



AIRTIGHT NETWORKS LICENSE AGREEMENT

This License Agreement (this "Agreement") is entered into by and between AirTight Networks, Inc. ("AirTight") and _____ ("Licensee"). For good and valuable consideration, the sufficiency of which is hereby acknowledged, AirTight and Licensee agree as follows. AirTight and Licensee are each referred to herein as a "party" or collectively, as the "parties".

1. DEFINITIONS

1.1 "Documentation" shall mean the end-user technical documentation that AirTight supplies with the Hardware (if any) and Software. Advertising and marketing materials are not Documentation.

1.2 "Error" shall mean a reproducible failure of the Software or Hardware to perform in substantial conformity with its Documentation.

1.3 "Effective Date" shall have the meaning set forth in the Section entitled Term and Termination.

1.4 "Hardware" shall mean the hardware containing AirTight software. Not all AirTight products come with Hardware.

1.5 "Intellectual Property Rights" shall mean copyrights, trademarks, service marks, trade secrets, patents, patent applications, moral rights, contractual rights of non-disclosure or any other intellectual property or proprietary rights, however arising, throughout the world.

1.6 "Release" shall mean any Update or Upgrade if and when these are made available by AirTight. In the event of a dispute as to whether a particular Release is an Update or an Upgrade, AirTight's published designation will be final.

1.7 "Software" shall mean the software (in object code format) created or licensed by AirTight and licensed to Licensee either as a stand alone product or loaded on AirTight Hardware, and any Release thereto.

1.8 "Update" shall mean, if and when available, any error corrections, fixes, workarounds or other maintenance releases with respect to the Software provided by AirTight that do not add functionality to the Software.

1.9 "Upgrade" shall mean, if and when available, new releases or versions of the Software that materially improve the functionality of, or add material functional capabilities to, the Software. AirTight may charge additional license fees for Upgrades.

2. PURCHASE AND LICENSE GRANT

2.1 Purchases. All Software and Hardware shall be purchased from an authorized AirTight reseller.



2.2 Limited License. All Software is licensed, not sold and subject to this Agreement. All Hardware is sold subject to the license granted in this Agreement. For each unit of Hardware and/or Software that Licensee purchases, AirTight grants Licensee, subject to this Agreement and subject to a purchase through an authorized AirTight reseller, a non-exclusive, non-transferable (except as provided in the Section entitled Assignment), non-sublicensable license during the term of this Agreement, to install and execute such Software and Hardware. The Software and Hardware are licensed for Licensee's own internal business purposes. Licensee may make and retain one copy of the Software for back-up and disaster recovery purposes so long as Licensee clearly marks it as a "back-up" or similar language.

2.3 Restrictions on Use. Licensee shall not: (a) adapt, alter, publicly display, publicly perform, translate, create derivative works of or otherwise modify the Software; (b) sublicense, lease, rent, loan, distribute or otherwise transfer the Software to any third party (except as provided in the Section entitled Assignment); (c) allow third parties to access or use the Software or Hardware, including but not limited to ASP, OEM or time-sharing arrangements. Licensee shall not reverse engineer, decompile, disassemble or otherwise attempt to derive the source code for the Software except to the extent expressly permitted by applicable law to obtain information necessary to render the Software interoperable with other software; provided, however, that Licensee must first request such information from AirTight and AirTight may, in its discretion, either provide such information to Licensee or impose reasonable conditions, including a reasonable fee, on such use of the source code for the Software to ensure that AirTight's and its suppliers' proprietary rights in the source code for the Software are protected. Licensee shall not remove, alter or obscure any proprietary notices on the Software or Documentation. Under no circumstances may Licensee install or execute the Software on more than one computer at the same time. Licensee shall not capture screenshots of the Software and share it with other people without AirTight's written consent.

2.4 Installation. Licensee is responsible for installing the Software and Hardware (if any) unless Licensee purchases installation services from AirTight or a third party pursuant to a separate agreement.

3. PROPRIETARY RIGHTS. Licensee acknowledges and agrees that the Software and Hardware, including but not limited to their sequence, structure, organization and source code, contains Intellectual Property Rights of AirTight and its suppliers. The Software is licensed and not sold to Licensee, and no title or ownership to such Software or the Intellectual Property Rights embodied therein passes as a result of this Agreement or any act pursuant to this Agreement. The Software (and all Intellectual Property Rights therein) is the exclusive property of AirTight and its suppliers, and all rights in and to the Software not expressly granted to Licensee in this Agreement, are reserved. AirTight owns all copies of the Software, however made. The Software, Hardware and related materials contain trade secrets of AirTight and Licensee shall not provide the Software, Hardware, Documentation, or details regarding the operation of the Software and/or Hardware, or any other AirTight confidential and/or proprietary information to any third party.

