

FireWire® Compliance

Trademark License Agreement



TABLE OF CONTENTS

Licensee information & Recitals2

Definitions & License Grant 3 - 4

Certification for use of Compliance Mark(s)4 - 5

Further Conveyances5

Quality, inspection, and Approval5

Identification and Use5

Defense of Claims, infringement 5 - 6

Term of License Agreement, Term of Revocation, Notices, Entire License Agreement; Amendment, Governing Law,
Attorney's Fees, and Equitable Relief.....6 - 7

Headings, Waiver, Severability, Relationship, Survival7

Exhibits.....8 - 9

FireWire Compliance Trademark License Agreement

This FireWire Compliance Trademark License Agreement ("Agreement") is made and entered into as of the effective date described below, by and between the 1394 High Performance Serial Bus Trade Association, also known as the 1394 Trade Association, a Texas, USA corporation, and

_____ a _____ corporation ("COMPANY").

LICENSEE INFORMATION

COMPANY: _____

Company Contact: _____

Company Address: _____

Company Phone Number: _____

Company Fax Number: _____

Company Contact E-mail: _____

RECITALS

WHEREAS, 1394 Trade Association has exclusive rights to license the FireWire Compliance logo.

WHEREAS, 1394 Trade Association wishes to encourage the distribution of high quality FireWire products through the maintenance of 1394 Test Suite, and;

WHEREAS, COMPANY wishes to license use of the FireWire Compliance Mark (as defined below) in accordance with 1394 Trade Association's terms and conditions described below;

NOW THEREFORE:

The parties hereby agree as follows:

1. DEFINITIONS

For purposes of this License Agreement the following terms shall have the following meanings:

- (a) "Mark(s)" shall mean, the FireWire Compliance logo as depicted in the attached Exhibit A, for use with product that has been tested and has successfully met the requirements, and passed the "1394 Compliance Test Suite".
- (b) "Product" shall mean the specific model or version of COMPANY's product, a representative sample of which has been tested and results submitted to 1394 Trade Association, after passing the "1394 Compliance Test Suite" for products containing 1394 technology, and is posted on the 1394 Trade Association Compliant Product List.
- (c) "1394 Compliance Test Suite" shall mean the approved complete set of 1394 product tests covering the following four test areas:
Base 1394, Point-to-Point, Network, and Functional Conformance, as set forth on the 1394 Trade Association website and as may be amended by 1394 Trade Association from time to time.
- (d) "Version Change" shall mean the change to any part of the "1394 Compliance Test Suite" test specification or test tool that could affect the results of the compliance test, is defined as a "Version Change". A "Version Change" is determined by the appropriate Task Force of a 1394 Trade Association Working Group, and is subject to review by the Trade Association Qualification Review Board (QRB).
An example of a possible "Version Change" is a change in the operating system, or its components that could affect the results
- (e) "Revision Change" any change to any part of the "1394 Compliance Test Suite" test specification or test tool that is not classified as a "Version Change" is classified as a "Revision Change" and does not require retesting.
- (f) "Version and Revision Numbering" of "1394 Compliance Test Suite" test specifications and tools shall use the following "Version # . Revision # " numbering system:
The number to the left of the decimal point is the version number.
The number to the right of the decimal point is the revision number.
- (g) "Territory," subject to Section 2(e), shall be worldwide.
- (h) "Effective Date" shall be the date of execution of this Agreement by 1394 Trade Association.
- (i) "Subsidiary(ies)" shall mean a company, corporation, or other entity in which, on a class by class basis, more than fifty percent (50%) of the stock entitled to vote for the election of directors is owned or controlled directly or indirectly by Company, but only so long as such ownership or control exists and Subsidiary is bound by all terms and conditions of this License Agreement to the same extent as Company.

2. LICENSE GRANT

- (a) Subject to and expressly conditioned upon compliance with the terms and conditions of this License Agreement, 1394 Trade Association hereby grants to COMPANY and any applicable Subsidiaries of COMPANY, a nonexclusive, personal right (including through manufacturing and distribution agents of COMPANY and Subsidiaries) to use in Territory, solely in the manner described in the FireWire1394 Compliance Logo Usage Guidelines and as may be amended by 1394 Trade Association from time to time with reasonable notice, the FireWire Compliance Logo, solely in conjunction with Product that has been submitted and passed the "1394 Compliance Test Suite" and is ready to be posted on the 1394 Trade Association Compliant Product List. The license right set forth in this Section 2(a) is not intended as a "Certification" program, i.e., the Mark(s) do not represent that 1394 Trade Association, or its licensor, certifies COMPANY's Product in anyway.
- (b) Upon the passing of an un-finalized version of the "1394 Compliance Test Suite" by COMPANY's Product, and the posting of the Product on the 1394 Trade Association Compliant Product List, the COMPANY is authorized to utilize the applicable logo(s) for a period of eighteen (18) months from the date that the Product is posted on the 1394 Trade Association Compliant Product List.

