



NON-EXCLUSIVE LICENSE AGREEMENT

between

AUBURN UNIVERSITY

and

This Agreement is made and entered into this ___ day of _____, 20___, (the "Effective Date") by and between AUBURN UNIVERSITY, a university duly established and organized under the laws of the State of Alabama, and with offices located at Office of Technology Transfer, 215 East Thach Avenue, Auburn, Alabama, 36830 ("AUBURN"), and _____, a corporation duly organized under the laws of _____ and having its principal office at _____ (hereinafter referred to as "LICENSEE").

WITNESSETH

WHEREAS, AUBURN is the owner of certain PATENT RIGHTS (as later defined herein) relating to AUBURN Case No. 07-014, entitled "A Method and Apparatus For a Second Channel Between Cache and Memory" by Sanjeev Baskiyar and Chengjun Wang and has the right to grant licenses under said PATENT RIGHTS;

WHEREAS, AUBURN is committed to policy that ideas or creative works produced at AUBURN should be used for the greatest possible public benefit; and accordingly believes that every reasonable incentive should be provided for the prompt introduction of such ideas into public use, all in a manner consistent with the public interest; and

WHEREAS, LICENSEE is desirous of obtaining a non-exclusive world-wide license in order to practice the above referenced invention covered by patent rights in the United States and in certain foreign countries, and to manufacture, use and sell in the commercial market the products made in accordance therewith; and

WHEREAS, AUBURN is desirous of granting such a license to LICENSEE in accordance with the terms of this Agreement.

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, the parties hereto agree as follows:

ARTICLE 1 - DEFINITIONS

For the purposes of this Agreement, the following words and phrases shall have the following meanings:

- 1.1 "FIELD OF USE" means all fields of use.
- 1.2 "LICENSED PRODUCT" means any product or part thereof which:
 - (a) is covered in whole or in part by an issued, unexpired claim or a pending claim contained in the PATENT RIGHTS in the country in which any such product or part thereof is made, used or sold; or
 - (b) is manufactured by using a process or is employed to practice a process which is covered in whole or in part by an issued, unexpired claim or a pending claim contained in the PATENT RIGHTS in the country in which any LICENSED PROCESS is used or in which such product or part thereof is used or sold.
- 1.3 "LICENSED PROCESS" means any process that is covered in whole or in part by an issued, unexpired claim or a pending claim contained in the PATENT RIGHTS.
- 1.4 "PATENT RIGHTS" shall mean all of the following AUBURN intellectual property:
 - (a) the United States and foreign patents and/or patent applications listed in Appendix A;
 - (b) United States and foreign patents issued from the applications listed in Appendix A;
 - (c) any reissues of United States patents described in (a) or (b) above.
- 1.5 "TERRITORY" means worldwide.

ARTICLE 2 - GRANT

2.1 Effective upon the full execution of this Agreement and the payment by LICENSEE to AUBURN of the License Issue Fee, AUBURN hereby grants to LICENSEE, subject to the terms and conditions of this Agreement, the non-exclusive right and license for the FIELD OF USE to practice under the PATENT RIGHTS to make, have made, use, lease, sell, and import LICENSED PRODUCTS and to practice the LICENSED PROCESSES in the TERRITORY, until the end of the

term for which the PATENT RIGHTS are granted unless this Agreement shall be sooner terminated according to the terms hereof.

2.2 This Agreement, unless terminated earlier as hereinafter provided, shall terminate on the expiration of the last of the patents licensed hereunder on a country-by-country basis, whereupon the non-exclusive licenses granted hereunder shall be fully paid and LICENSEE shall be free to develop, make, have made, use, sell and have sold LICENSED PRODUCTS or to utilize LICENSED PROCESSES for the FIELD OF USE without further duties or responsibilities to AUBURN.

2.3 LICENSEE agrees that LICENSED PRODUCTS leased or sold in the United States shall be manufactured substantially in the United States, per the terms provided in 37 CFR 401.14(i) when applicable.

2.4 The license granted hereunder shall not be construed to confer any rights upon LICENSEE by implication, estoppel or otherwise as to any technology not specifically set forth in Appendices A and B hereof.

ARTICLE 3 - ROYALTIES

3.1 For the rights, privileges and license granted hereunder, LICENSEE shall pay royalties to AUBURN in the manner hereinafter provided to the end of the term of the PATENT RIGHTS or until this Agreement shall be terminated:

- (a) License Issue Fee of Ten Thousand Dollars (\$10,000), which said License Issue Fee shall be deemed earned and due within thirty (30) days of the Effective Date and subject to the terms of Article 11.2.
- (b) LICENSEE shall pay yearly License Maintenance Fees payable on the anniversary of the Effective Date of this Agreement. Such fees shall be Ten Thousand Dollars (\$10,000) per year for years starting before the first patent under the PATENT RIGHTS has issued and Twenty-Five Thousand Dollars (\$25,000) per year for years starting after the first patent under the PATENT RIGHTS has issued.

