PATENT LICENSE AGREEMENT
WINDOWS CLIENT PC OPERATING SYSTEM (INCLUDING .NET FRAMEWORK)
(WINdows 10 PROTOCOLS)

This Patent License Agreement (the “Agreement”) is entered into between Microsoft Licensing GP, a Nevada general partnership, having a principal place of business at 6100 Neil Road, Suite 210, Reno, Nevada 89511-1137 (“Microsoft”), and the person or company identified below (“Licensee”), effective as of the date it has been signed on behalf of both parties (the “Effective Date”).

Licensee Full Legal Name:
Type of Legal Entity (corporation, partnership, sole proprietorship or other):
State/Province Organized:
Street Address:
City, State & Country:
Licensee Contact Name:
Phone Number:
Fax Number:

LICENSLEE                  MICROSOFT LICENSING GP
______________________________________________  ______________________________________
By                                      By
______________________________________________  ______________________________________
Name, Title                            Name, Title
______________________________________________  ______________________________________
Date                                   Date

1. Definitions. Capitalized terms used in this Agreement are defined in this Section 1 or elsewhere in this Agreement.

1.1. “.NET Framework” means the Windows component marketed, distributed, and licensed by Microsoft as the .NET Framework (including the Windows Communication Foundation) in the Windows Client PC Operating System and Windows Server Operating System.

1.2. “Affiliate” means, with respect to any party, any entity that directly or indirectly Controls, is Controlled by or is under common Control with such party. For purposes of this definition, “Control” means direct or indirect (through any number of successive tiers) ownership of: (a) more than fifty percent (50%) of the outstanding shares having the right to vote for the election of directors or other managing authority of the subject entity; or (b) in the case of an entity which does not have outstanding shares (e.g. a partnership, joint venture or unincorporated association), more than fifty percent (50%) of the ownership interests having the right to make decisions for the subject entity.

1.3. “Compatible Software” means software that is capable of interoperating with the applicable Windows Client PC Operating System or the .NET Framework without breaking compatibility with such Windows Client PC Operating System or the .NET Framework, respectively.

1.4. “Copy” means each individual copy of the Product, including, without limitation, all copies that a Customer or Provider is authorized to make under the terms of the agreement under which that Product is Provided, and further including any concurrently running instances of the Product that the Customer is authorized to deploy (including each instance running on a virtual machine or virtualized server).
1.5. “Customer” means a third party (whether an individual or an entity) that receives a Product for its own use and not to sublicense or further Provide.


1.7. “EAS Protocol” means, with respect to a particular Windows Client PC Operating System, the Microsoft Exchange ActiveSync ("EAS") Protocols, described in the “ActiveSync” entitled Technical Documentation for such Windows Client PC Operating System.

1.8. “General Windows Implementation” means an Implementation of any of the Protocols other than the EAS Protocol.

1.9. “Implementation(s)” means only those portion(s) of Server software developed by or for Licensee that implement Protocols in accordance with the Technical Documentation in order to interoperate with Windows Client PC Operating System, the .NET Framework, or Compatible Software.

1.10. “Maintained Mailbox” means an account that is active or otherwise enabled for storage or synchronization of PIM Information (i.e., any personal information management information such as e-mail, calendar, contacts or tasks) using the EAS Protocol and that is maintained using any EAS Implementation (whether used by Licensee or Providers or Customers under this Agreement) at any point during a given Quarter. For purposes of the foregoing, each unique e-mail address for such account will constitute a separate “Maintained Mailbox.”

1.11. “Microsoft Server Software Products” means Microsoft’s server software products released in 2007 or later that are sold or otherwise distributed or provided to end users, and their successors, together with Updates thereto.