- (c) For COMPANY products for which there is a 1394 Trade Association approved "1394 Compliance Test Suite" the term of the utilization of applicable logo(s) is not limited unless the test suite has undergone a "Version Change". When an approved "1394 Compliance Test Suite" undergoes a "Version Change", the product must pass the updated "1394 Compliance Test Suite" within eighteen (18) months, from the "Version Change", in order to continue to utilize the applicable logo(s).
- (d) COMPANY agrees that it shall be jointly and severally liable for any breach of the terms and conditions of this License Agreement by COMPANY or its Subsidiaries.
- (e) 1394 Trade Association represents and warrants that to the best of its knowledge it has the right to enter into this License Agreement, including the right to license the Mark(s).
- (f) 1394 Trade Association may modify the license right set forth in Section 2(a) above to eliminate any country or jurisdiction from this License Agreement if its licensor, determines that use or continued use of the Mark(s) in such country or jurisdiction may subject 1394 Trade Association, its licensor or any third party to legal liability, or may jeopardize 1394 Trade Association's or its licensor's rights in the Mark(s). In such event, and upon notice from 1394 Trade Association or licensor, COMPANY shall with reasonable promptness cease all use of the Mark(s) in such country or jurisdiction.
- (g) COMPANY may not use or reproduce the Mark(s) in any manner whatsoever other than as expressly described in the "FireWire Compliance Usage Guidelines".
- (h) COMPANY agrees and acknowledges that 1394 Trade Association and its licensor retain all rights, titles and interests in and to the Mark(s), and any associated goodwill, and COMPANY's use of the Mark(s) shall inure to the benefit of 1394 Trade Association and/or its licensor. Except as expressly granted in this License Agreement, COMPANY shall have no rights in the Mark(s). Under no circumstances will anything in this License Agreement be constructed as granting, by implication, estoppel or otherwise, a license to any IEEE 1394 technology or proprietary right other than the permitted use of the Mark(s) pursuant to Section 2(a).
- (i) COMPANY represents and warrants that it will use the Mark(s) solely as provided in this License Agreement and will not use the Mark(s) for promotional goods or products which, in 1394 Trade Association's or its licensor's reasonable judgment will diminish or otherwise damage 1394 Trade Association's or its licensor's goodwill in the Mark(s), including but not limited to uses which could be deemed to be obscene, pornographic, excessively violent or otherwise in poor taste or unlawful, or which purpose or objective is to encourage unlawful activities.

3. CERTIFICATION FOR USE OF COMPLIANCE MARK(S)

- (a) "Usage Guidelines" COMPANY agrees to follow all "1394 Trade Association Usage Guidelines", as they pertain to the Compliance Logo Certification.
- (b) "Re-submission for Version Changes" COMPANY agrees to re-test products if a "Version Change" has been made to any part of the "1394 Compliance Test Suite" specification, or the test tool used for those tests. The test results from those tests shall be submitted to the 1394 Trade Association within eighteen (18) months of the "Version Change", or earlier if so required by the 1394 Trade Association.
- (c) "Re-submission for additional testing" COMPANY agrees to re-test products before distribution for sale, if changes are made to such products that could affect the products interoperability with other 1394 Trade Association certified products. COMPANY also agrees to re-submitting products for testing if so required by the 1394 Trade Association. The 1394 Trade Association may make this request as part of its generic auditing procedure, or in such case as the product has been found to have interoperability issues with other 1394 Trade Association certified products.
- (d) "Responsibility to Archive" COMPANY agrees to archive until six (6) months after final production of the product, the detailed test logs generated for all products whose results form is submitted to the 1394 Trade Association. COMPANY also agrees to keep a representative sample of the products for which the detailed test logs apply. Copies of those test logs, and the corresponding samples must be supplied to the 1394 Trade Association if so requested.
- (e) "Publication of Certification" COMPANY agrees that the 1394 Trade Association has the right to list all certified 1394 logo compliant products on the 1394 Trade Association Web Site.
- (f) "Removal of Certification" Failure of COMPANY to comply with these Terms and Conditions may result in COMPANY losing its Certification of that product with the 1394 Trade Association Logo Program.

- (g) "If COMPANY fails to comply" then the 1394 Trade Association shall remove that COMPANY's Product from the list of certified 1394 logo compliant products on the 1394 Trade Association Web Site.

