

## AFFILIATE LICENSE AGREEMENT

This Affiliate License Agreement (“Agreement”) is entered into as of July 1, 2003 (the “Effective Date”) between Acacia Media Technologies Corporation (hereinafter “AMTC”), a Delaware corporation, with an address at 500 Newport Center Drive, 7th Floor, Newport Beach, CA 92660, Fax No. 949-480-8301, and \_\_\_\_\_, a \_\_\_\_\_ corporation with an address at \_\_\_\_\_, Fax No. \_\_\_\_\_ (hereinafter “Company”).

### BACKGROUND

**A.** AMTC is the owner of a portfolio of certain U.S. and foreign patents and patent applications covering certain systems and/or methods for transmitting and/or receiving digital audio, video, and audio-visual content (hereinafter “DMT<sup>®</sup> Technology”);

**B.** Company (and its Subsidiaries (as defined in Section 1.1 below), if any) provide Link(s) (as defined in Section 1.6 below) via their websites to direct end-user customers of Company and its Subsidiaries (hereinafter “End-User Customers”) to one or more third party websites that provide access to adult-oriented, sexually explicit video, audio and/or audio-visual content that is transmitted via the World Wide Web, Internet, or other download protocol utilizing the DMT Technology (hereinafter called “Covered Content”);

**C.** Acacia alleges that the use by Company (and its Subsidiaries’) of the Links in connection with the sale and/or transmission of Covered Content in the absence of a use license from AMTC, may constitute infringement of one or more claims of the Licensed Patents (as defined in Section 1.4 below) under one or more of the provisions of 35 U.S.C. § 271, including, but not limited to, §§ 271(a), (b), (c) and/or (g);

**D.** Company (and its Subsidiaries), without admitting any past or present liability for patent infringement, desire to obtain a license under the Licensed Patents in connection with Company’s (and its Subsidiaries’) use of Links in connection with the sale and/or transmission of Covered Content to End-User Customers accessing the Covered Websites (as defined in Section 1.3 below);

**NOW, THEREFORE**, in consideration of the above premises and the mutual covenants of the parties to be faithfully performed, AMTC and Company (on Company’s own behalf and on behalf of Company’s Subsidiaries listed on Exhibit A attached hereto), intending to be legally bound, agree as follows:

### 1. DEFINITIONS

In addition to the terms defined above and elsewhere in this Agreement, as used in this Agreement:

**Affiliate License  
Agreement (cont'd)**

- 1.1** “**Subsidiary**” shall mean any enterprise (a company, person, or group of persons, whether incorporated or not) in which Company currently has greater than a fifty percent (50%) ownership interest. A true and complete listing of Company’s Subsidiaries is attached hereto as **Exhibit A**.
- 1.2** “**Content Provider**” shall mean a person or entity that makes previews of Covered Content available via a website and/or transmits Covered Content to webmasters via the World Wide Web, Internet, or other download protocol.
- 1.3** “**Covered Websites**” shall mean only those websites legally owned by Licensed User (as defined in Section 1.5 below) that include Links to one or more third party websites that include Covered Content. A true and correct copy of the Covered Websites is attached to this Agreement as **Exhibit B**.
- 1.4** “**Licensed Patents**” shall mean the patents listed on **Exhibit C** to this Agreement, as well as any additional patents obtained by AMTC via any divisionals, continuations and continuations-in-part thereof, and any other patents hereafter acquired by AMTC that are licensed as part of the DMT Technology.
- 1.5** “**Licensed User**” shall mean Company and any Subsidiaries listed in Exhibit A.
- 1.6** “**Links**” shall mean a textual and/or graphical reference, including without limitation, banner and pop-up advertisements, that, when clicked by an End-User Customer, directs such End-User Customer to a third party website that provides access to Covered Content.
- 1.7** “**Third Party Host**” shall mean a person or entity, that is also not a Content Provider, that hosts Covered Content on Licensed User’s behalf and transmits the Covered Content to End-User Customers.