1.12. “Necessary Claims” means the claims of a patent or patent application that Microsoft owns or has the right to sublicense without a fee and that are necessarily infringed by implementing the Protocols in accordance with the Technical Documentation in order to interoperate with the Windows Client PC Operating System or the .NET Framework. Necessary Claims do not include any claims directed to any technology other than an Implementation; without limiting the foregoing, Necessary Claims do not include any claims directed to (a) underlying or enabling technology that may be used or Provided in connection with a Protocol or an Implementation, (b) any portions of a Product other than the Implementation; or (c) any implementation of technical documentation, specifications or technologies that are merely referred to in the body of the Technical Documentation.

1.13. “Net Revenues” means, for each Product: (a) all revenues actually recognized by Licensee in the normal course of business from (1) the Provision of the Product, and (2) any installation, support, maintenance, or similar agreements for services that are contractually required in connection with the Provision of the Product, including in each such case the fair market value of any non-monetary consideration; less (b) any Credits. “Credits” means (a) freight, postage, insurance, and shipping and handling expenses applicable to the Product (but only, in each instance, if separately priced and identified in the applicable invoices or other agreements); (b) credits, rebates, or refunds actually allowed for returns or recalls of the Product; and (c) sales, value-added, excise taxes, tariffs and duties, and other taxes directly related to the Provision of the Product, to the extent that the items described in (a), (b) and (c) are included in the gross invoice price and actually incurred by Licensee. Credits do not include taxes assessed against the income derived from Provision of Products or against Licensee’s business operations.

1.14. “Protocols” means:

(a) the software communications protocols that are implemented in a Windows Client PC Operating System and used to exchange information with other Microsoft Server Software Products and mutually to use the information which has been exchanged as defined by the Technical Documentation; and
(b) the software communications protocols that are implemented in an instance of the .NET Framework that are used to exchange information with another instance of the .NET Framework and mutually to use the information which has been exchanged as defined by the Technical Documentation.

For purposes of the foregoing, “software communications protocols” means a set of rules of interconnection and interaction between various instances of software products in different computer environments.

1.15. “Provide” means selling, offering for sale, importing, licensing, distributing, providing online access to (including under subscriptions or user-based connection fees), hosting, or otherwise making available in any manner to a third party. “Provider” means any entity that Licensee authorizes to Provide a Product in accordance with the terms of this Agreement.

1.16. “Quarter” has the meaning set forth in Section 3.3(a).

1.17. “Royalties” means the royalties owed under this Agreement, as described in Section 3 below.

1.18. “Server” has the meaning set forth in Section 3.2.

1.19. “Service” has the meaning set forth in Section 3.2.

1.20. “Technical Documentation” means the Microsoft technical specifications and documents set forth on Exhibit A.

1.21. “Term” has the meaning set forth in Section 7.1.

1.22. “Update” means any update that Microsoft makes commercially available as a “service pack” to the applicable Microsoft product, under the applicable end user license agreement for such product, or any critical fix or recommended modification to, or updated component for, the applicable Microsoft product that Microsoft develops and makes generally available (e.g., through its website or any other general distribution means) for the product to which the update applies, under the applicable end user license agreement for such product.

1.23. “User” means an individual human being that is authorized to access a Product or to otherwise make use of a Product.


2. License

2.1. License Grant. Microsoft, on behalf of itself and its Affiliates, grants Licensee a worldwide, non-exclusive, personal license under the Necessary Claims to make, use, and Provide Implementations. This license grant is conditioned on Licensee’s payment of Royalties (including prepaid royalties) and Licensee’s and its Providers’ compliance with Section 2.2. Licensee may only Provide Implementations as part of products or services Provided under a Licensee brand (“Product”); notwithstanding the foregoing, this Agreement does not grant any licenses under any patents or patent applications with respect to the portions of the Product that do not constitute the Implementation.

