

4C CPPM/CPRM ASSOCIATE LICENSE AGREEMENT FOR RESELLERS

Company Name of Associate	
Address:	
Contact Name	
Title:	
Division:	
Telephone Number:	
Facsimile Number:	
E-mail address:	

This **CPRM/CPPM ASSOCIATE LICENSE AGREEMENT FOR RESELLERS** (“Agreement”) is made and entered into as of _____ (the “Effective Date”) by and between: (i) 4C Entity, LLC, a Delaware limited liability company (“4C” or “Licensor”); (ii) the Founders and (iii) the company named above (“Associate”).

Background

Content Protection for Prerecorded Media (CPPM) and Content Protection for Recordable Media (CPRM) are technical methods of encryption, decryption and renewability for purposes of protecting certain digital content from unauthorized interception and copying.

To preserve the integrity of CPRM and CPPM, components which perform critical functions such as decryption and authentication may only be distributed to parties who agree to use and resell and/or redistribute them as required by this Agreement.

Agreement

In consideration of the above and of being authorized (1) to receive certain components related to CPRM and CPPM and (2) to resell or redistribute such components in accordance with this Agreement, Associate agrees and promises as follows:

1. **Definitions.**

1.1 “Adopter” means an entity (including a Founder) that has entered into an Adopter Agreement with Licensor and delivered it to Licensor or its designee, and shall include its Affiliates, provided the Adopter Affiliates which wish to distribute Digital Audio Content or Digital Video Content in a form protected by the 4C Technology may only do so pursuant to a Content Participant Agreement.

1.2 “Affiliate” means with respect to any person or entity, any other person or entity directly or indirectly controlling or controlled by or under direct or indirect common control with such person or entity. "Control" means the possession of beneficial ownership of more than 50% of the stock or other similar interest entitled to vote for election of the Board of Directors or similar managing authority.

1.3 “Authorized Reseller” means an entity that is authorized to receive, resell and/or redistribute Production/Sale Licensed Components in accordance with the terms of the Adopter Agreement and in accordance with the terms of this Agreement.

1.4 “Compliant Product” refers to a product which is in compliance with all applicable Compliance Rules as set forth in the Adopter Agreement.

1.5 “CPPM Technology” means the methods for encryption, decryption and renewability developed by the Founders for use with prerecorded media (“CPPM”), including the C2 Cipher.

1.6 “CPRM Technology” means the methods for local encryption, decryption and renewability developed by the Founders for use with recordable media (“CPRM”), including the C2 Cipher.

1.7 “Content Participant” means an entity that has executed a Content Participant Agreement in order to use the 4C Technology to protect its Digital Audio Content, Digital Video Content or Related Content and to obtain certain other rights and shall include its Affiliates, provided that Content Participant Affiliates which wish to become Adopters may only do so by entering into an Adopter Agreement.

1.8 “Digital Audio Content” means sound recordings, as defined in 17 U.S.C. § 101.

1.9 “Digital Video Content” means audiovisual works, as defined in 17 U.S.C. § 101.

1.10 "Eligible Content Participant" means an entity that has executed a Content Participant Agreement in order to use CPPM to protect its Digital Audio Content, is distributing Digital Audio Content protected by CPPM in commercial quantities, and is in compliance with the material terms and conditions of its Content Participant Agreement.

1.11 "4C Technology" means certain methods for encryption (including local encryption), decryption, and renewability developed by the Founders for purposes of protecting certain digital content from unauthorized interception and copying, which methods are described in the Specifications entitled Content Protection for Prerecorded Media Specification, C2 Block Cipher Specification, Content Protection for Recordable Media Specification, CSS Compatible DVD Drive Authentication for CPPM and CSS-based DVD Drive Authentication for CPRM.

1.12 “Fellow Associates” means those entities which have executed a 4C CPRM/CPPM Associate License Agreement for Resellers and delivered it to 4C or its designee.

1.13 “Founders” means International Business Machines Corporation (“IBM”), Intel Corporation (“Intel”), Panasonic Corporation (“Panasonic”), and Toshiba Corporation (“Toshiba”).