3.2 All payments due hereunder shall be paid in full, without deduction of wire transfer fees, taxes or other fees which may be imposed by any government and which shall be paid by LICENSEE.

3.3 Royalty payments shall be paid in United States dollars in Auburn, Alabama, or at such other place as AUBURN may reasonably designate consistent with the laws and regulations controlling in any foreign country. If any currency conversion shall be required in connection with the payment of royalties hereunder, such conversion shall be made by using the exchange rate prevailing at the Regions Bank on the last business day of the calendar quarterly reporting period to which such royalty payments relate.

3.4 The royalty payments set forth in this Agreement shall, if overdue, bear interest until payment at a per annum rate two percent (2%) above the prime rate in effect at the Regions Bank on the due date. The payment of such interest shall not foreclose AUBURN from exercising any other rights it may have as a consequence of the lateness of any payment.

ARTICLE 4 - PATENT PROSECUTION

4.1 AUBURN shall apply for, seek prompt issuance of, and maintain during the term of this Agreement the PATENT RIGHTS listed in Appendix A hereto. The prosecution, filing and maintenance of all PATENT RIGHTS patents and applications, including payment of all related fees and costs, shall be the primary responsibility of AUBURN. The foregoing notwithstanding, AUBURN shall have no obligation to undertake an appeal of a final rejection of any patent application by the patent office.

ARTICLE 5 - INFRINGEMENT

5.1 LICENSEE shall inform AUBURN promptly in writing of any alleged infringement of the PATENT RIGHTS by a third party and of any available evidence thereof.

5.2 During the term of this Agreement, AUBURN shall have the right, but shall not be obligated, to prosecute at its own expense all infringements of the PATENT RIGHTS and, in furtherance of such right, LICENSEE hereby agrees that AUBURN may include LICENSEE as a party plaintiff in any such suit, without expense to LICENSEE. The total cost of any such infringement action commenced or defended solely by AUBURN shall be borne by AUBURN and AUBURN shall keep any recovery or damages for past infringement derived therefrom.

5.3 If within six (6) months after having been notified of any alleged infringement, AUBURN shall have been unsuccessful in persuading the alleged infringer to desist and shall not have brought and shall not be diligently prosecuting an infringement action, or if AUBURN shall notify LICENSEE at any time prior thereto of its intention not to bring suit against any alleged infringer for the FIELD OF USE, then, and in those events only, LICENSEE shall have the right, but shall not be obligated, to prosecute at its own expense any infringement of the PATENT RIGHTS for the FIELD OF USE, and LICENSEE may, for such purposes, use the name of AUBURN as party plaintiff. No settlement, consent judgment or other voluntary final disposition of the suit may be entered into without the consent of AUBURN, which consent shall not unreasonably be withheld. LICENSEE shall indemnify AUBURN against any order for costs that may be made against AUBURN in such proceedings.

5.4 In the event that LICENSEE shall undertake the enforcement and/or defense of the PATENT RIGHTS by litigation, LICENSEE may withhold up to fifty percent (50%) of the payments otherwise thereafter due AUBURN under Article 3 hereunder and apply the same toward reimbursement of up to half of LICENSEE's expenses, including reasonable attorneys' fees, in connection therewith. Any recovery of damages by LICENSEE for each such suit shall be applied first in satisfaction of any unreimbursed expenses and legal fees of LICENSEE relating to such suit, and next toward reimbursement of AUBURN for any payments under Article 3 past due or withheld

and applied pursuant to this Article 5. The balance remaining from any such recovery shall be divided equally between LICENSEE and AUBURN

5.5 In the event that a declaratory judgment action alleging invalidity or infringement of any of the PATENT RIGHTS shall be brought against LICENSEE, AUBURN, at its option, shall have the right, within thirty (30) days after commencement of such action, to intervene and take over the sole defense of the action at its own expense.

5.6 In any infringement suit as either party may institute to enforce the PATENT RIGHTS pursuant to this Agreement, the other party hereto shall, at the request and expense of the party initiating such suit, cooperate in all respects and, to the extent possible, have its employees testify when requested and make available relevant records, papers, information, samples, specimens, and the like.