2.2. Notice. Licensee will ensure that all recipients of source code copies of Products agree to and are bound to the following terms as part of their agreement covering their use of the Product: “This source code may be covered by patents owned by Microsoft Corporation. You are not licensed under any Microsoft patents to distribute this code in any form unless you have obtained an appropriate license from Microsoft. The terms and conditions of such license may be obtained by contacting Microsoft at protocol@microsoft.com.”
2.3. **Reservation of Rights.** All rights not expressly granted in this Agreement are reserved by Microsoft. No additional rights other than under the Necessary Claims are granted by implication, exhaustion, estoppel, or otherwise. Licensee will not claim licenses or other rights under any patents or applications of Microsoft or its Affiliates other than the Necessary Claims as a result of entering into this Agreement or making, using, or Providing any Implementation under this Agreement.

2.4. **Most Favored Terms.** If any other third party enters into a patent license specifically for the Protocols that contains terms that are more advantageous to that third party than the terms of this Agreement, Licensee will have the opportunity to enter into the same agreement as that third party. If that third party agreement provides for lower Royalties than this Agreement, Licensee will receive a credit against future Royalties owed under this Agreement, consisting of the difference between the amount that Licensee paid under this Agreement for the relevant time period and the amount that Licensee would have owed under the other agreement for that time period.

3. **Royalties**

3.1. **Prepaid Royalties.** Licensee will pay Microsoft $10,000 in non-refundable prepaid royalties, to be credited against Royalties.

3.2. **Royalties.** Licensee will pay Royalties for each Copy of a Product used or Provided by Licensee, its Providers or Customers containing an Implementation consisting of the Net Revenues for each Copy of that Product multiplied by the Royalty Rate set forth below, provided that the Royalty per Copy, per Maintained Mailbox or per User, as applicable, will not be less than the Minimum Royalty set forth below for the applicable Product Type:

<table>
<thead>
<tr>
<th>Product Type</th>
<th>Royalty Rate</th>
<th>Minimum Royalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>General Windows Implementation:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• <strong>Server</strong> – Software Product that is designed or used to provide computing or data services to multiple Users or software programs running on multiple other computers but shall not include desktops, laptops, tablets, slates, mobile phones, personal digital assistants or similar devices or software running on any of the foregoing</td>
<td>0.4%</td>
<td>$9.26 per Copy of the Product</td>
</tr>
<tr>
<td>• <strong>Service</strong> – Product that is Provided to Customers only in the form of a service, i.e., no software or hardware is transferred to the Customer</td>
<td>0.4%</td>
<td>$0.04 per unique User of the Service per Quarter</td>
</tr>
<tr>
<td>EAS Implementations: For either a Server or a Service Product.</td>
<td>0.4%</td>
<td>$0.38 per Maintained Mailbox maintained per Quarter</td>
</tr>
</tbody>
</table>

If a Product contains one or more EAS Implementations as well as one or more other General Windows Implementations, then separate royalties are payable for such Product for each Implementation type as noted above.

(a) **Evaluation Copy Pricing.** No Royalties are owed for Copies of a Product that Licensee permits to be used under a written agreement only for a reasonably limited time period and only for testing and evaluation purposes.

(b) **Locked Copies.** If Licensee Provides a Copy of a Product using a commercially reasonable form of anti-piracy activation technology such that the Copy cannot be used or installed by a Customer without the use of an associated authorized digital license key, and Provides the Copy under an agreement that permits initial use or
installation of the Copy only by means of the key, then Licensee will not be required to treat the Copy as having been “Provided” until Licensee or a Provider first makes the key available to the Customer.

3.3. Reporting and Payments.

(a) Licensee will pay Royalties on a quarterly basis for use or Provision in the prior full or partial calendar quarter (“Quarter”). Licensee will submit Royalty Reports within 30 days after the end of each Quarter to the address specified in Section 8.1, with a copy by e-mail to ipnotice@microsoft.com, using a form to be provided by Microsoft. Microsoft will in no event be entitled to obtain any information concerning: (a) the identity of any Provider or Customer of Licensee; or (b) the quantity of Implementations or Products Provided to any particular Provider or Customer of Licensee, except as may be required to determine the total quantity of Copies of Products subject to Royalties under this Section 3.