4. LIMITED WARRANTY

4.1 Warranty. For a period of one year from Licensee's receipt of the Hardware and/or Software (the "Warranty Period"), AirTight warrants to Licensee and for Licensee's sole benefit that, subject to the Section entitled Exclusions, the Software and Hardware when used as



permitted under this Agreement and in accordance with the instructions in the Documentation, will operate substantially without Error.

4.2 Exclusions. AirTight will have no obligation to correct, and AirTight makes no warranty with respect to, Errors caused by: (a) improper installation of the Software or Hardware; (b) changes that Licensee have made to the Software or Hardware; (c) use of the Software or Hardware in a manner inconsistent with the Documentation; (d) the combination of the Software or Hardware with hardware or software not provided by AirTight; (e) malfunction, modification or relocation of Licensee's servers; or (f) Licensee's failure to make reasonable backups.

4.3 Remedy for Errors. For Errors reported to AirTight during the Warranty Period, Licensee's exclusive remedy and AirTight's sole liability for breach of this warranty is that AirTight shall, at its own expense, (a) use commercially reasonable efforts to make available to Licensee, by Internet download, Updates that are intended to correct such Errors and that AirTight makes generally available; (b) at its election, repair or replace any defective Hardware returned to AirTight within the Warranty Period. Any remedy provided under this Section 5.3 will not extend the original Warranty Period. AirTight shall have no obligation regarding Errors reported, or returns made, after the Warranty Period.

4.4 Disclaimer. EXCEPT FOR THE EXPRESS WARRANTY IN SECTION 5.1, AIRTIGHT AND ITS AFFILIATES DISCLAIM ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, RESULT, EFFORT, TITLE AND NON-INFRINGEMENT. THERE IS NO WARRANTY THAT THE SOFTWARE WILL BE ERROR FREE, OR THAT THE SOFTWARE OR HARDWARE WILL OPERATE WITHOUT INTERRUPTION OR WILL FULFILL ANY OF LICENSEE'S PARTICULAR PURPOSES OR NEEDS. AIRTIGHT PROVIDES NO WARRANTY FOR ANY THIRD PARTY SOFTWARE.

5. LIMITATION OF LIABILITY. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW: AIRTIGHT, ITS AFFILIATES, SUPPLIERS AND MANUFACTURERS SHALL NOT BE LIABLE TO LICENSEE OR ANY OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR RELIANCE DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, THE HARDWARE OR THE SOFTWARE, UNDER ANY LEGAL THEORY, INCLUDING BUT NOT LIMITED TO LOST PROFITS, LOST DATA, BUSINESS INTERRUPTION, PERSONAL INJURY, FOR LOSS OF PRIVACY, NEGLIGENCE, AND FOR ANY OTHER PECUNIARY OR OTHER LOSS WHATSOEVER, EVEN IF AIRTIGHT KNOWS OF OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.

EXCEPT FOR AIRTIGHT'S OBLIGATIONS UNDER THE SECTION ENTITLED INDEMNIFICATION, AIRTIGHT'S, ITS AFFILIATES', SUPPLIERS' AND MANUFACTURERS' TOTAL CUMULATIVE LIABILITY FOR ACTUAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, THE HARDWARE, OR THE SOFTWARE, SHALL NOT EXCEED THE PRICE AIRTIGHT RECEIVED FOR SUCH HARDWARE OR SOFTWARE, REGARDLESS OF THE CAUSE OR FORM OF ACTION. THIS SECTION SHALL APPLY EVEN IF LICENSEE'S EXCLUSIVE REMEDY HAS FAILED OF ITS ESSENTIAL PURPOSE. LICENSEE ACKNOWLEDGES AND AGREE THAT THE PRICES AND FEES REFLECT THE ALLOCATION OF RISK SET FORTH IN THIS AGREEMENT AND THAT AIRTIGHT WOULD NOT ENTER INTO THIS AGREEMENT WITHOUT THESE LIMITATIONS ON ITS LIABILITY.



6. INFRINGEMENT INDEMNIFICATION

6.1 AirTight's Obligation. Subject to the Sections entitled Conditions and Exclusions, if a third party makes a claim against Licensee alleging that the Hardware or Software infringes any U.S. patent or copyright registered or issued as of the Start Date, AirTight shall: (a) pay all reasonable costs to defend Licensee; and (b) pay any damages assessed against Licensee in a final judgment by a court of competent jurisdiction or any settlement that AirTight has agreed upon with such third party.

6.2 Conditions. AirTight shall be obligated to pay these costs only if Licensee: (a) notify AirTight promptly in writing of any such claim; (b) give AirTight full information and assistance in settling and/or defending the claim; and (c) give AirTight full authority and control of the defense and settlement of any such claim. Licensee may also participate in the defense at Licensee's own expense.