4. FURTHER CONVEYANCES

The license grant in Section 2(a) is personal to COMPANY, and COMPANY shall not assign, transfer or sublicense this License Agreement (or any right granted herein) in any manner without the prior written consent of the 1394 Trade Association. Notwithstanding the foregoing, where COMPANY transfers to a third party all or substantially all of the business of COMPANY that is responsible for the manufacture and distribution of Product, that party shall be entitled to use the Mark(s) under the terms of this version of the License Agreement upon execution of same.

5. QUALITY, INSPECTION, AND APPROVAL

- (a) COMPANY shall supply 1394 Trade Association with suitable specimens of product and COMPANY's use of the Mark(s) in connection with Product at any time upon reasonable notice of thirty (30) days from 1394 Trade Association. COMPANY shall cooperate fully with 1394 Trade Association. COMPANY shall cooperate fully with 1394 Trade Association to facilitate periodic review of COMPANY's use of the Mark(s) and of COMPANY's compliance with the quality standards described in this License Agreement. In any periodic review of COMPANY's compliance, Product will be tested using the "1394 Compliance Test Suite" that was in use when the product was last submitted for testing.
- (b) If 1394 Trade Association, in its sole discretion, determines that any use of the Mark(s), or that the quality of any Product submitted to 1394 Trade Association for quality control purposes, fails to conform to this License Agreement, 1394 Trade Association shall provide the COMPANY with written notice of such failure or deficiency. The COMPANY shall have sixty (60) days hereafter to satisfy 1394 Trade Association that the COMPANY has fully corrected and remedied any such deficiencies. Should the COMPANY fail to cure the deficiencies within said sixty (60) day period, 1394 Trade Association may terminate this License Agreement with respect to such deficient Product.
- (c) COMPANY represents and warrants that the representative sample of the specific model or version of COMPANY's product submitted to 1394 Trade Association for testing accurately represents the specific model or version of COMPANY's product on which the Mark(s) will be applied.

6. IDENTIFICATION AND USE

- (a) COMPANY shall mark every use of the Mark(s) with the trademark designation as described in the "FireWire Compliance Logo Usage Guidelines" as amended by 1394 Trade Association from time to time.
- (b) COMPANY shall employ best efforts to use the Mark(s) in a manner that does not derogate from 1394 Trade Association's and its licensor's rights in any of the Mark(s) and will take no action that will interfere with or diminish 1394 Trade Association's or its licensor's rights in the Mark(s). COMPANY agrees not to adopt, use or register any corporate name, trade name, trademark, domain name, product name, service mark or certification mark, or other designation similar to the Mark(s). COMPANY agrees that all use of the Mark(s) by COMPANY will inure to the benefit of 1394 Trade Association and/or its licensor. COMPANY may not use the Mark(s) in any way that implies endorsement or sponsorship of COMPANY's Product or Services by 1394 Trade Association or its licensor.

7. DEFENSE OF CLAIMS

- (a) In the event the Marks are the subject of a claim of infringement, 1394 Trade Association may, upon written notice, revoke any part of the license herein that could relate to the alleged infringement.
- (b) Neither 1394 Trade Association nor its licensor shall have any liability for any claim based on COMPANY's manufacture or distribution of Product, or its use of the Mark(s).
- (c) The Mark(s) are provided to COMPANY on an "as is" basis. 1394 Trade Association and its licensor make no warranties either express, implied, statutory or otherwise with respect to the Mark(s), including any warranty of non-infringement, implied warranties of merchantability of fitness for a particular purpose. 1394 Trade Association and its licensor shall not be liable for any special, incidental, or consequential damages arising or related to COMPANY'S use

of the Mark(s), or termination of this license agreement, even if advised of their possibility, or be liable for a total amount in excess of the logo administration fee.

- (d) COMPANY agrees to indemnify and defend 1394 Trade Association and its licensor from and against any and all claims damages, costs, and expenses (including reasonable attorney's fees) and pay the amount of any adverse final judgment (or settlement to which both parties consent) arising out of any adverse final judgment (or settlement to which both parties consent) arising out of or related to the Product in any manner, including user claims regarding Product's defect, failure or malfunction, provided COMPANY is notified promptly in writing of any claim, and COMPANY has sole control over its defense or settlement.
- (e) 1394 Trade Association and its licensor reserve all rights to, or not to, control, commence, prosecute or defend any action or claim concerning the Mark(s).