(b) Microsoft will invoice Licensee for the Royalties owed based on Licensee’s Royalty Reports. Licensee will pay all invoices issued by Microsoft under this Agreement within 30 days to an account specified by Microsoft. All payments due under this Agreement are payable in United States Dollars. If Licensee receives or makes payments of any amounts that are part of Net Revenues in a currency other than U.S. Dollars, Licensee will calculate Royalties as if such payments were converted to U.S. Dollars at the end of the Quarter in which the payments were received or paid. Licensee will use the applicable currency exchange rate quoted in the Wall Street Journal as of 3 pm EST for currency trading among banks in amounts of $1,000,000 or more on the last day of the applicable Quarter. Microsoft may assess and Licensee will then pay the lesser of (a) a one and one-half percent (1.5%) monthly charge, and (b) the highest amount permitted by applicable law with respect to late charges, on all amounts that are past due from the date due through and including the date Microsoft receives payment in full.

3.4. Taxes. This Section 3.4 governs the treatment of all taxes arising as a result of or in connection with this Agreement, notwithstanding any other provision of this Agreement.

(a) Licensee is responsible for the billing, collecting and remitting of sales, use, value added, and other comparable taxes due with respect to the collection of any revenues by Licensee, or any portion thereof. Microsoft is not liable for any taxes (including any penalties or interest thereon), that Licensee is legally obligated to pay and that are incurred by Licensee in connection with this Agreement or any Licensee revenues related to the Provision of any Implementation or Product, and Licensee takes full responsibility for all such taxes. Licensee is not liable for any income taxes that Microsoft is legally obligated to pay with respect to any amounts paid to Microsoft by Licensee under this Agreement.

(b) Amounts payable to Microsoft under this Agreement exclude any taxes, duties, levies, fees, excises or tariffs imposed on any of Licensee’s activities in connection with this Agreement. Licensee will pay to Microsoft any applicable taxes that are owed by Licensee solely as a result of entering into this Agreement and which are permitted to be collected from Licensee by Microsoft under applicable law, except to the extent Licensee provides to Microsoft a valid exemption certificate for such taxes. Licensee agrees to indemnify, defend and hold Microsoft harmless from any taxes (including without limitation sales or use taxes paid by Licensee to Microsoft) or claims, causes of action, costs (including without limitation reasonable attorneys’ fees) and any other liabilities of any nature whatsoever related to such taxes.

(c) If, after a determination by foreign tax authorities, any taxes are required to be withheld on payments made by Licensee to Microsoft, Licensee may deduct such taxes from the amount owed Microsoft and pay them to the appropriate taxing authority; provided however, that Licensee will promptly secure and deliver to Microsoft an official receipt for any such taxes withheld or other documents necessary to enable Microsoft to claim a U.S. Foreign Tax Credit. Licensee will make certain that any taxes withheld are minimized to the extent possible under applicable law.

3.5. Recordkeeping and Audits.

(a) Recordkeeping. Licensee will maintain accurate and adequate books and records related to its compliance with
all terms and conditions of this Agreement (collectively, “Audit Information”) until the date that is two years from the end of the last Quarter in which Licensee Provides Implementations.

(b) **Audits.** At the request of Microsoft or one of its Affiliates, Licensee will provide access to Audit Information to a nationally recognized independent certified public accountant (“Auditor”) selected by Microsoft (or the requesting Affiliate, if applicable) and approved by Licensee (such approval not to be unreasonably delayed or withheld), for purposes of conducting an audit of Licensees’ compliance with the terms and conditions of this Agreement. Licensee must be given at least 30 days notice of any audit and the access will be limited to those portions of the Audit Information necessary to verify Licensee’s compliance with this Agreement. The Auditor will use reasonable and customary care to protect the confidentiality of Audit Information. Audits will be conducted during regular business hours at Licensee’s facilities. The Auditor may be escorted by Licensee personnel when on Licensee premises, and will not unreasonably interfere with Licensee’s normal course of business. Following conclusion of the audit, the Auditor will provide both Microsoft and Licensee with a report of the results of the audit.