6.3 Exclusions. AirTight shall not be liable for: (a) any costs or expenses incurred by Licensee without AirTight's prior written authorization; (b) any use of the Hardware or Software not in accordance with this Agreement or the Documentation; (c) for any claim based on the use or a combination of the Hardware or Software with any other software, firmware, hardware or data not provided or approved by AirTight; (d) use of any Release of the Software other than the most current Release made available to Licensee; or (e) any alterations or modification of the Hardware or Software by any person other than AirTight or its authorized agents.

6.4 Cure. In the event AirTight is required, or in AirTight's sole opinion is likely to be required, to indemnify Licensee under the Section entitled AirTight's Obligation, AirTight shall do one of the following: (a) obtain the right for Licensee to continue using the Hardware or Software; (b) replace or modify the Hardware or Software with a functional equivalent that is non-infringing; or (c) terminate this Agreement and refund any fee AirTight received, prorated over 3 years, or the period of Licensee's license if shorter than 3 years.

7. EXPORT RESTRICTIONS. Licensee acknowledges that the Software is subject to U.S. export jurisdiction. Licensee agrees to comply with all applicable international and national laws that apply to the Software, including the U.S. Export Administration Regulations, as well as end-user, end-use, and destination restrictions issued by U.S. and other governments. Licensee assumes sole responsibility for any required export approval and/or licenses and all related costs. Licensee shall not acquire, ship, transfer or re-export, directly or indirectly, the Hardware and/or Software to proscribed, embargoed, or prohibited countries or their nationals, denied destinations, nor use it for nuclear activities, chemical biological weapons or missile projects. Proscribed countries, destinations, and people are set forth in the United States Export Administration Regulations, and the Office of Foreign Asset Control's Specially Designated Nationals list, and are subject to change without further notice from AirTight.

8. CONFIDENTIALITY.

8.1 Confidential Information. In the course of performing its responsibilities under this Agreement, each party ("Recipient") or its employees may be exposed to or acquire Confidential Information of the other party ("Discloser") or third parties to whom Discloser has a duty of confidentiality. "Confidential Information" means nonpublic information that the Discloser



designates as being confidential to Recipient or which, under the circumstances surrounding disclosure ought to be treated as confidential by the Recipient. "Confidential Information" includes, without limitation, information in tangible or intangible form relating to and/or including released or unreleased Discloser products, the marketing or promotion of any Discloser product, Discloser's business policies or practices, and information received from others that Discloser is obligated to treat as confidential. Recipient agrees to hold Confidential Information in strict confidence and not to copy, or disclose the information to third parties, or use the information for any purpose not contemplated by this Agreement and to advise each of its employees who may be exposed to Confidential Information of their obligations to keep that information confidential. Recipient shall use at least the same degree of care in handling Discloser's Confidential Information as it uses with regard to its own confidential information, but no less than a reasonable standard of care.

8.2 Exceptions. Confidential Information may be disclosed: (i) to the extent required by applicable law or regulation, or (ii) pursuant to a subpoena or order of a court or regulatory, self-regulatory or legislative body of competent jurisdiction, or (iii) in connection with any regulatory report, audit or inquiry, or (iv) where requested by a regulator with jurisdiction over Recipient. Confidential Information shall not include information that is: (i) in or becomes part of the public domain (other than by disclosure by Recipient in violation of this Agreement); (ii) previously known to Recipient (which must be demonstrable) without an obligation of confidentiality; (iii) independently developed by Recipient outside of this Agreement; or (iv) rightfully obtained by Recipient from third parties without an obligation of confidentiality.

8.3 Return of Confidential Information. Upon termination of this Agreement (or earlier at the request of Discloser), Recipient shall promptly return or destroy all Confidential Information and any copies of documents, papers or other material which may contain or be derived from any Confidential Information that is in its possession. At Discloser's request, Recipient shall certify that it has satisfied its obligations under this Section 8.3.

8.4 Technical Information. AirTight may collect certain technical information regarding the operation and use of its products and if collected, would use this information only in an aggregated manner, such that a particular device or user could not be determined. The aggregated information shall be AirTight Confidential Information.

8.5 Equitable Relief. Each party agrees that any actual or threatened disclosure or misappropriation of the other party's Confidential Information would constitute immediate, irreparable harm to the other party for which monetary damages would be an inadequate remedy. Therefore, in addition to any other rights and remedies which may be available to such party at law or in equity, any such actual or threatened disclosure may be stopped through injunctive proceedings without the posting of a bond.

9. TERM AND TERMINATION

9.1 Term. This Agreement shall be effective as of the earlier of: (i) the date it is fully executed by both parties, or (ii) the date Licensee installs or activates the Software or Hardware (the "Effective Date"), and shall continue in full force and effect until it expires pursuant to the period of use that Licensee purchased or unless earlier terminated as described in the Section entitled Termination.



