

IPMI Second Generation Adopter's Agreement

This is a patent license agreement among parties wishing to adopt the –IPMI Second Generation Specification.

As used in this Agreement:

- The “**Promoters**” are Intel Corporation, Dell Corporation, Hewlett Packard Corporation, and NEC Corporation, and any other entity that has executed an IPMI Specification Promoters’ Agreement (“Promoters’ Agreement”) that has been executed by the other Promoters.
- “**Adopter**” is the entity named at the end of this Agreement.
- “**Compliant Portion**” means portions of products (hardware, software or combinations thereof) that implement and are compliant with all relevant portions of the Legacy Specification and/or the Second Generation Specification, as applicable.
- “**Contributor**” means an entity that has executed a copy of the Contributor Agreement in the form attached to the Promoters’ Agreement as Exhibit B and delivered it to any of the Promoters.
- “**Fellow Second Generation Adopters**” are the Promoters and any other entity that has executed an identical counterpart of this Agreement, and delivered it to any of the Promoters.
- “**IPMI Website**” shall mean <http://www.intel.com/design/servers/ipmi> or such other website as the Promoters may designate by providing advance notice to all Fellow Second Generation Adopters.
- “**Legacy Adopter**” is any entity that has executed the original Adopter’s Agreement, attached to the Promoters’ Agreement as Exhibit A, (“Original Agreement”) covering the Legacy Specification, and that has not executed an identical counterpart to this Agreement.
- “**Legacy Specification**” are versions 1.5 and earlier of the specifications entitled "Intelligent Platform Management Interface Specification," “ Intelligent Platform Management Bus Communications Protocol Specification,” and “ Intelligent Chassis Management Bus Bridge Specification" authored and published by the Promoters.
- “**Second Generation Specification**” are the specifications entitled "Intelligent Platform Management Interface Specification Second Generation,” “Intelligent Platform Management Bus Communications Protocol Specification Second Generation,” and “Intelligent Chassis Management Bus Bridge Specification Second Generation" authored and published by the Promoters.
- “**Necessary Claims**” shall mean those claims of all patents and patent applications throughout the world, excluding any claims to semiconductor manufacturing technology, that a Fellow Second Generation Adopter has the right, at any time during the term of this Agreement, to grant licenses of the scope specified herein without such grant or the exercise of rights thereunder resulting in payment of royalties or other consideration to third parties (except payment to affiliates) and that are necessarily infringed by an implementation of a version of a Legacy Specification or Second Generation Specification adopted by the Promoters, where such infringement could not have been avoided by another commercially reasonable non-infringing implementation of such Specification.
- “**Unit**” shall mean an individual hardware or software product, including a licensed copy of a software product.

Licenses:

Adopter may have executed this Agreement alone, or this Agreement and the Original Agreement. In either event, this Agreement alone shall govern the licensing relationship relating to the Legacy Specification and the Second Generation Specification between the Adopter and all Fellow Second Generation Adopters. For the purposes of clarity, with respect to Fellow Second Generation Adopters,

this Agreement shall supersede and replace the provisions of the Original Agreement. Only in the case where Adopter has executed the Original Agreement, and only with respect to Legacy Adopters and the Legacy Specification, shall the Original Agreement remain in force.

- Grants of Licenses. Upon the Adopter's execution of this Agreement:
 - The Promoters hereby agree that they will grant to Adopter a nonexclusive, worldwide license under Necessary Claims solely to make, have made, use, import, and directly and indirectly, offer to sell, sell and otherwise distribute and dispose of Compliant Portions; provided that such license shall not extend to any part, function or feature of a product that is not a Compliant Portion or for which there exists a commercially reasonable, noninfringing alternative. Such license shall be granted on reasonable and non-discriminatory terms, provided that such license grant may be conditioned upon Adopter's grant of a reciprocal license. With respect to any royalty free patent license that the Promoters receive from a Contributor that includes the right of the Promoters to grant sublicenses, the Promoters hereby grant Adopter a royalty free sublicense to the same rights and licenses that the Promoters received from the Contributor.
 - Adopter hereby agrees that it will grant to each Fellow Second Generation Adopter, a nonexclusive, worldwide license under its Necessary Claims solely to make, have made, use, import, and directly and indirectly, offer to sell, sell and otherwise distribute and dispose of Compliant Portions; provided that such license shall not extend to any part, function or feature of a product that is not a Compliant Portion or for which there exists a commercially reasonable, noninfringing alternative. Such license shall be granted on reasonable and non-discriminatory terms, provided that such license grant may be conditioned upon a Fellow Second Generation Adopter's grant of a reciprocal license. Only with respect to this obligation to grant licenses under its Necessary Claims, each Fellow Second Generation Adopter shall be a third party beneficiary of this Agreement.
 - The Promoters and the Adopter hereby agree that each will provide a written notice to each of the Promoters that it may seek a royalty from Fellow Second Generation Adopter(s). The Promoters agree to use commercially reasonable efforts to post such notice on the IPMI Website within a reasonable time. Such notice shall include a specific listing of the patent(s) for which a Promoter or Adopter may seek to charge a royalty. With respect to each patent that a Promoter or Adopter may seek such a royalty-bearing license from Fellow Second Generation Adopters, only a one-time notice to the Promoters is required. The Promoters and the Adopter further agree that they will only seek to collect royalties pursuant to this Agreement from Fellow Second Generation Adopters for any Units of products that were sold, leased, rented, licensed, shipped or otherwise transferred more than one hundred twenty (120) days after Adopter has notified the Promoters as set forth above. Nothing in this Agreement shall waive any right that Adopter may have under the law of the appropriate jurisdiction to receive actual notice from a Fellow Second Generation Adopter asserting a claim of patent infringement against Adopter.
 - The Promoters grant to Adopter a nonexclusive, royalty-free, nontransferable, nonsublicenseable, worldwide license under their trade secrets and copyrights in the Legacy Specification and the Second Generation Specification to use and reproduce the Legacy Specification or the Second Generation Specification as necessary in order to make, have made, use, import, offer to sell and sell Compliant Portions.
- Withdrawal