1.14 "Production/Sale Licensed Component" means a component, such as an integrated circuit, circuit board, or software module which is manufactured under license from 4C, pursuant to Section 2.3 of the Adopter Agreement, which is designed solely to be and which is assembled into a Production/Sale Licensed Product or is sold or otherwise distributed to an Authorized Reseller solely for resale and/or redistribution in accordance with this Agreement and the Adopter Agreement, and which embodies a portion of the Specification, but which does not by itself completely satisfy the Compliance Rules.

1.15 "Production/Sale Licensed Product" means a product, including without limitation products such as DVD audio players and recorders whether they are consumer electronic products or software, which is manufactured under license from 4C pursuant to Section 2.3 of the Adopter Agreement, with respect to which all of the statements in 1.15.1-1.15.3 are true.

1.15.1 the product embodies and complies with the designs set out in one or more of the Specifications,

1.15.2 the product is a Compliant Product, and

1.15.3 the product is designed for the playback and/or recording of Digital Audio Content or Digital Video Content.

1.16 "Related Content" means information or material intended for enjoyment by end-users, other than Digital Audio Content, embodied on a digital audio disc or other prerecorded digital media and may include by way of example and not of limitation, so called "music videos," lyrics, graphics, liner notes, interviews with or statements by recording artists.

1.17 "Specifications" means collectively the specifications entitled "Content Protection for Recordable Media Specification," "Content Protection for Prerecorded Media Specifications," "CSS-based DVD Drive Authentication for CPRM," "CSS Compatible DVD Drive Authentication for CPPM" and "C2 Block Cipher Specification" as may be amended from time to time.

2. Handling Production/Sale Licensed Components and Production/Sale Licensed Products.

2.1 Associate is authorized to receive Production/Sale Licensed Components from Adopters and/or Fellow Associates and resell and/or redistribute such Production/Sale Licensed Components in accordance with the following terms:

2.1.1 *Modifications.* Associate shall not rework, modify, or reverse engineer any Production/Sale Licensed Component or Production/Sale Licensed Product and shall not assemble or combine any Production/Sale Licensed Component, or Production/Sale Licensed Product with any other Production/Sale Licensed Component or Production/Sale Licensed Product or any other product.

2.1.2 *Distribution.* Production/Sale Licensed Components may be resold or redistributed only to Adopters or Fellow Associates authorized to receive such products to be used and distributed only under the terms of their respective licenses subject to this Associate License for Resellers. Associate agrees not to resell or redistribute Production/Sale Licensed Components to any other person.

2.1.3 *Other Licensees.* Licensor will make available on a quarterly basis a list of Adopters and Fellow Associates. Associate shall not resell or redistribute Production/Sale Licensed Components to any other person or entity not on such list and not authorized to receive such products.

Associate is free to set with Adopter or its Fellow Associate all other terms of resale or redistribution of Production/Sale Licensed Components which are not established by this Agreement, including terms pertaining to price.

3. Administration Fees. Within thirty (30) days of the Effective Date, Associate shall pay 4C Administration fees of \$6,000 for the first three year term which fee shall be used to offset the costs associated with the Licensor's administration of the CPRM and CPPM Technology. This Agreement shall be renewable for another three-year term at a rate to be determined, consistent with Section 3.2. Associate shall not be entitled to any refund thereof for any reason. Administrative Fees for the renewed term are currently estimated to be \$2,000.

3.1 *Gross Payments.* Any Fees paid by Associate hereunder will be paid without deduction or withholding for or on account of any present or future tax, assessment, or governmental charge imposed or levied, unless in each case the withholding or deduction of such tax, assessment or governmental charge is required by law. In the event such withholding or deduction is so required, Associate shall include with its payment written notification of such withholding and shall forward to 4C in a timely manner evidence of such withholding adequate to permit 4C and/or the Founders to claim relevant tax credits under applicable treaties. Associate assumes full responsibility for remitting such withholding to the proper authority.

3.2 *Adjustment for Inflation.* On December 31, 2003 and every third anniversary thereof, the fees set forth in this Section 3 shall be adjusted for inflation based on the change in the Producer Price Index from January three years prior thereto to December of the then current year. Licensor will make the adjustment effective on April 15 of the following year for those Associates subject to renewal fees on or after that date.