**2. LICENSE**

- 2.1 Grant of Limited Use License.** Subject to the provisions of Section 2.2 and Section 3, AMTC hereby grants to Licensed User a non-exclusive, non-transferable, non-assignable, limited use license (“Limited Use License”) under the Licensed Patents in the geographic areas covered by the Licensed Patents solely for the following purpose and use:

Inclusion of Links on the Covered Websites.

- 2.2 Any Use Or Right Not Specifically Enumerated Is Excluded.** The Limited Use License defined by and granted in Section 2.1 is limited solely to the specified uses enumerated in Section 2.1. The License excludes any and all uses not specifically

**Affiliate License  
Agreement (cont'd)**

enumerated in Section 2.1. For the avoidance of doubt, Licensed User is not granted any rights, by implication or otherwise, under the Licensed Patents to transmit Covered Content, either directly or via a Third Party Host, to any person or entity, including without limitation End-User Customers.

- 2.3 Reserved Rights.** Any and all rights not explicitly granted to Licensed User in Section 2.1 above are expressly reserved by AMTC. No license or immunity as to the Licensed Patents is granted by AMTC to Licensed User, either by implication, estoppel, or otherwise, other than the Limited Use License specifically enumerated and expressly provided in Section 2.1 to Licensed User, and no license or immunity as to the Licensed Patents is granted by AMTC to End-User Customers or any other entity either by implication, estoppel, or otherwise.
- 2.4 No Sublicense Rights.** The Limited Use License granted to Licensed User in Section 2.1 above does not confer upon Licensed User the right to grant or otherwise transfer (via sublicense, assignment, or otherwise) any rights under the Licensed Patents to any other persons or entities for any purpose. Licensed User's rights under the Licensed Patents are limited to the specific uses set forth in Section 2.1.
- 2.5 Company Liable for Obligations of Subsidiary.** Company is and shall remain primarily liable to AMTC for all of its Subsidiaries' obligations, covenants, representations and performance under each and every term and condition of this Agreement, including, but not limited to, the limitations and conditions of use (defined in Section 2.1 above), financial, audit and other obligations under this Agreement.
- 2.6 Conditional Release for Past Infringement.** Provided that Licensed User maintains compliance with all of the terms and conditions of this Agreement, and as part of the consideration being given to Licensed User hereunder, Licensed User is conditionally relieved from any liability Licensed User may have incurred prior to the Effective Date for infringement of the Licensed Patents solely by virtue of Licensed User's acts and uses specified in Section 2.1 above.

**3. ROYALTIES AND AUDIT**

- 3.1 Annual Prepaid Royalty and Contract Administration Fee.** In consideration of the Limited Use License granted in Section 2.1 above, and the conditional release for past infringement set forth in Section 2.6 above, for each twelve (12) month period that this Agreement is in effect, Licensed User shall pay AMTC an annual prepaid royalty (the "Royalty"), covering such twelve (12) month period, equal to four percent (4%) of Licensed User's actual Gross Sales (as defined in Section 3.2 below) for the immediately preceding twelve (12) month period. If Licensed User's actual Gross Sales for the twelve (12) month period immediately preceding the Effective Date of this Agreement exceeded one million dollars (\$1,000,000),

**Affiliate License  
Agreement (cont'd)**

Licensed User should call AMTC at (949) 480-8300. The initial twelve (12) month period that this Agreement is in effect, and any subsequent twelve (12) month period for which this Agreement is renewed, shall be referred to as a "Royalty Period." Licensed User represents to AMTC that its actual Gross Sales for the period beginning July 1, 2002 and ending June 30, 2003 were \$\_\_\_\_\_, which multiplied by four percent (0.04) equals an initial Royalty payment of \$\_\_\_\_\_ ("Initial Royalty Payment") for the first Royalty Period beginning July 1, 2003 and ending June 30, 2004. Contemporaneously with Licensed User's execution of this Agreement, Licensed User shall pay AMTC (i) the Initial Royalty Payment, (ii) a one-time, non-refundable contract administration fee equal to twenty-five hundred dollars (\$2,500), and (iii) the Royalty due for any completed Royalty Periods occurring between the Effective Date (set forth in the first paragraph of this Agreement) and the date Licensed User executes this Agreement. Licensed User shall make subsequent Royalty payments to AMTC in accordance with Section 3.3 below.