ARTICLE 6 - PRODUCT LIABILITY

6.1 LICENSEE shall at all times during the term of this Agreement and thereafter, indemnify, defend and hold AUBURN, its trustees, directors, officers, employees and affiliates, harmless against all claims, proceedings, demands and liabilities of any kind whatsoever, including legal expenses and reasonable attorneys' fees, arising out of the death of or injury to any person or persons or out of any damage to property, or resulting from the production, manufacture, sale, use, lease, consumption or advertisement of the LICENSED PRODUCT(s) and/or LICENSED PROCESS(es) or arising from any obligation of LICENSEE hereunder, excepting only claims that the PATENT RIGHTS infringe third party intellectual property.

6.2 LICENSEE shall obtain and carry in full force and effect commercial, general liability insurance that shall protect LICENSEE and AUBURN with respect to events covered by Article 6.1 above. Such insurance shall be written by a reputable insurance company authorized to do business in the State of Alabama, shall list AUBURN as an additional named insured thereunder, shall be endorsed to include product liability coverage and shall require thirty (30) days written notice to be given to AUBURN prior to any cancellation or material change thereof. The limits of such insurance shall not be less than Three Million Dollars (\$3,000,000) per occurrence with an aggregate of Five Million Dollars (\$5,000,000) for personal injury or death, and Three Million Dollars (\$3,000,000) per occurrence with an aggregate of Five Million Dollars (\$5,000,000) for property damage. LICENSEE shall provide AUBURN with Certificates of Insurance evidencing the same.

6.3 EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT, AUBURN, ITS TRUSTEES, DIRECTORS, OFFICERS, EMPLOYEES, AND AFFILIATES MAKE NO REPRESENTATIONS AND EXTEND NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, VALIDITY OF PATENT RIGHTS CLAIMS, ISSUED OR PENDING, AND THE ABSENCE OF LATENT OR OTHER DEFECTS, WHETHER OR NOT DISCOVERABLE. NOTHING IN THIS AGREEMENT SHALL BE CONSTRUED AS A REPRESENTATION MADE OR WARRANTY GIVEN BY AUBURN THAT THE PRACTICE BY LICENSEE OF THE LICENSE GRANTED

HEREUNDER SHALL NOT INFRINGE THE PATENT, COPYRIGHT, TRADEMARK OR OTHER INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY. IN NO EVENT SHALL AUBURN, ITS TRUSTEES, DIRECTORS, OFFICERS, EMPLOYEES AND AFFILIATES BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING ECONOMIC DAMAGE OR INJURY TO PROPERTY AND LOST PROFITS, REGARDLESS OF WHETHER AUBURN SHALL BE ADVISED, SHALL HAVE OTHER REASON TO KNOW, OR IN FACT SHALL KNOW OF THE POSSIBILITY.

ARTICLE 7 - EXPORT CONTROLS

It is understood that AUBURN is subject to United States laws and regulations controlling the export of technical data, computer software, laboratory prototypes and other commodities (including the Arms Export Control Act, as amended and the Export Administration Act of 1979), and that its obligations hereunder are contingent on compliance with applicable United States export laws and regulations. The transfer of certain technical data and commodities may require a license from the cognizant agency of the United States Government and/or written assurances by LICENSEE that LICENSEE shall not export data or commodities to certain foreign countries without prior approval of such agency. AUBURN neither represents that a license shall not be required nor that, if required, it shall be issued.

ARTICLE 8 - NON-USE OF NAMES

LICENSEE shall not use the names or trademarks of Auburn University, nor any adaptation thereof, nor the names of any AUBURN employees, in any advertising, promotional or sales literature without prior written consent obtained from AUBURN, or said employee, in each case, except that LICENSEE may state that it is licensed by AUBURN under one or more of the patents and/or applications comprising the PATENT RIGHTS and that AUBURN may state it has non-exclusively licensed the PATENT RIGHTS to LICENSEE.

ARTICLE 9 - ASSIGNMENT

This Agreement is not assignable and any attempt to do so shall be void.

ARTICLE 10 - DISPUTE RESOLUTION

10.1 Except for the right of either party to apply to a court of competent jurisdiction for a temporary restraining order, a preliminary injunction, or other equitable relief to preserve the status quo or prevent irreparable harm, any and all claims, disputes or controversies arising under, out of, or in connection with the Agreement, including any dispute relating to patent validity or infringement, which the parties shall be unable to resolve within sixty (60) days shall be mediated in good faith. The party raising such dispute shall promptly advise the other party of such claim, dispute or controversy in a writing that describes in reasonable detail the nature of such dispute. By not later than five (5) business days after the recipient has received such notice of dispute, each party shall have selected for itself a representative who shall have the authority to bind such party, and shall additionally have advised the other party in writing of the name and title of such

representative. By not later than ten (10) business days after the date of such notice of dispute, the party against whom the dispute shall be raised shall select a mediation firm in the Birmingham area and such representatives shall schedule a date with such firm for a mediation hearing. The parties shall enter into good faith mediation and shall share the costs equally. If the representatives of the parties have not been able to resolve the dispute within fifteen (15) business days after such mediation hearing, the parties shall have the right to pursue any other remedies legally available to resolve such dispute in either the Courts of the State of Alabama or in the United States District Court for the Middle District of Alabama, to whose jurisdiction for such purposes AUBURN and LICENSEE each hereby irrevocably consents and submits.

