

NON-PROFIT EDUCATION PROVIDER LICENSE AGREEMENT

This Non-Profit Education Provider License Agreement (“Agreement”) is entered into on September 1, 2004 (the “Effective Date”) between Acacia Media Technologies Corporation, a Delaware corporation, with an address at 500 Newport Center Drive, 7th Floor, Newport Beach, CA 92660, Fax No. 949-480-8301 (hereinafter “AMTC”), and _____, a non-profit _____, with an address at _____, Fax No. _____ (hereinafter “Licensed User”).

BACKGROUND

- A. AMTC is the owner of a portfolio of certain U.S. and foreign patents and patent applications relating to certain systems and/or methods for transmitting and/or receiving non-live, digital audio, video, and audio-visual content (hereinafter the “DMT[®] Technology”);
- B. Licensed User is a non-profit educational company or institution that offers at least one Distance Learning Course (as defined in Section 1.1 below) that includes Transmissions (as defined in Section 1.2 below) of Covered Content (as defined in Section 1.3 below) to students via the World Wide Web, Internet, or other IP protocol;
- C. AMTC alleges that Transmissions of Covered Content by Licensed User 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. Licensed User desires to obtain a license under the Licensed Patents in connection with the Transmissions of Covered Content.

NOW, THEREFORE, in consideration of the above premises and the mutual covenants of the parties to be faithfully performed, AMTC and Licensed User, 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:

- 1.1 “**Distance Learning Course**” shall mean an educational course provided by Licensed User primarily to students remotely located from the instructor.
- 1.2 “**Transmission**” shall mean each Stream (as defined in Section 1.6 below), Download (as defined in Section 1.7 below), and other transfer of a Covered Content file via the World Wide Web, Internet, or other IP protocol.

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- 1.3** “**Covered Content**” shall mean digital audio, video and/or audio-visual content transmitted and received via the World Wide Web, Internet, or other IP protocol.
- 1.4** “**Licensed Patents**” shall mean the patents listed on **Exhibit A** 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 which is licensed as part of the DMT Technology.
- 1.5** “**Distance Learning Enrollment**” shall mean each student registration for a Distance Learning Course.
- 1.6** “**Stream**” shall mean the transfer of a Covered Content file, or a portion of a Covered Content file, to an end user by Licensed User, or on Licensed User’s behalf, via the World Wide Web, Internet, or other IP protocol, whereby the Covered Content file, or such portion of the Covered Content file, is viewable by the end user during the transfer process.
- 1.7** “**Download**” shall mean the transfer of a Covered Content file, or a portion of a Covered Content file, to an end user by Licensed User, or on Licensed User’s behalf, via the World Wide Web, Internet, or other IP protocol, whereby the entire Covered Content file, or such portion of the Covered Content file, is viewable by the end user after completion of the transfer process.
- 1.8** “**Third Party Host**” shall mean a person or entity that hosts and provides Distance Learning Transmissions of Covered Content on Licensed User’s behalf.
- 1.9** “**Distance Learning Transmission**” shall mean a Transmission of Covered Content provided in connection with a Distance Learning Course.
- 1.10** “**Minimum Threshold**” shall mean either (i) five hundred (500) or more Distance Learning Enrollments, or (ii) fourteen thousand (14,000) or more Distance Learning Transmissions.
- 1.11** “**Academic Year**” shall mean the annual period commencing on September 1st and ending on August 31st of each year.
- 1.12** “**Free Transmission**” shall mean a Transmission for which an end user is not charged a fee or other consideration of any kind to access, view and/or receive the Covered Content.
- 1.13** “**Paid Transmission**” shall mean a Transmission for which an end user is charged a per exhibition fee, a per transmission fee, a subscription fee or other consideration to access, view and/or receive the Covered Content.