8. INFRINGEMENT

COMPANY shall promptly notify 1394 Trade Association of any suspected infringement of or challenge to the Mark(s) or any of its constituent elements

9. TERM OF LICENSE AGREEMENT

- (a) This Agreement shall be in effect for a period of one (1) year from the Effective Date, unless terminated pursuant to this Agreement, thereafter this Agreement shall be automatically renewed for successive one (1) year terms, unless either Party indicates its intentions to terminate this Agreement
- (b) 1394 Trade Association shall have the right to terminate this License Agreement if COMPANY fails to cure its breach of this License Agreement within 10 days of notice of breach; or immediately if either (i) COMPANY acts in any manner that could injure, limit or otherwise affect 1394 Trade Association's or its licensor's ownership of the Mark(s) or (ii) COMPANY becomes insolvent or is the subject of a proceeding for the benefit of creditors.

10. TERMINATION OF REVOCATION

Upon termination or revocation, COMPANY will promptly stop using the Mark(s), however, COMPANY may deplete existing inventory of COMPANY's products and related marketing materials containing the marks for not more than sixty (60) days, provided such usage is in compliance with the terms of this License Agreement and does not otherwise violate any existing laws or court order

11. NOTICES

All notices and other communications under this License Agreement shall be in writing and shall be deemed given if delivered personally, mailed by registered or certified mail, return receipt requested, or sent by email or telecopy with a receipt confirmed by telephone, to the parties at the addresses herein or to such other addresses as a party may from time to time notify the other parties. Provision of an email address at which each party may be contacted is mandatory.

Location: 1394 Trade Association,
1560 East Southlake Blvd.
Suite 220
Southlake, Texas 76092

Telephone: (817) 416-2200

Fax: (817) 416-2256

Email Address: jsnider@1394ta.org

COMPANY: information listed on the front page of this Agreement

12. ENTIRE LICENSE AGREEMENT; AMENDMENT

This License Agreement, including all Exhibits, contains the entire agreement of the parties with respect to the subject matter hereof, and shall supersede all prior and contemporaneous communications. It shall not be amended except by a written agreement signed by both parties.

13. GOVERNING LAW; ATTORNEYS' FEES; EQUITABLE RELIEF

- (a) This License Agreement shall be governed by and construed in accordance with the laws of the United States and the State of California without regard to conflicts of law principles. COMPANY hereby consents to the jurisdiction of, and waives any and venue objections to, the United States District Court for the Northern District of California or the Superior Court of the State of California for the County of Santa Clara, in any proceeding arising out of this Agreement. The parties agree to accept service of process by U.S. certified or registered mail, return receipt requested, or by any other method authorized by applicable law.
- (b) COMPANY acknowledges that a breach by it of this License Agreement may cause 1394 Trade Association or its licensor irreparable damage, which cannot be remedied in monetary damages in an action at law, and may also constitute infringement of the Mark(s). In the event of any breach that could cause irreparable harm to 1394 Trade Association or its licensor, or cause some impairment or dilution of its reputation or trademarks, The 1394 Trade Association or its licensor shall be entitled to an immediate injunction, in addition to any other legal or equitable remedies.

14. HEADINGS

Section headings are used in this License Agreement for convenience of reference only and shall not affect the meaning of any provision of this License Agreement.

15. WAIVER

No waiver of any breach of any provision of this License Agreement shall constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provision hereof, and no waiver shall be effective unless made in writing and signed by an authorized representative of the waiving party.

16. SEVERABILITY

If any provision of this License Agreement (or any other agreements incorporated herein) shall be held by a court of competent jurisdiction to be illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect.

17. RELATIONSHIP

Neither this License Agreement, nor any terms and conditions contained hereto, shall be constructed as creating a partnership, joint venture or agency relationship or as granting a franchise. 1394 Trade Association and its licensor is not a guarantor of the fitness of the Products.

18. SURVIVAL

The provisions of Sections 2(g), 6(b), 7, 9, 10, and 11 shall survive expiration or termination of this License Agreement.

19. EXHIBITS

This License Agreement includes Exhibit A that is hereby incorporated by reference.

IN WITNESS WHEREOF, the parties hereto have executed this License Agreement as of the Effective Date and do each hereby warrant and represent that their respective signatory whose signature appears below has been and is on the date of this License Agreement duly authorized by all necessary and appropriate corporate action to execute this License Agreement.

1394 TRADE ASSOCIATION

COMPANY

Name (Signature)

Name (Signature)

Name (Print)

Name (Print)

Address

Address

Phone Number

Phone Number

Email

Email

Date

Date

EXHIBIT A

Do not reproduce this example. Upon execution of the FireWire Compliance Trademark License Agreement and qualifying to use the FireWire Compliance Logo, COMPANY will receive a CD ROM containing all of the logo art files.



The logo reproduced above has been protected with a "not for use" watermark. This "not for use" watermark is not part of the logo.

Note: FireWire, FireWire symbol and the FireWire Compliance logo are trademarks of Apple Computer, inc., registered in the U.S. and other countries.