**3.2 Gross Sales.** Gross Sales shall mean the gross value of the consideration received (including without limitation any gross dollars received) by Licensed User generated from the Links to third party websites that have not licensed the DMT Technology from AMTC. With respect to sales to any person, firm, or corporation directly or indirectly controlling, controlled by, under common control with, or enjoying a specially favored course of dealing with Licensed User, Gross Sales shall be the amount which would have been charged on an arm's length sale to a bona fide third party. Licensed User has determined and acknowledges that a royalty based upon Licensed User's Gross Sales is an accurate and convenient means for measuring the value of the licensed activities defined in Section 2.1 above, and that in light of this royalty base, the Royalty amount has been adjusted accordingly.

**3.3 Royalty Payments.** Any payment made pursuant to the provisions of this Agreement shall be paid in United States Dollars. Within thirty (30) days of the end of each Royalty Period following the first Royalty Period, Licensed User shall send to AMTC the Royalty payment due for the then-current Royalty Period along with a statement indicating Licensed User's actual Gross Sales for the preceding Royalty Period in reasonable detail. Such statement shall be certified by an employee, officer, or principal of Licensed User authorized to make such certification. In addition to the royalty payment set forth in Section 3, in the event Licensed User is located outside of the United States, Licensed User shall pay or reimburse AMTC for any and all taxes, such as sales, excise, value added, use taxes, and similar taxes of Licensed User (but not AMTC's U.S. or state income taxes), based upon payments made hereunder in a jurisdiction where such taxes are required. Any payment required hereunder that is more than ten (10) days late (including unpaid portions of amounts due) shall bear interest, compounded monthly, at the lesser of ten percent (10%) per annum, or the highest interest rate permitted to be charged by applicable law. If a payment due under this Agreement is made by Licensed User's

**Affiliate License  
Agreement (cont'd)**

check and the check is dishonored, such payment shall be deemed to not have been made, and AMTC may require subsequent payments to be made by cashier's check in immediately available funds.

- 3.4 Audit Rights.** Licensed User shall keep accurate records of Gross Sales for a period not to exceed five (5) years, unless in dispute, in which event they shall be kept until the later of when said dispute is settled and such five (5) year period. Such records shall be open during reasonable business hours and upon ten (10) days prior written notice, at the place where such records are customarily kept, for examination by AMTC or an agent of AMTC, for the sole purpose of verifying the accuracy of Licensed User's representations to AMTC regarding Licensed User's Gross Sales. The records available for inspection shall include, without limitation, any records indicating traffic to the Covered Websites. AMTC may exercise its rights of inspection hereunder no more than twice per calendar year. In the event that any audit performed by AMTC or its agent reveals a royalty underpayment in excess of five percent (5%) for any Royalty Period, Licensed User shall bear the reasonable costs of such audit. Licensed User shall remit any underpaid royalty amounts due to AMTC, plus the costs of the audit if applicable, immediately upon receiving notice thereof. Licensed User shall give AMTC, or an agent of AMTC, access to the Covered Websites at any time, for the purpose of verifying Licensed User's compliance with the terms of this Agreement.