2. LICENSE

- 2.1 Grant of Limited Use License.** Subject to the provisions of this Agreement, AMTC hereby grants to Licensed User a non-exclusive, non-transferable, non-assignable, limited use license (the "Limited Use License") under the Licensed Patents in the geographical areas covered by the Licensed Patents solely for the purpose of providing Distance Learning Transmissions. This Limited Use License shall expressly exclude any Paid Transmissions, other than Distance Learning Transmissions. In certain instances, Licensed User may elect to utilize the services of a Third Party Host. In such instances, the Third Party Host may, on behalf of Licensed User, provide Distance Learning Transmissions pursuant to the Limited Use License granted to Licensed User in this Section 2.1; provided however, that such Limited Use License in all instances shall only apply to Distance Learning Transmissions provided on behalf of Licensed User. A separate license may be necessary between the Third Party Host and AMTC to provide Distance Learning Transmissions or any other Transmissions on behalf of any party other than Licensed User.
- 2.2. Covenant Not To Sue.** Provided that Licensed User complies with all of the terms and conditions of this Agreement, and subject to Section 2.1, AMTC hereby covenants not to sue Licensed User for infringement of the Licensed Patents for Free Transmissions ("Covenant Not To Sue"). This Covenant Not To Sue shall not apply to any other causes of action AMTC may now or in the future have against Licensed User including without limitation breach of this Agreement.
- 2.3 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 by Licensed User enumerated in Section 2.1. The Limited Use License excludes any and all uses not specifically enumerated in Sections 2.1. Licensed User acknowledges that a separate license from AMTC may be necessary under the Licensed Patents for those fields and uses outside of the scope of the uses specifically licensed by Section 2.1 of this Agreement.
- 2.4 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 any other party, by implication, estoppel, or otherwise.
- 2.5 No Sublicense and Assignment Rights.** The Limited Use License granted to Licensed User in Section 2.1 above, and the Covenant Not To Sue in Section 2.2 above, do not confer upon Licensed User the right to sublicense any rights under the Licensed Patents to any other persons or entities for any purpose. Licensed User's

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rights under the Licensed Patents are limited to the specific uses set forth in Section 2.1. The Limited Use License granted to Licensed User in Section 2.1 above, and the Covenant Not To Sue in Section 2.2 above, do not confer upon Licensed User the right to assign any rights under the Licensed Patents whether by merger, acquisition, operation of law, or otherwise.

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 shall be conditionally released 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 Minimum Threshold and Initial Royalty. In consideration of the Limited Use License granted in Section 2.1 above, the conditional release for past infringement set forth in Section 2.6 above, Licensed User shall pay AMTC a royalty ("Royalty") in accordance with this Section 3, if Licensed User meets or exceeds the Minimum Threshold (as defined in Section 1.10 above) at any time during the current Academic Year or the immediately preceding Academic Year. Licensed User shall have the option of selecting either a Per Transmission Royalty (as defined in Section 3.2 below) or a Per Enrollment Royalty (as defined Section 3.3 below). Contemporaneously with Licensed User's execution of this Agreement, Licensed User shall pay AMTC the greater of (i) an annual minimum royalty of \$1,000 ("Annual Minimum Royalty"), and (ii) either the Per Transmission Royalty or the Per Enrollment Royalty, as selected by Licensed User, based on either the number of Distance Learning Transmissions or the number of Distance Learning Enrollments, respectively, for all Distance Learning Courses for the immediately preceding Academic Year ("Initial Royalty Payment"). This Initial Royalty Payment shall apply to the current Academic Year ending in 2005. Payment of Royalties hereunder shall be paid and include a statement in accordance with Section 3.4.

3.2 Per Transmission Royalty. If Licensed User meets the Minimum Threshold and does not elect to pay AMTC a Per Enrollment Royalty (as set forth in Section 3.3 below), Licensed User shall pay AMTC a royalty equal to seven cents (\$0.07) for each Distance Learning Transmission ("Per Transmission Royalty"). For example, and by way of example only, if Licensed User provides 100,000 Distance Learning Transmissions during an Academic Year, the Per Transmission Royalty will be \$7,000 (*i.e.*, 100,000 Distance Learning Transmissions multiplied by the \$0.07 Per Transmission Royalty rate). Per Transmission Royalty payments shall be paid to AMTC on an annual basis in accordance with Section 3.4 below.

3.3 Per Enrollment Royalty. If Licensed User meets the Minimum Threshold and does not elect to pay AMTC a Per Transmission Royalty (as set forth in Section 3.2

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above), Licensed User shall pay AMTC a royalty equal to two dollars (\$2.00) for each Distance Learning Enrollment (“Per Enrollment Royalty”). For example, and by way of example only, if Licensed User has 3,500 Distance Learning Enrollments during an Academic Year, the Per Enrollment Royalty will be \$7,000 (*i.e.*, 3,500 Distance Learning Enrollments multiplied by the \$2.00 Per Enrollment Royalty rate). Per Enrollment Royalty payments shall be paid to AMTC on an annual basis in accordance with Section 3.4 below. Licensed User hereby acknowledges and agrees that a royalty based upon Distance Learning Enrollments 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.