4. Liability for Violation. Failure to comply with the terms of this Agreement, including but not limited to redistribution and/or resale of Production/Sale Licensed Components or Production/Sale Licensed Products in violation of this Agreement, will subject Associate to legal liability, including injunctions, damages and termination of this Agreement. Licensee acknowledges that in the event of breach of its obligations hereunder money damages alone will not adequately compensate an injured party, including an injured third party beneficiary, and that injury to such party will be irreparable. In the event of any breach, Licensor and/or Eligible Content Participant, shall be entitled to bring an action at law or in equity against Associate to enforce the terms of the Agreement and in any such action shall be entitled to specific performance or other temporary, preliminary or permanent injunctive relief. Licensee further acknowledges that Licensor, in addition to any other remedies in equity, but in lieu of any and all other claims for monetary damages may recover liquidated damages for any material breach of this Agreement in the amount of one million (\$1M) dollars. Associate agrees that, Eligible Content Participants shall be third party beneficiaries of this Agreement and, as such, are entitled to bring an action for equitable relief as if Associate were an Adopter subject to the third party beneficiary terms of the 4C CPPM/CPRM License Agreement.

5. General Terms.

5.1 *Disclaimer.* ALL INFORMATION, CPRM AND CPPM TECHNOLOGY AND SPECIFICATIONS ARE PROVIDED “AS IS.” LICENSOR, FOUNDERS AND THEIR AFFILIATES MAKE NO REPRESENTATIONS OR WARRANTIES, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EXPRESSLY DISCLAIM IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ANY EQUIVALENTS UNDER THE LAWS OF ANY JURISDICTION THAT MIGHT ARISE FROM ANY ACTIVITIES OR INFORMATION DISCLOSURES RELATING TO THIS AGREEMENT. LICENSOR, FOUNDERS, AND AFFILIATES FURTHER DISCLAIM ANY WARRANTY THAT ANY IMPLEMENTATION OF THE SPECIFICATIONS, IN WHOLE OR IN PART, WILL BE FREE FROM INFRINGEMENT OF ANY THIRD PARTY INTELLECTUAL PROPERTY OR PROPRIETARY RIGHTS.

5.2 *Limitation of Liability.* NEITHER LICENSOR NOR FOUNDERS OR THEIR AFFILIATES, NOR ANY OF THEIR DIRECTORS, OFFICERS, AGENTS, MEMBERS, REPRESENTATIVES, EQUIVALENT CORPORATE OFFICIALS, OR EMPLOYEES ACTING IN THEIR CAPACITIES AS SUCH (COLLECTIVELY THE “AFFECTED PARTIES”) SHALL BE LIABLE TO ASSOCIATE FOR ANY DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES ARISING OUT OF ANY CAUSE OF ACTION RELATING TO THIS AGREEMENT, OR BASED ON ANY PERSON’S USE OF OR MAKING, USING, SELLING OR IMPORTING ANY PRODUCTS OF ASSOCIATE THAT IMPLEMENT CONFIDENTIAL OR HIGHLY CONFIDENTIAL INFORMATION OR THE CPRM/CPPM TECHNOLOGY OR SPECIFICATIONS, WHETHER UNDER THEORY OF CONTRACT, TORT, INDEMNITY, INTELLECTUAL PROPERTY INFRINGEMENT (DIRECT, CONTRIBUTORY OR OTHERWISE) PRODUCT LIABILITY OR OTHERWISE. TO THE EXTENT THAT ANY COURT OF COMPETENT JURISDICTION RENDERS JUDGMENT AGAINST ANY OF THE AFFECTED PARTIES NOTWITHSTANDING THE ABOVE LIMITATION, THE AFFECTED PARTIES’ AGGREGATE LIABILITY TO ASSOCIATE IN CONNECTION WITH THIS AGREEMENT SHALL IN NO EVENT EXCEED THE FEES PAID BY ASSOCIATE TO LICENSOR HEREUNDER. ASSOCIATES AND THEIR DIRECTORS, OFFICERS, AGENTS, MEMBERS, REPRESENTATIVES, EQUIVALENT CORPORATE OFFICIALS, OR EMPLOYEES ACTING IN THEIR CAPACITIES AS SUCH SHALL NOT BE LIABLE TO LICENSOR, FOUNDERS, OR THEIR AFFILIATES FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES BUT SHALL BE LIABLE FOR DAMAGES AS SET FORTH IN SECTION 4.