**4. REPRESENTATIONS, WARRANTIES AND COVENANTS**

- 4.1 Representations, Warranties, and Covenants of Licensed User.** Licensed User represents, warrants, and covenants to AMTC that: (i) Exhibit B is an accurate and complete list of the websites legally owned by Licensed User that include Links to third party websites via which Covered Content is sold and/or transmitted to End-User Customers; (ii) Licensed User will immediately notify AMTC in writing in the event that Licensed User acquires or develops additional websites during the Royalty Period that include Links to third party websites via which Covered Content is sold and/or transmitted to End-User Customers; (iii) in the event that Licensed User contests or voluntarily assists others in contesting the validity of the Licensed Patents or AMTC's ownership thereof during the term of this Agreement, AMTC, upon written notice to Licensed User, may immediately terminate this Agreement and the license granted hereunder, and in the event that a final determination is made adjudicating any of the contested claims in AMTC's favor, Licensed User shall reimburse AMTC for the actual costs and expenses incurred by AMTC in contesting Licensed User's position; (iv) Licensed User is licensing each patent constituting the Licensed Patents for its own convenience, and this Agreement may not provide Licensed User all of the rights that Licensed User needs to utilize the DMT Technology; (v) Licensed User has the full legal authority (on behalf of Company and any Subsidiaries) necessary to enter into this Agreement and perform the duties and obligations outlined in this Agreement, and (vi) Licensed User has not used, and

**Affiliate License  
Agreement (cont'd)**

shall not use, the DMT Technology except as expressly set forth in Section 2.1 above.

**4.2 Representations, Warranties, and Covenants of AMTC.** AMTC represents and warrants that it (i) owns all right, title and interest in the Licensed Patents, and (ii) has the necessary rights, powers, and authority to enter into this Agreement. THE LICENSE GRANTED TO LICENSED USER BY AMTC IS GRANTED IN “AS IS/WHERE IS” CONDITION. OTHER THAN WITH RESPECT TO ITS OWNERSHIP OF THE LICENSED PATENTS, AMTC MAKES NO REPRESENTATIONS OR WARRANTIES TO LICENSED USER OF ANY KIND, INCLUDING WITHOUT LIMITATION, EXPRESS, IMPLIED, STATUTORY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, PATENT ENFORCEABILITY, OR PATENT VALIDITY. IN ADDITION, AMTC MAKES NO REPRESENTATION THAT THE USE OF THE DMT TECHNOLOGY WILL NOT INFRINGE, DIRECTLY, CONTRIBUTARILY, OR BY INDUCEMENT, ANY PATENT, COPYRIGHT, TRADEMARK OR OTHER PROPRIETARY RIGHT OF ANY THIRD PARTY. AMTC SHALL NOT BE LIABLE TO LICENSED USER FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, EVEN IF INFORMED OF THE POSSIBILITY THEREOF IN ADVANCE. THESE LIMITATIONS APPLY TO ALL CAUSES OF ACTION IN THE AGGREGATE, INCLUDING WITHOUT LIMITATION, BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, FRAUD, MISREPRESENTATION AND OTHER TORTS, LOSS OF PROFIT, LOSS OF BUSINESS, LOSS OF SAVINGS OR OTHER LOSS.

**5. CONFIDENTIALITY**

**5.1 Confidentiality.** All information provided pursuant to this Agreement, including without limitation, the terms of this Agreement, and any sales or customer information provided by Licensed User to AMTC, shall be regarded as confidential information (“Confidential Information”). The parties agree that, other than as required by law, they shall not disclose any Confidential Information and shall use the Confidential Information only for the purposes set forth herein. Licensed User acknowledges that AMTC’s parent company, Acacia Research Corporation (“Acacia”), is a publicly traded company, and that Acacia may be required to publicly disclose the signing of this Agreement, as well as certain terms of the Agreement. Confidential Information shall not include information that: (i) was already known, otherwise than under an agreement of secrecy or non-use, at the time of its disclosure; (ii) has passed into the public domain prior to or after its disclosure, otherwise than through any act or omission attributable to principals, officers, employees, consultants or agents of the receiving party; or (iii) was subsequently disclosed, otherwise than under an agreement of secrecy or non-use, by a third party that had not acquired the information under an obligation of confidentiality.