10.2 Notwithstanding the foregoing, nothing in this Article shall be construed to waive any rights or timely performance of any obligations existing under this Agreement.

ARTICLE 11 - TERMINATION

11.1 If LICENSEE shall cease to carry on its business, this Agreement shall terminate upon notice by AUBURN.

11.2 Should LICENSEE fail to make any payment whatsoever due and payable to AUBURN hereunder, AUBURN shall have the right to terminate this Agreement effective on thirty (30) days' notice, unless LICENSEE shall make all such payments to AUBURN within said thirty (30) day period. Upon the expiration of the thirty (30) day period, if LICENSEE shall not have made all such payments to AUBURN, the rights, privileges and license granted hereunder shall automatically terminate.

11.3 Upon any material breach or default of this Agreement by LICENSEE, AUBURN shall have the right to terminate this Agreement and the rights, privileges and license granted hereunder effective on ninety (90) days' notice to LICENSEE. Such termination shall become automatically effective unless LICENSEE shall have cured any such material breach or default prior to the expiration of the ninety (90) day period.

11.4 LICENSEE shall have the right to terminate this Agreement at any time on six (6) months' notice to AUBURN, and upon payment of all amounts due AUBURN through the effective date of the termination.

11.5 Upon termination of this Agreement for any reason, nothing herein shall be construed to release either party from any obligation that matured prior to the effective date of such termination; and Articles 1, 6, 7, 8, 11.5, and 13 shall survive any such termination. LICENSEE may, however, after the effective date of such termination, sell all LICENSED PRODUCTS, and complete LICENSED PRODUCTS in the process of manufacture at the time of such termination and sell the same, provided that LICENSEE shall make the payments to AUBURN as required by Article 3 of this Agreement.

ARTICLE 12 – PAYMENTS, NOTICES
AND OTHER COMMUNICATIONS

Any payment, notice or other communication pursuant to this Agreement shall be sufficiently made or given on the date of mailing if sent to such party by certified first class mail, postage prepaid, addressed to it at its address below or as it shall designate by written notice given to the other party:

In the case of AUBURN:

Director
Office of Technology Transfer
Auburn University
215 East Thach Avenue
Auburn, Alabama 36830

In the case of LICENSEE:

ARTICLE 13 - MISCELLANEOUS PROVISIONS

13.1 This Agreement shall be construed, governed, interpreted and applied in accordance with the laws of the State of Alabama, U.S.A., except that questions affecting the construction and effect of any patent shall be determined by the law of the country in which the patent was granted.

13.2 The parties hereto acknowledge that this Agreement sets forth the entire Agreement and understanding of the parties hereto as to the subject matter hereof, and all prior representations and warranties have been merged into this document and are thus superseded in totality by this Agreement. This Agreement shall not be subject to any change or modification except by the execution of a written instrument subscribed to by the parties hereto.

13.3 The provisions of this Agreement are severable, and in the event that any provisions of this Agreement shall be determined to be invalid or unenforceable under any controlling body of the law, such invalidity or unenforceability shall not in any way affect the validity or enforceability of the remaining provisions hereof.

13.4 LICENSEE agrees to mark the LICENSED PRODUCTS sold in the United States with all applicable United States patent numbers. All LICENSED PRODUCTS shipped to or sold in

other countries shall be marked in such a manner as to conform with the patent laws and practice of the country of manufacture or sale.

13.5 The failure of either party to assert a right hereunder or to insist upon compliance with any term or condition of this Agreement shall not constitute a waiver of that right or excuse a similar subsequent failure to perform any such term or condition by the other party.

IN WITNESS WHEREOF, the parties have duly executed this Agreement the day and year set forth below.

AUBURN UNIVERSITY

By: _____
Name: _____
Title: _____

Date: _____

By: _____
Name: _____
Title: _____

Date: _____

APPENDIX A

UNITED STATES PATENT RIGHTS

AUBURN Case No. 07-014:

- U.S. Provisional Patent Application Entitled "Method and Apparatus for a Second Channel Between Cache and Memory"

U.S. Provisional Patent Application Number 61/003,542

Inventors: Sanjeev Baskiyar, Chengjun Wang

Filing Date: November 16, 2007

FOREIGN PATENT RIGHTS

None.