

## PATENT AND SOFTWARE LICENSE AGREEMENT

This agreement (hereinafter called "License") is made and entered into by and between Skype Technologies SA, Skype, Inc., and Affiliates thereof (hereinafter called "Licensee") and Licensor, defined below, on November 19, 2009 ("Effective Date").

WHEREAS Licensor is in the business of developing, selling, servicing, and maintaining software that enables the distribution of authorized, licensed content over electronic networks;

WHEREAS Licensor is the owner of the Patents, as defined below;

WHEREAS Licensee desires to obtain certain rights being offered for license by Licensor pursuant to the terms and conditions of this License.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and obligations herein undertaken and for good and valuable consideration, Licensor and Licensee (individually the "Party" and collectively the "Parties") agree as follows:

### I. DEFINITIONS

"Affiliate" shall mean, with respect to any entity, any other entity that, directly or indirectly, controls, is controlled by or is under common control with, that entity; provided, however, that in each case any such other entity shall be considered to be an Affiliate only during the time period during which such control exists. For purposes of this definition, "control" (including, with correlative meaning, the terms "controlled by" and "under common control with"), as used with respect to any entity, shall mean the possession, directly or indirectly, of the power to direct and/or cause the direction of the management and policies of such entity, whether through the ownership of voting securities, by contract or otherwise.

"Field of Use" shall mean any and all uses, practiced worldwide, to which, and for which, the Licensee Application(s) have been designed or for which they may be used.

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"Patents" shall mean (i) U.S. Patent Nos. 5,978,791, 6,415,280, and 6,928,442, and (ii) any and all improvements, modifications, continuations, continuations-in-part, divisions, re-issues and re-examinations thereof (including any patent claiming priority from or derived from U.S. Patent Application No. 08/425,160).

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EXHIBIT

Personal Web

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### **V. CONSIDERATION**

In consideration of the licenses, releases, and covenants granted herein, Licensee has received good and valuable consideration (the "Fee"), receipt of which is hereby acknowledged by Licensor. The licenses, releases, and covenants granted herein remain in full force and effect, throughout the term of

this Agreement, without any other payments of money or other consideration or compensation.

## VI. TERM AND TERMINATION

This License shall commence upon Licensor's countersignature of this Agreement after being signed by Licensee, and shall continue until the expiration of the last to expire of the Patents or termination in accordance with the terms of this Section VI. This License shall be non-terminable and irrevocable.

Notwithstanding any other terms in this Section 6, this Agreement shall automatically terminate if Licensee, or any party on Licensee's behalf, pursuant to Licensee's instructions, or under Licensee's control, challenges the validity of one or more claims in the Patents.

## VII. RELEASE AND COVENANT NOT TO SUE

**General Release.** Each Party, on behalf of itself and each of its Affiliates (the "Releasing Party"), hereby unconditionally and irrevocably releases, remises, acquits and forever discharges the other Party and each of its Affiliates, and its and their respective successors, assigns, employees, directors, officers, and agents, past and present, from any and all actions, causes of action, proceedings, suits, accounts, rights, claims, demands, liabilities, interest, costs and expenses, of any kind or nature, whether in law or in equity, known or unknown, in each case, on account of, arising out of or relating in any way to the Licensed Patents or infringement thereof, whether direct, indirect, contributory or by inducement.

**Unknown Claims.** The Releasing Party, on behalf of itself and its Affiliates, hereby irrevocably and forever expressly waives all rights that the Releasing Party and/or its Affiliates may have arising under California Civil Code Section 1542 and all similar rights under the laws of any other applicable jurisdictions with respect to the release granted by the Releasing Party under Section 3.1. The Releasing Party understands that Section 1542 provides that:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

The Releasing Party acknowledges that it has been fully informed by its counsel concerning the effect and import of this Agreement under California Civil Code Section 1542 and similar laws of any other applicable jurisdictions and knowingly waives all rights under Section 1542 and similar laws of other applicable jurisdictions

## VIII. NOTICE

All communications and notices required under this License shall be considered duly given if sent by courier requiring signed receipt upon delivery or if timely mailed by U.S. Postal Service, first class, postage prepaid and addressed as follows:

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Brilliant Digital Entertainment,  
12711 Ventura Boulevard, Suite 210  
Studio City, CA 91604

(b) If to Licensee:  
Skype Technologies S.A.  
22.24 Boulevard Royal  
L-2449 Luxembourg  
Telephone No.: +442071937201  
Facsimile No.: +352 26 10 21 34

or such mailing address as either party may from time to time specify in writing.

## IX. MISCELLANEOUS

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In the event that any one or more of the provisions contained in this License or any application thereof is held to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby, unless a manifest injustice or inequity would result from the applicability or enforceability of such remaining provisions; and the parties agree to substitute for the invalid, illegal or unenforceable provision a provision which most closely approximates the intent and economic effect of the invalid, illegal or unenforceable provision or to reform the invalid, illegal or unenforceable provision to the maximum which would be valid, legal and enforceable.

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Each Party acknowledges that if it breaches any of its obligations under this Agreement, it will cause damage of an irreparable and continuing nature to the other party, for which money damages will not provide adequate relief. Therefore, in addition to any money damages to which the non-breaching party is entitled, the non-breaching party also is entitled to obtain injunctive relief (including but not limited to immediate entry of a temporary restraining order) to prohibit the breaching party's continuing breach of the applicable term. The non-breaching party will have the right to obtain such relief without having to prove any damages or post any bond.

Licensee covenants that, during the term of this Agreement, it shall not attack, compromise, file suit against or in any manner attempt to vitiate or commit or fail to take any action, which could vitiate any of the rights, titles or interests of the Licensor in the Patents.

This Agreement shall be governed by and construed in accordance with the laws of the State of California, exclusive of its provisions on conflicts of laws. In respect of any dispute relating to this Agreement, such dispute shall be brought exclusively in a court of competent jurisdiction sitting in Los Angeles County, California.

The losing party in any proceeding related to or arising out of this Agreement, including actions in tort, shall pay the costs and expenses (including reasonable attorneys' fees) of the prevailing party. Any and all remedies herein expressly conferred upon a party shall be deemed cumulative and not



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No waiver of any provision of this License shall be effective as against the waiving Party unless such waiver is in writing signed by the waiving Party. Waiver by a Party in respect of a specific matter shall

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