9.2 Termination. Without prejudice to any other rights, AirTight may terminate this Agreement if Licensee breaches this Agreement and does not cure such breach within 30 days of receipt of written notice. Licensee may terminate this Agreement at anytime upon 30 days written notice to AirTight. Upon termination of this Agreement for any reason: (a) all license rights granted in this Agreement will immediately terminate and Licensee must promptly stop all use of the Software and Hardware; (b) AirTight's obligation to provide services under any service agreement terminates; (c) Licensee must erase all copies of the Software from Licensee's computers, and destroy all copies of the Software and Documentation on tangible media in Licensee's possession or control.

9.3 Survival. The Sections entitled Proprietary Rights, Limitation of Liability, Export Restrictions, Confidentiality, Term and Termination, Controlling Law, and Dispute Resolution and Attorney's Fees shall survive the expiration or termination of this Agreement. AirTight's obligations under the Section entitled Infringement Indemnification shall survive only for claims based on use of the Hardware or Software during the licensed term.

10. GENERAL

10.1 Assignment. Neither party shall assign this Agreement without the prior written consent of the other party, which shall not be unreasonably withheld; provided, that, each party may assign or transfer this Agreement to any affiliate or to any successor by merger of such party, or upon a sale of all or substantially all of such parties assets, in each case, without the prior written consent of the other party. This Agreement shall inure to the benefit of and be binding upon the respective successors and assigns, if any, of the parties hereto.

10.2 Controlling Law. This Agreement shall be governed in all respects by the laws of the state of California, without regard to its choice of law rules. Application of the U.N. Convention of Contracts for the International Sale of Goods is expressly excluded.

10.3 Dispute Resolution and Attorneys' Fees. Except for claims related to a breach of confidentiality or infringement or misuse of intellectual property, any and all claims or disputes arising out of or in any manner related to this Agreement shall be resolved in binding arbitration conducted in accordance with the provisions of the California Code of Civil Procedure, section 1280 through section 1294.2, or under such other provisions of California law enacted to modify or affect the foregoing sections. The laws of California relating to the arbitration of disputes that are in existence at the time that an arbitrable claim arises shall govern the proceedings. The parties acknowledge and agree that the parties and the subject matter of this Agreement have substantial contacts with the County of Santa Clara, State of California. The parties agree that arbitration shall be conducted in Santa Clara, California and that the Superior Court for the County of Santa Clara shall have jurisdiction with regards to petitions to compel arbitration. Each party irrevocably consents to the personal jurisdiction and venue in, and agrees to service of process issued by, such court. No punitive or exemplary damages may be awarded in the arbitration proceedings, but all other relief allowed by law or equity in judicial proceedings conducted in the State of California shall be recoverable. The arbitrator may award the prevailing party reasonable attorneys' fees and costs of arbitration if prior to the first meeting with the arbitrator, the prevailing party offered to participate in mediation conducted in Santa Clara County, California, before a mutually agreeable mediator and, if such offer is accepted, such party actually participated in good faith in such mediation proceedings.



10.4 Force Majeure. Neither party shall be liable for any delay or failure to perform for any cause beyond their reasonable control, except for the payment of money, to the extent that performance is rendered impossible by strike, fire, flood, wars, sabotage, civil unrest, governmental acts, or any other reason where failure to perform is beyond the reasonable control of and is not caused by the negligence of the nonperforming party.

10.5 Waivers and Amendments. All waivers must be in writing. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion. This Agreement may be amended only by a written document signed by Licensee and AirTight.

10.6 Severability. If any provision of this Agreement is held to be void, invalid, unenforceable or illegal, the other provisions shall continue in full force and effect.

10.7 Notices. All notices given pursuant to this Agreement shall be in writing and effective: (i) upon receipt if hand delivered, (ii) on the next day after being sent by facsimile if followed by the methods in subsections (iii) or (iv), (iii) on the third business day after being sent prepaid by certified or registered mail, or (iv) on the second business day after being sent prepaid by commercial express courier. All such notices will be sent to the addresses first set forth above, attention Chief Executive Officer and General Counsel for AirTight and Chief Executive Officer for Licensee.

10.8 Counterparts and Facsimiles. This Agreement may be signed in two counterparts, which together shall form a single agreement as if both parties had executed the same document. Facsimile and .pdf file signature pages shall be binding as if original.

10.9 Entire Agreement. This Agreement completely and exclusively states the agreement of the parties regarding its subject matter. This Agreement supersedes all prior proposals, agreements or other communications between the parties, oral or written, regarding such subject matter. This Agreement shall not be modified except by a subsequently dated written amendment or appendix signed on behalf of AirTight and Licensee by their duly authorized representatives, and any provision of a purchase order purporting to vary the provisions hereof shall be void.

IN WITNESS WHEREOF, the parties have executed this License Agreement to be effective as of the Effective Date.

AirTight Networks, Inc. _____ (Licensee)

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

