

Notice: This agreement is not effective until a fully executed original has been received by the Secretary,

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ACPI 2.0 ADOPTERS AGREEMENT

This ACPI 2.0 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.

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

1.3 “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.

1.4 “Compliant Portion” means only those specific portions of products (hardware, software or combinations thereof) that i) implement and are compliant with all relevant portions of the Final Specification, and ii) are within the bounds of the Scope.

1.5 “Final Specification” means the Advanced Configuration and Power Interface release 2.0 (“ACPI 2.0”) Final Specification as adopted and published by the Promoters.

1.6 “Necessary Claims” means claims of a patent or patent application that (a) are owned or controlled by a party or its Affiliates now or at any future time during the term of this agreement; 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 technically 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 (w) that read solely on an implementation example included in the Final Specification; (x) other than those set forth above even if contained in the same patent 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 a payment of royalties by the licensor to unaffiliated third parties.

1.7 “Promoters” means each company that has signed a ACPI 2.0 Specification Promoters Agreement.

1.8 “Scope” means any fixed-register interface definitions with their associated behavioral models, any firmware interface definitions for describing available register features, and the grammar and syntax defining the ACPI Source Language (ASL) and ACPI Machine Language (AML) used to create objects in the ACPI name space, and all table definitions, method interface definitions, and algorithms that are disclosed with particularity in the Final Specification with the sole purpose of enabling products to inter-operate, 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 elsewhere 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.

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

1.10 “Trademarks” shall have the meaning assigned in Section 4.1.

2. COMPLIANCE WITH ANTITRUST LAWS

The Promoters and Adopters are committed to fostering open competition in the development of products and services based on the Final Specification. The Adopters and Promoters understand

that in certain lines of business they are or may be direct competitors and that it is imperative that they and their representatives act in a manner which does not violate any state, federal or international antitrust laws and regulations. Without limiting the generality of the foregoing, the Adopting Party acknowledges that this Agreement prohibits any communication that violates the anti-trust laws. Accordingly, Adopting Party will make a good faith effort to counsel its representatives who participate in any activities under this Agreement on the importance of limiting the scope of their discussions and communications to the topics that relate to the purposes of this Agreement, whether or not such discussions and communications take place during formal meetings, informal gatherings, or otherwise.

3. LICENSES

3.1 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 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.

(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.

3.2 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 3.1(a)3.1(a), provided that all reproductions thereof shall include any copyright notices and disclaimers contained in the Final Specification.

3.3 ACPI 1.0 Licensing. Any Adopter and its Affiliates who are not ACPI 1.0 Licensees agree to grant to all ACPI 1.0 Licensees and their Affiliates, who will or have agreed to the same undertaking with respect to ACPI 2.0 Promoters, Adopters and their Affiliates, a non-exclusive worldwide license under its ACPI 1.0 Necessary Claims solely to make, have made, use, import,

offer to sell, sell and otherwise distribute and dispose of ACPI 1.0 Compliant Portions; provided that such license need not extend to any part or function of a product in which an ACPI 1.0 Compliant Portion is incorporated that is not itself part of the ACPI 1.0 Compliant Portion. Such license shall be granted on a royalty-free basis and under otherwise reasonable and non-discriminatory terms. For the purposes of this Section 3.3:

“ACPI 1.0 Compliant Portion” means only those specific portions of products (hardware, software or combinations thereof) that: (i) implement and are compliant with all relevant portions of the ACPI 1.0 Specification, and (ii) are within the bounds of the Scope,

“ACPI 1.0 Necessary Claims” means claims of a patent or patent application that (a) are owned or controlled by a party or its Affiliates now or at any future time during the term of this Agreement; and (b) are necessarily infringed by implementing those proportions of the ACPI 1.0 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 technically reasonable non-infringing alternative for implementing such portions of the ACPI 1.0 Specification within the bounds of the Scope. Notwithstanding the foregoing sentence, ACPI 1.0 Necessary Claims do not include any claims (w) that read solely on an optional implementation example included in the ACPI 1.0 Specification; (x) other than those set forth above even if contained in the same patent as ACPI 1.0 Necessary Claims; (y) that read solely on any implementations of any portion of the ACPI 1.0 Specification that are not within the bounds of the ACPI 1.0 Scope; or (z) that, if licensed, would require a payment of royalties by the licensor to unaffiliated third parties.

“ACPI 1.0 Scope” means any fixed-register interface definitions with their associated behavioral models and any firmware interface definitions for describing available register features, the grammar and syntax defining the ACPI Source Language (ASL) and ACPI Machine Language (AML) used to create objects in the ACPI name space, and all table definitions, method interface definitions, and algorithms that are disclosed with particularity in the ACPI 1.0 Specification with the sole purpose of enabling products to inter-operate, interconnect or communicate as defined within the ACPI 1.0 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 ACPI 1.0 Specification, but are not themselves expressly set forth in the ACPI 1.0 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 elsewhere but referred to in the body of the ACPI 1.0 Specification; or (c) any portions of any product and any combinations thereof the purpose or function of which is not required for compliance with the ACPI 1.0 Specification.

4. TRADEMARKS

4.1 Nonassert. Adopter and its Affiliates hereby agree not to assert against any Promoter or other Adopter or their Affiliates any trademark, trade name, or similar rights it may have now or hereafter in the names “Advanced Configuration and Power Interface”, “ACPI”, or “ACPI 2.0” (collectively “Trademarks”).

4.2 Obligation to Use Trademarks. Adopter or its Affiliates are not obligated to use any of the Trademarks on any product, advertising, or on any other material in any manner.

4.3 Use of the Trademarks. Adopter and its Affiliates 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.

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 on Final Draft. 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. OTHER THAN SECTION 3.4 AS SET OUT IN THE CONTRIBUTOR ADDENDUM (IF ONE IS SIGNED), IN NO EVENT WILL ANY PARTY HERETO BE LIABLE TO ANY OTHER PARTY OR ANY THIRD PARTY 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 or by email and written notices shall be sent to the parties at the following addresses or at such addresses as the Secretary or Adopting Party may later specify by such written notice. For purposes of this Section 5.7.7, written no

tice shall not include notice by email or by facsimile.

Notices to Promoters

Notices to Adopting Party

ACPI 2.0 Promoters
C/O

Tony Pierce
Microsoft Corporation
One Microsoft Way
Redmond, WA 98052-6399
U.S.A.

Email: tonypi@microsoft.com
Phone: (425) 703-8669

FAX: 425-706-3336 Attention: Tony Pierce

Subject: ACPI 2.0

Written 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 (on behalf of all Promoters):

Company: _____ Address: _____

By: _____

Name: _____ Telephone: _____

Title: _____ Fax: _____

Date: _____ e-mail: _____

Adopting Party:

Company: _____ Address: _____

By: _____

Name: _____ Telephone: _____

Title: _____ Fax: _____

Date: _____ e-mail: _____