5.3 *Ownership.* Except as expressly provided herein, this Agreement does not give Associate any license or other rights to any information provided under this Agreement.

5.4 *Entire Agreement.* This Agreement may not be modified except by written agreement dated subsequent to the date of this Agreement and signed by all parties.

5.5 *Other Licenses.* This Agreement only permits Associate to receive and/or resell and/or redistribute certain Production/Sale Licensed Components manufactured under license from Licensor. Neither Licensor nor any other party shall be responsible for other permissions or licenses which may be needed in the manufacture or sale of any Production/Sale Licensed Component or Production/Sale Licensed Product.

5.6 *Assignment.* Associate shall not assign or transfer any rights or obligations under this Agreement without the prior written consent of Licensor, which shall not be unreasonably withheld. Licensor may assign or transfer this Agreement and/or any of its rights or obligations hereunder.

5.7 *Notices.* Associate's address for notices under this Agreement shall be the address set out on the first page hereof. Licensor's address for notices hereunder is:

Jacob Pak, Manager
4C Entity, LLC
380 Tennant Ave., Unit 4, Morgan Hill, CA 95037
Fax: +1 408 779 9291

5.8 *Governing Law; Jurisdiction.* This agreement and any third party beneficiary claims brought pursuant to this Agreement, shall be governed by and construed in accordance with the laws of the State of New York and the United States of America, excluding that body of law relating to conflicts of law principles. Associate irrevocably consents to the exclusive jurisdiction and venue in the federal and state courts located in the State of New York and to the effectiveness, execution and enforcement of any order or judgment of such court throughout the world; and to the service of process of said courts in any matter relating to this Agreement by personal delivery by overnight mail or international courier, which requires signing on receipt, postage prepaid, to the address specified on the first page hereof. The parties agree to waive a jury trial on any action arising out of or relating to this Agreement.

5.9 *Term.* The license granted under this Agreement shall be effective upon Effective Date and thereafter until this Agreement is terminated in accordance with any of the following events:

5.9.1 *Nonrenewal.* This Agreement shall terminate three (3) years after the Effective Date unless renewed.

5.9.2 *Termination by Associate.* Associate shall have the right to terminate this Agreement at any time upon ninety (90) days prior written notice to Licensor and Founders.

5.9.3 *Breach.* Licensor may terminate this Agreement and Founders may terminate any license to Necessary Claims for any material breach by Associate, and Associate may terminate this Agreement for any material breach by Licensor or Founders, by providing timely written notice to the other parties and an opportunity to cure the breach. If the breach is not fully cured within thirty (30) days of receiving such notice the Agreement may be terminated.

5.9.4 *Avoidance of Legal Liability.* Licensor may terminate this Agreement in the event Licensor determines it is necessary to do so to avoid potential legal liability for Licensor, Founders, Adopters, Associates or Content Participants by providing thirty (30) days written notice to Associate.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

4C:

By: _____

Name: Jacob Pak

Title: 4C Manager

Addresses for notices

4C Entity LLC:

380 Tennant Ave., Unit 4

Morgan Hill, California 95037

Associate:

By: _____

Name: _____

Title: _____

Associate:

International Business Machines Corp.

New Orchard Road

Armonk, New York 10504

Intel Corporation

2200 Mission College Boulevard

Santa Clara, California 95052

By: _____

Name: Jacob Pak

Title: Attorney in fact

Date: _____

By: _____

Name: Jacob Pak

Title: Attorney in fact

Date: _____

Panasonic Intellectual Property

Corporation of America

One Panasonic Way

Secaucus, New Jersey 07094

Toshiba America Information Systems, Inc.

9740 Irvine Boulevard

Irvine, California 92618

By: _____

Name: Jacob Pak

Title: Attorney in fact

Date: _____

By: _____

Name: Jacob Pak

Title: Attorney in fact

Date: _____