## **6. TERM AND TERMINATION**

**6.1 Term.** This Agreement shall commence upon AMTC's countersignature of this Agreement after being signed by Licensed User, and shall terminate one (1) year following the Effective Date. Unless Licensed User notifies AMTC of its intent not to renew this Agreement at least forty five (45) days prior to the expiration of the then current Term, this Agreement shall automatically renew for additional one (1) year terms and shall terminate at the end of the subsequent twelve (12) month period. This Agreement shall automatically terminate upon the expiration of the last to expire of the Licensed Patents. Notwithstanding the foregoing, in the event that all of the Licensed Patents are held to be invalid by a non-appealable final order by a Court of competent jurisdiction, such that no surviving claims of the Licensed Patents cover the sale, advertisement and/or transmission of Covered Content, this Agreement shall automatically terminate and Licensed User shall have no obligation to make any additional Royalty payments to AMTC, provided, however, that AMTC shall have no obligation to refund any Royalty payments received from Licensed User for any reason whatsoever.

**6.2 Termination.** Notwithstanding Section 6.1 above, AMTC may terminate this Agreement upon thirty (30) days written notice to Licensed User upon the breach by Licensed User of any of the terms and conditions of this Agreement, provided that such breach has not been fully cured within such thirty (30) day period. Upon the termination of this Agreement for any reason, Licensed User shall immediately stop any and all acts or uses of the DMT Technology that would constitute infringement of any claim of the Licensed Patents under one or more of the provisions of 35 U.S.C. § 271, including, but not limited to, §§ 271(a), (b), (c) and/or (g).

## **7. MISCELLANEOUS**

**7.1 Indemnification by Licensed User.** Licensed User shall indemnify and hold harmless AMTC and its affiliates, principals, employees, officers, directors, consultants, stockholders, representatives and agents, successors and assigns (an "AMTC Indemnified Party") from and against all claims, disputes, debts, controversies, obligations, judgments, demands, liens, causes of action, liability, loss, damages, costs and expenses (including reasonable attorneys' fees and expenses of litigation) (collectively, "Claims") which an AMTC Indemnified Party may incur, suffer or be required to pay resulting from or arising in connection with the breach by Licensed User of any covenant or other provision contained in this Agreement, or any Claims arising out of or relating to any action or inaction by Licensed User in connection with this Agreement or the Covered Websites. An

**Affiliate License  
Agreement (cont'd)**

AMTC Indemnified Party may retain counsel, as necessary, to defend against any such Claims.

- 7.2 Non-Agency.** Nothing in this Agreement is intended or shall be deemed to constitute a partnership, agency, employer-employee, or joint venture relationship between the AMTC and Licensed User. Neither AMTC nor Licensed User shall incur any debts or make any commitments for the other.
- 7.3 Entire Agreement, Amendments, and Waivers.** This Agreement constitutes and contains the entire agreement between AMTC and Licensed User, and supersedes any and all prior negotiations, conversations, correspondence, understandings, and letters respecting the subject matter hereof. This Agreement may be amended or modified or one or more provisions hereof waived only by a written instrument signed by the parties. No delay or omission by any party in exercising any right or power arising from any default by the other party shall be construed as a waiver of such default, nor shall any single or partial exercise thereof preclude any further exercise thereof or the exercise of any other right or power arising from any default by a party. No waiver of any breach of any covenant or other condition shall be construed to be a waiver of or consent to any previous or subsequent breach of the same or of any other covenant or condition.
- 7.4 Severability and Captions.** If one or more provisions of this Agreement are held to be invalid or unenforceable under applicable law, such provision shall be excluded from this Agreement and the balance of the Agreement shall be interpreted as if such provision were so excluded. In the event a part or provision of this Agreement is held to be invalid or unenforceable or in conflict with law for any reason, the parties shall replace any invalid part or provision with a valid provision that most closely approximates the intent and economic effect of the invalid provision. The captions to this Agreement are for convenience only and are to be of no force or effect in construing and interpreting the provisions of this Agreement.
- 7.5 Governing Law and Consent to Jurisdiction.** This Agreement shall be governed by and construed under applicable federal law and the laws of the State of California, excluding any conflict of law provisions. Licensed User and AMTC each irrevocably consent to the exclusive jurisdiction of any California state or federal court sitting in the Central District of California, over any suit, action or proceeding arising out of or relating to this Agreement. AMTC and Licensed User hereby waive personal service of any summons, complaint, or other process in any action in any California state or federal court sitting in the Central District of California, and agree that all service thereof may be made by (i) certified or registered mail, return receipt requested, to the other party's address identified in the opening paragraph of this Agreement; (ii) by facsimile to other party's facsimile number identified in the opening paragraph of this Agreement (or other facsimile

