

## **DIGITAL INTERACTIVE INTERFACE FOR VIDEO AND AUDIO (DiiVA) ADOPTERS AGREEMENT**

This Digital Interactive Interface for Video and Audio Adopters Agreement (“Adopters Agreement”) is entered into by and between DiiVA Licensing LLC (“Administration Organization”), as agent of the Promoters (as defined below) and the adopting party set forth below (“Adopting Party”).

Adopting Party Name (the company name, unless you are specifically signing as an individual)

Mailing Address:

E-mail Address:

Legal Contact Name:

Telephone/Fax:

The parties hereto wish to encourage broad industry adoption of the Final Specification (as defined in paragraph 1.8, below) without field of use limitations and wish to make available licenses for the same on reasonable and nondiscriminatory terms. They therefore agree as follows:

### **AGREEMENT**

#### **1. DEFINITIONS**

1.1 “Administration Organization” means initially DiiVA Licensing LLC or a licensing and administration body formed by the Promoters for the purpose of promoting the Final Specification.

1.2 “Adopter” means Adopting Party and any party that has entered into or later enters into this Adopters Agreement agreed to by the Promoters and has delivered or later delivers such Adopters Agreement to the Administrative Organization.

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) greater than 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) greater than 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 so long as such ownership or control exists and is greater than fifty percent (50%).

1.4 “Compliant Portion” means those portions of a product in any field of use (hardware, software or combinations thereof) that implement and are compliant with the Final Specification (as applicable to such portions); provided, and only to the extent that, such portions are within the bounds of the Scope.

1.5 “Contributor” means a party that has entered into a Contribution Agreement agreed to by

the Promoters.

1.6 “Contribution Agreement” means a DiiVA Contribution Agreement in the form agreed by the Promoters.

1.7 “Effective Date” means the date an Adopter delivers an original fully executed Adopters Agreement to the Agent.

1.8 “Final Specification” means the version and contents of the Draft Specification as adopted by the Promoters; provided that the Final Specification shall not include (i) any implementation examples unless such implementation examples are expressly identified in the Final Specification as being “licensed” under terms of this Agreement, and (ii) any feature, specification, protocol, interface, item or other element that is labeled or otherwise identified as “not licensed.”

1.9 “Member” means a Promoter, a Contributor or an Adopter.

1.10 “Necessary Claims” for each Member means claims of a patent or patent application, to the extent patents issue on such application, that

- (a) now or at any future time during the term of this Agreement, are owned, controlled or licensable by such party or any of its Affiliates throughout the world; and
- (b) are necessarily infringed by implementing those portions of the Final Specification that are within the bounds of the Scope, provided that a claim is necessarily infringed only when it is not possible to avoid infringing such claim because there is no commercially reasonable 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; or
- (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 third parties who are not Affiliates, unless the licensee agrees in writing to indemnify the licensor against all royalty costs and expenses arising from such license.

1.11 “Promoters” are Sichuan Chang Hong Electric Co.; Qingdao Haier Co.; Hisense Electric Co.; Konka Group; Nanjing Panda Electronics Co.; Skyworth Group; SVA Information Industry Co.; TCL Corporation; and Synerchip Co., Ltd. and such additional companies that may be added from time to time under the terms of the Promoters Agreement or such fewer companies resulting from a withdrawal as permitted under the terms of the Promoters Agreement.

1.12 “Scope” means those methods of communication, electrical and algorithmic definition of bi-directional data transfer implementation disclosed with particularity in the Final Specification where the primary purpose of such disclosure is to enable additional features and functionality, as defined within the Final Specification. “Scope” also means those portions of the implementation examples related to the bi-directional data transfer indicated as being “licensed” in the Final Specification.

Notwithstanding the foregoing, the Scope shall not include

- (y) any technology that is (i) not actually contained within a product or portion thereof that complies with the Final Specification, even if such technology is useful or necessary to develop, design, debug, manufacture, sell or use such product or portion thereof, or (ii) any implementation examples, unless such implementation examples are expressly identified in the Final Specification as being “licensed”, or
- (z) any portion of any product or any combination of products (or portions of products) the purpose or function of which is not required for compliance with, or specified as a compliant implementation in, the Final Specification.

1.13 “Secretary” means a person designated by the Promoters to undertake certain administrative duties related to the Specification, which initially shall be China Video Industry Association.

1.14 “Trademarks” shall have the meaning assigned in Section 3, herein.