(c) **Frequency and Costs.** Audits will not be performed more than once every 12 months, unless an audit discloses a Material Discrepancy, in which case follow-up audits may be conducted until the Material Discrepancy has been resolved. Licensee will promptly pay the costs of any audit(s) that reveal a Material Discrepancy; otherwise, Microsoft will be responsible for the costs. “Material Discrepancy” means, with respect to Royalties, the greater of 5% or $10,000 when compared to the amount that was reported during the period subject to audit; and/or with respect to other terms of this Agreement, material non-compliance with any other material terms.

4. **Confidentiality.** Royalty Reports, Audit Information, and audit reports are Licensee’s confidential information. Microsoft will not disclose them except as may be required by applicable law or as may be required by judicial or governmental order. If possible under the terms of the order, Microsoft will either give Licensee prior notice of the disclosure to enable it to seek a protective order or obtain written assurance that the confidential information will receive the highest level of applicable protection.

5. **Representations and Warranties**

5.1. **Mutual.** Each party represents and warrants that (a) the person executing this Agreement on its behalf has all necessary power and authority to do so, and that upon such signature this Agreement is a legal, valid and binding obligation enforceable against such party, and (b) it is entering into this Agreement in good faith.

5.2. **DISCLAIMER.** EXCEPT AS PROVIDED IN SECTION 5.1, EACH PARTY DISCLAIMS ALL WARRANTIES, GUARANTEES, AND CONDITIONS, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OR MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT.

6. **LIMITATIONS OF REMEDIES & LIABILITY.** EXCEPT WITH RESPECT TO A BREACH OF SECTION 2.2 (NOTICE), OR WITH RESPECT TO ANY INFRINGEMENT OR MISAPPROPRIATION OF EITHER PARTY’S INTELLECTUAL PROPERTY RIGHTS, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER PARTY IS LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR SPECIAL DAMAGES WHATSOEVER ARISING OUT OF OR IN CONNECTION WITH ANY PROVISION OF THIS AGREEMENT, REGARDLESS OF THE LEGAL THEORY UPON WHICH ANY CLAIM FOR SUCH DAMAGES IS BASED. THE FOREGOING EXCLUSION APPLIES EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE AND EVEN IF ANY AVAILABLE REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

7. **Term & Termination**

7.1. **Term.** The terms of this Agreement commence upon Microsoft’s receipt of the Prepaid Royalties and continue in effect until all of Microsoft’s rights under the Necessary Claims expire, unless this Agreement is terminated.
7.2. **Termination.** Licensee may terminate this Agreement at any time, in its sole discretion and without cause, by providing written notice to Microsoft. Microsoft may terminate this Agreement by giving Licensee written notice of termination: (i) immediately and at any time, if Licensee is in material breach of Section 2.2; (ii) at any time if Licensee is in material breach of any term or condition of this Agreement and fails to remedy that breach within 60 days after written notice thereof; or (iii) immediately and at any time, pursuant to Section 8.3. If Licensee or any of its Affiliates files, maintains or voluntarily participates in a patent infringement lawsuit against Microsoft, its Affiliates, or any Protocol licensee on account of that entity’s implementation of a Protocol, then the license grants in Section 2.1 are terminated as of the Effective Date with respect to any Implementation of the same Protocol.

7.3. **Effect of Expiration or Termination.** If this Agreement is terminated, Licensee will have no further rights under this Agreement, and the following Sections will survive any expiration or termination of the Agreement: Sections 2.3 (Reservation of Rights); 3.2 – 3.4 (Royalties; Payments; and Taxes), with respect to Royalty obligations accrued prior to expiration or termination; 3.5 (Recordkeeping and Audits), for a period of 2 years following expiration or termination; 5 (Representations and Warranties), 6 (Limitation of Remedies & Liability), 7.3 (Effect of Expiration or Termination) and 8 (Miscellaneous). Any expiration or termination of this Agreement is without prejudice to any right or remedy of either party arising out of any breach of this Agreement, including without limitation recovery of any monies due or claimed due under this Agreement.