**Affiliate License  
Agreement (cont'd)**

number identified in writing by the parties for such purpose); or (iii) by such other method as if authorized by the California Long Arm Statute.

- 7.6 Notices.** Any notice required or permitted under this Agreement shall be given in writing and shall be sent via overnight carrier, or via facsimile and regular mail, to the addresses and fax numbers indicated in the opening paragraph of this Agreement above. Payment information shall be sent to the attention of Accounts Receivable Department of AMTC and all other notices to AMTC shall be sent to the attention of Robert Berman, Chief Operating Officer and General Counsel, AMTC.
- 7.7 Third Party Beneficiaries and Assignment.** Nothing in this Agreement shall be construed to give rise to any obligation on either party hereto for the benefit of a third party or to confer any rights on any party other than AMTC or Licensed User. Licensed User may not assign, delegate, sell, transfer, sublicense or otherwise dispose of, voluntarily or involuntarily, by operation of law or otherwise, any or all of its rights or obligations under this Agreement to any other person, business or entity.
- 7.8 Survival.** Sections 3.4, 4.1, 4.2, 5.1, 7.1, 7.3, 7.5, 7.7, and 7.8 of this Agreement shall survive the expiration or termination of this Agreement.

**IN WITNESS WHEREOF**, the parties have executed this Agreement on the dates set forth below.

\_\_\_\_\_  
[Company]

**Acacia Media Technologies Corporation**

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

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

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

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

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

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

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

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

Email Address: \_\_\_\_\_

# Exhibit A

## List of Subsidiaries

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

Address: \_\_\_\_\_

\_\_\_\_\_

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

Contact: \_\_\_\_\_

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

Address: \_\_\_\_\_

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

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† We have no Subsidiaries \_\_\_\_\_  
initials

# Exhibit B

## Covered Websites (sites legally owned by Licensed User)

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## Exhibit C

### Licensed Patents

United States·····U.S. Patent No. 5,132,992  
United States·····U.S. Patent No. 5,253,275  
United States·····U.S. Patent No. 5,550,863  
United States·····U.S. Patent No. 6,002,720  
United States·····U.S. Patent No. 6,144,702  
Taiwan····· Taiwan Patent No. 72821  
Mexico····· Mexican Patent No. 180038  
Japan····· Japanese Patent No. 4-504433  
Belgium····· EP 0 566 662  
Switzerland·····EP 0 566 662  
France·····EP 0 566 662  
Italy····· EP 0 566 662  
Luxembourg····· EP 0 566 662  
Monaco····· EP 0 566 662  
Netherlands····· EP 0 566 662  
Sweden····· EP 0 566 662  
Great Britain·····EP 0 566 662  
Greece····· GR3032463T3  
Spain·····ES2138968T3  
Denmark·····DK566662T3  
Germany·····DE69230250T2  
Austria····· AT186437E  
European Patent Office·····European Patent No. EP 0 566 662 B1  
European Patent Office·····European Patent No. EP 0 933 892 B1