3.4 Payments. Any payment made pursuant to the provisions of this Agreement shall be paid in United States Dollars. Licensed User shall pay AMTC the Royalties set forth in this Section 3 for each Academic Year during the Term that Licensed User meets or exceeds the Minimum Threshold. The first payment by Licensed User to AMTC under this Agreement shall be paid in accordance with Section 3.1. Within forty-five (45) days after the end of each Academic Year during the Term (beginning with the Academic Year ending in 2005), or in the event that Licensed User has not met the Minimum Threshold during the immediately previous Academic Year, within forty-five (45) days of Licensed User meeting the Minimum Threshold, Licensed User shall pay to AMTC the greater of (i) the Annual Minimum Royalty of \$1,000, and (ii) either the Per Transmission Royalty or the Per Enrollment Royalty, as selected by Licensed User, based on either the number of Distance Learning Transmissions or the number of Distance Learning Enrollments, respectively, for all Distance Learning Courses for the immediately preceding Academic Year. The Royalty payment shall apply to the then-current Academic Year. If Licensed User selects the Per Transmission Royalty, the payments shall include a statement indicating in reasonable detail the number of Distance Learning Transmissions in all Distance Learning Courses for the applicable Academic Year. If Licensed User selects the Per Enrollment Royalty, the payments shall include a statement indicating in reasonable detail the number of Distance Learning Enrollments in all Distance Learning Courses for the applicable Academic Year. All statements shall be certified by an employee, officer, or principal of Licensed User authorized to make such certification. Any payment required hereunder that is more than thirty (30) 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.

3.5 Audit Rights. Licensed User shall be responsible for ensuring that accurate records of the number of Distance Learning Transmissions or the number of Distance Learning Enrollments, as applicable, in all Distance Learning Courses, are maintained 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

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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 the number of Distance Learning Transmissions or the number of Distance Learning Enrollments, as applicable. The records available for inspection shall include, without limitation, any records indicating the number of Distance Learning Transmissions or the number of Distance Learning Enrollments, as applicable, in all Distance Learning Courses, for each applicable Academic Year. AMTC may exercise its rights of inspection hereunder no more than once per calendar year. In the event that any audit performed by AMTC or its agent reveals a Royalty underpayment in excess of ten percent (10%) for any quarter, Licensed User shall bear the reasonable costs of such audit. Licensed User shall remit any underpaid royalty amounts due to AMTC, plus (i) simple annual interest thereon from the date payment was originally due at the lesser of ten percent (10%) per annum or the maximum interest rate permitted by law, and (ii) the costs of the audit, if applicable, immediately upon receiving notice thereof.

4. REPRESENTATIONS, WARRANTIES AND COVENANTS

4.1 Representations, Warranties, and Covenants of Licensed User. Licensed User represents, warrants, and covenants to AMTC that: (i) 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; (ii) 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 from parties other than AMTC to utilize the DMT Technology; and (iii) Licensed User is a non-profit institution that has the full legal authority necessary to enter into this Agreement and perform the duties and obligations outlined in this Agreement.

4.2 Representations, Warranties, and Covenants of AMTC. AMTC represents and warrants that it owns all right, title and interest in the Licensed Patents. 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,

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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. TERM AND TERMINATION

- 5.1 Term.** This Agreement shall commence as of the Effective Date, after AMTC's and Licensed User's signature of this Agreement, and shall terminate upon the expiration of the last to expire of the Licensed Patents ("Term"). Notwithstanding the foregoing, in the event that all of the Licensed Patents are held to be invalid or unenforceable by a non-appealable final order of a Court of competent jurisdiction, such that no surviving claims of the Licensed Patents cover Transmissions 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.
- 5.2 Termination.** Notwithstanding Section 5.1 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. 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).

6. MISCELLANEOUS

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

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- 6.2 Non-Agency.** Nothing in this Agreement is intended or shall be deemed to constitute a partnership, agency, employer-employee, or joint venture relationship between AMTC or Licensed User. Neither AMTC nor Licensed User shall incur any debts or make any commitments for the other.
- 6.3 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.
- 6.4 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.
- 6.5 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 number identified in writing by the parties for such purpose); or (iii) by such other method authorized by the California Long Arm Statute.
- 6.6 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

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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, Executive Vice President, AMTC.

- 6.7 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.
- 6.8 Survival.** Sections 3.4, 3.5, 4.1, 4.2, 5.2, 6.1, 6.3, 6.5, 6.6, 6.7, 6.8, and 6.9 of this Agreement shall survive the expiration or termination of this Agreement.
- 6.9 Confidentiality.** All information provided pursuant to this Agreement, including without limitation, the terms of this Agreement, and any Transmission 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.

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

[Licensed User]

Acacia Media Technologies Corporation

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Exhibit A

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