8. **Miscellaneous**

8.1. **Notices.** All notices and requests between the parties in connection with this Agreement are deemed given on the day they are received either by messenger, delivery service, or in the United States of America mails, postage prepaid, certified or registered, return receipt requested, and addressed using the contact information indicated on the first page of this Agreement for Licensee, the contact information indicated below for Microsoft, or to such other address as the party to receive the notice or request so designates per this notice provision.

Microsoft Licensing GP
Attn: Special Agreements
Dept. 551, Volume Licensing
6100 Neil Road, Suite 210
Reno, NV 89511-1137

Copy to:
Microsoft Corporation
One Microsoft Way
Redmond, WA 98052-6399

Attn: IP Contracts Manager
8.2. **Governing Law; Jurisdiction; Attorneys’ Fees.** This Agreement shall be governed by and construed in accordance with English law and U.S. Federal law:

**By marking a box below, Licensee elects the indicated option:**

☐ Each party hereby submits to the exclusive jurisdiction of the Chancery Division of the High Court of England and Wales in London or in a court of competent jurisdiction in Seattle Washington, USA or New York, NY, USA. Process may be served on either party in the manner authorized by applicable law or court rule. In any formal action or suit to enforce any right or remedy under this Agreement or to interpret any provision of this Agreement, the prevailing party is entitled to recover its costs, including reasonable attorneys’ fees, costs and other expenses. The Parties acknowledge and agree that any formal action or suit to enforce any right or remedy under this Agreement or to interpret any provision of this Agreement constitutes an issue relating to the application of Article 82 of the Treaty within the meaning of Article 15 of Regulation 1/2003.

**OR**

☐ Any dispute, disagreement or claim arising out of or relating in any way to this Agreement or the parties’ obligations under this Agreement, including the breach, termination or validity of this Agreement, will be resolved by binding confidential arbitration conducted in London England or in Seattle Washington, USA or New York, NY, USA, in accordance with the International Chamber of Commerce (ICC) Rules of Arbitration in effect on the date of this Agreement with such modifications or adaptations as foreseen herein or necessary under the circumstances (the “Rules”). Judgment upon the award rendered by the arbitrator(s) may be entered by any court having jurisdiction. The parties will keep the arbitration proceedings, any related discovery, and the arbitration tribunal’s decisions confidential to the full extent permitted by the Rules. The requirements of this Section 8.2 will not be deemed a waiver of any right of termination under this Agreement.

8.3. **Assignment.** Microsoft may assign this Agreement to an Affiliate. Otherwise, neither party may assign or otherwise transfer this agreement or any of its rights or obligations under this Agreement, whether by operation of contract, law, insolvency, bankruptcy, or otherwise without the consent of the other party, which will not be unreasonably withheld. Any attempted assignment or transfer in violation of this Section 8.3 is null and void and has no force or effect. Any acquisition of Licensee or other change of Control of Licensee without such consent shall be deemed an attempted assignment for which Microsoft shall have the right to terminate this Agreement.

8.4. **Entire Agreement and Modifications.** This Agreement (including its Exhibit) constitutes the entire agreement between the parties with respect to its subject matter and merges all prior and contemporaneous communications on such subject matter. No modifications of this Agreement are effective unless contained in a subsequent written agreement that expressly references this Agreement and its intent to modify its terms, and is signed by duly authorized representatives of Licensee and Microsoft.
Exhibit A: Technical Documentation

In connection with the execution of this Agreement, Microsoft will provide a complete list of the Technical Documentation. In the interim, the list of documentation is available by searching the Patent and Program Map available at https://docs.microsoft.com/en-us/openspecs/dev_center/ms-devcentlp/13571077-e344-4e6f-a477-369894979798.