## **2. LICENSES**

### **2.1 Limited Patent Licenses.**

(a) To Adopter. Subject to the terms and conditions of this Agreement including the non-assertion terms set forth in Section 2.1(b) and the annual fee and payments of royalties described in Annex A, upon the Effective Date of this Adopters Agreement, Administrative Organization, hereby grants to Adopter and its Affiliates who agree to be bound to this Adopters Agreement (collectively “Licensee”) a nonexclusive, non-sublicensable, non-transferable, worldwide patent license under its Necessary Claims solely to make, have made, use, import, and directly and indirectly, 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 but that is not itself part of the Compliant Portion. Further, any patent license granted under this section includes a provision that provides in the event a Licensee (or any of its Affiliates) sues the grantor of such license (or any of its Affiliates) for patent infringement on account of the manufacture, use, sale, offer for sale, importation, distribution, or other disposition or promotion of the grantor's (or its Affiliate's) compliant implementation of the Final Specification, then said grantor may terminate all license grants and any other rights provided herein by such grantor to such Licensee and such Licensee's Affiliates. Adopter understands and agrees that it has no license to patent claims other than Promoter’s Necessary Claims.

(b) By Adopter. Upon the Effective Date of this Adopters Agreement, Adopter hereby agrees, on behalf of itself and its Affiliates, hereby agree not to bring, commence, maintain or prosecute any

action or other proceeding based on any Necessary Claims that they may now or in the future own or control, or to otherwise assert any such Necessary Claim, worldwide against any Promoter or any fellow Adopter, solely to enable Promoters and fellow Adopters to make, have made, use, import, and directly and indirectly, 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 but that is not itself part of the Compliant Portion. Further, in the event an Adopter or Promoter sues an Adopter (or any of its Affiliates) for patent infringement on account of the manufacture, use, sale, offer for sale, importation, distribution, or other disposition or promotion of the Adopter's (or its Affiliate's) compliant implementation of the Final Specification, then said Adopter's non-assertion agreement against such beneficiary shall terminate.

2.2 Copyright License. Upon the Effective Date of this Adopters Agreement, the Promoters and Contributors hereby grant to Adopter and its Affiliates who agree to be bound to this Adopters Agreement, a nonexclusive, nontransferable, non-sublicenseable, worldwide copyright license in the Final Specification to reproduce the Final Specification as necessary in order to exercise the patent rights granted to Adopter in Section 2.1(a), provided that all reproductions thereof shall include any copyright notices and disclaimers contained in the Final Specification.

2.3 The provisions of Section 2.1(b) shall survive the termination of this Agreement for any reason.

2.4 Annual Fees. The current annual fees of US\$5,000 is required for Adopter membership in DiiVA. However, the Promoters reserve the right to change such annual fees upon providing ninety (90) days written notice to Adopter.

### 3. TRADEMARKS

3.1 Nonassert. Adopter hereby agrees not to assert against any Member any trademark, trade name, or similar rights it may have now or hereafter in the names "DiiVA", Digital Interactive Interface for Video and Audio" (collectively "Trademarks") when used to identify or refer to the Final Specification and products containing Compliant Portions. The Promoters may agree in the future to create, use and seek appropriate protection for additional trademarks, trade names, logos, trade dress and the like (all such trademarks and the like also being "Trademarks") for identifying or referring to the Final Specification and products containing Compliant Portions.

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 hereby agrees that, to the extent it uses the Trademarks, it shall only use the Trademarks in accordance with any applicable Trademark guidelines and 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.

3.4 Compliance Testing. In order to foster interoperability, the Promoters may develop a compliance test specification (“Compliance Test Specification”), which shall represent the minimum compliance testing required for products incorporating Compliant Portions. Each Adopter shall be solely responsible for ensuring that its products that incorporate Compliant Portions comply with the Final Specification, function correctly and interoperate with other products. Prior to an Adopter's use of any Trademarks and prior to mass producing and/or distributing (either directly or indirectly whether through a manufacturing contractor or agent) of a product incorporating a Compliant Portion, each of such Adopters shall reasonably test a representative sample of such product to establish compliance with the Final Specification. At a minimum, such testing include successfully performing all testing required in the Compliance Test Specification. The Promoters may establish an authorized test center and such authorized test center may develop terms and conditions of testing to enable Adopters to pass the testing requirements. Each Adopter shall be responsible for its expenses related to such compliance testing.

#### 4. TERM

4.1 Term. This Adopters Agreement shall begin on the Effective Date and shall continue for a period of five (5) years after which time it will be automatically renewed for an additional term of five (5) years unless the Adopter provides written notice of termination to the Secretary not later than sixty (60) days prior to the expiration of the initial term. Following such termination, Sections 1, 2.1(b), 4 and 6 shall survive and remain in effect. All other rights, obligations, terms and conditions of this Adopters Agreement shall terminate.

4.2 Termination by Promoters. In the event that the Promoters determine, in accordance with the terms of the Promoters Agreement, to terminate the Promoters Agreement, then this Adopters Agreement shall automatically terminate. The Secretary shall notify all Adopters of such termination. Following such termination, Sections 1, 2.1(b), 4 and 6 shall survive and remain in effect. All other rights, obligations, terms and conditions of this Adopters Agreement shall terminate.

4.3 Termination for Breach. This Adopters Agreement may be terminated by a 30 day written notice to Adopter (and such termination shall be effective upon the expiration of that 30 day period) in the event that Adopter: (i) materially breaches any of its obligations hereunder and such breach is not cured or not capable of cure within the 30 day period in such notice, or (2) repeatedly breaches any of its obligations hereunder and fails to cure and cease committing such repeated breaches within the 30 day period in such notice. Following such termination, Sections 1, 2.1(b), 4 and 6 shall survive and remain in effect. All other rights, obligations, terms and conditions of this Adopters Agreement shall terminate.

#### 5. ENFORCEMENT OF AGREEMENTS

5.1 Adopter shall promptly notify the Secretary of any violation of any Member agreements of which it becomes aware. Each Promoter shall have the right to enforce compliance with the terms of such agreement as provided in the Promoters Agreement.

#### 6. GENERAL

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

6.2 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.

6.3 Limitation of Liability. IN NO EVENT WILL ANY PARTY HERETO BE LIABLE TO EACH OTHER OR TO 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.

6.4 Governing Law. This Agreement shall be construed and controlled by the laws of Hong Kong without reference to conflict of laws principles.

6.5 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 courts of Hong Kong, PRC.

6.6 Notices. All notices hereunder shall be in writing and sent to the Administration Organization or Secretary at such address as they have furnished for notice from the parties hereto. For purposes of this Section 6.6, written notice shall not include notice by electronic mail or by facsimile. Notices shall be deemed served when received by the addressee or, if delivery is not accomplished by reason of some fault of the addressee, when tendered for delivery. The Secretary or Administration Organization 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 the Secretary or Administration Organization at such changed address.

6.7 Not Partners. This Adopters Agreement does not create a joint venture, partnership or other form of business association between the parties, or an obligation to buy or sell products implementing the Final Specification.

6.8 Complete Agreement; No Waiver. This Adopters 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 Adopters 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.

6.9 No Rule of Strict Construction. Regardless of which party may have drafted this Adopters Agreement, no rule of strict construction shall be applied against any party. If any provision of this Adopters 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 Adopters Agreement, and the remainder of this Adopters Agreement will continue in effect.

6.10 Compliance with Laws. Anything contained in this Adopters 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.

6.11 Authority. Each party hereby represents and warrants that it has the power and authority to bind itself and all of its Affiliates to the obligations contained herein, including without limitation, the obligation to grant patents licenses as set forth in Section 2. Each party further represents and warrants that it has not and will not transfer patents having Necessary Claims for the purpose of circumventing the commitment to grant licenses contained in this Adopters Agreement. Any transfer by an Adopter or its Affiliates to a third party of a patent having Necessary Claims shall be subject to the terms and conditions of this Adopters Agreement.

6.12 Petition for Necessary Claims. If Adopter or third party has a reasonable good faith belief that it is the owners of a Necessary Claim, then such person shall inform the Administrative Organization and Promoters, and may petition the Administrative Organization and Promoters in writing for a share of future patent royalties collected under DiiVA. The Promoters shall make a final determination regarding the reasonable allocation of future royalties based on the value (and not the number) of any claims determined to be Necessary Claims.

6.13 Challenge to Necessary Claims. If Adopter or its Affiliate challenges the validity or enforceability of any Necessary Claim in any jurisdiction in a court, patent office or other official action, such claims shall be excluded from the Necessary Claims licensed to Adopter and its Affiliates under this Agreement, and the patent holder may seek all remedies for the infringement of such claims by Adopter and its Affiliates, including injunctive relief, without reference to this Agreement.

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

ADOPTER	ADMINISTRATIVE ORGANIZATION
<hr/> Company Name  By: _____ Name: Title: Date: _____	<hr/> By: _____ Name: Title: Date: _____

## **Annex A**

### **Royalties**

All Adopters shall pay Agent a running royalty for each End-User Product sold by such Adopter. An End-User Product is defined as a product that is typically designed and sold for use by end-users, and where such products are not themselves incorporated into a royalty bearing End-User Product that uses the DiiVA logo or DiiVA compliant. Examples of End-User Products include, but are not limited to, DVD players, set top boxes, Digital TVs, D-VHS players, A/V Receivers, Personal Computers and Mobile Phones. Examples of devices that are not End-User Products, include, but are not limited to, Components such as ICs and printed circuit boards (except where such Components are sold directly to end-users for assembly into systems).

Manufacturers of Components, Cables and Connectors will pay no per-unit royalty to the extent such Components, Cables and Connectors are incorporated into End-User Products subject to royalty hereunder. Components, Cables and Connectors sold otherwise shall be considered End-User Products subject to the payment of royalties.

The royalty rate is \$0.02 per End-User Product sold.