- Notice of Withdrawal. Adopter may, at any time, withdraw from those licensing rights and licensing obligations specified below. Adopter's withdrawal shall be effective on the date sixty (60) days before its written notice of withdrawal is delivered to the Promoters ("Effective Date of Withdrawal"). The Promoters agree to use commercially reasonable efforts to post such notice of withdrawal on the IPMI Website within a reasonable time.
- Effect of Withdrawal. Upon withdrawal as provided in this section, the following rights, licenses and obligations of Adopter under this Agreement shall terminate, but only with respect to any release, version, update, alteration or modification of the Second Generation Specification adopted by the Promoters and published on the IPMI website on or after the Effective Date of Withdrawal: 1) the right to receive licenses to Necessary Claims from Fellow Second Generation Adopters; 2) the obligation to grant licenses to its Necessary Claims to Fellow Second Generation Adopters; and 3) the trade secret and copyright license from the Promoters. All rights, licenses and obligations shall survive with respect to the Legacy Specification, and any release, version, update, alteration or modification of the Second Generation Specification adopted by the Promoters and published on the IPMI Website before the Effective Date of Withdrawal. This Agreement shall otherwise survive in full force and effect. Nothing in this Agreement including, but not limited to, the withdrawal of Adopter, shall change or otherwise effect the terms and conditions of any other license or agreement between Adopter and a Fellow Second Generation Adopter.

General:

- Trademarks and Branding. Adopter hereby agrees not to assert against any Fellow Second Generation Adopters any trademark or trade name rights Adopter may have now or hereafter in the names Intelligent Platform Management Interface (IPMI), Intelligent Platform Management Bus (IPMB), and Intelligent Chassis Management Bus (ICMB).
- Governing Law. This Agreement shall be construed and controlled by the laws of Delaware, without reference to conflict of laws principles.
- Jurisdiction. The parties agree that all disputes arising in any way out of this Agreement shall be heard exclusively in, and all parties irrevocably consent to jurisdiction and venue in, the state and Federal courts of Delaware.
- No Other Licenses. Adopter neither grants nor receives any license to or right to use any trademark, tradename, copyright, or maskwork hereunder. Except for the rights expressly provided by this Agreement, Adopter neither grants nor receives, by implication, estoppel, or otherwise, any rights under any patents or other intellectual property rights.
- No Warranty. Adopter acknowledges that the Legacy Specification and the Second Generation Specification are provided "AS IS" WITH NO WARRANTIES WHATSOEVER, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY, NONINFRINGEMENT, FITNESS FOR ANY PARTICULAR PURPOSE, OR ANY WARRANTY OTHERWISE ARISING OUT OF ANY PROPOSAL, SPECIFICATION, OR SAMPLE.
- Not Partners. Adopter understands that the Fellow Second Generation Adopters are independent companies and are not partners or joint venturers with each other. While the Fellow Second Generation Adopters may select an entity to handle certain administrative tasks for them, no party is authorized to make any commitment on behalf of all or any of them. Except, however, the undersigned Promoter represents and warrants that it is authorized to obligate all Promoters to grant the licenses to Necessary Claims as specified above, and to grant the trade secret and copyright license specified above on behalf of all Promoters.

- Limitation of Liability. IN NO EVENT WILL FELLOW SECOND GENERATION ADOPTERS BE LIABLE TO EACH OTHER, OR TO ANY CONTRIBUTORS FOR COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, LOST PROFITS, LOSS OF USE, LOSS OF DATA OR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, OR SPECIAL DAMAGES, WHETHER UNDER CONTRACT, TORT, WARRANTY OR OTHERWISE, ARISING IN ANY WAY OUT OF THIS AGREEMENT WHETHER OR NOT SUCH PARTY HAD ADVANCE NOTICE OF THE POSSIBILITY OF SUCH DAMAGES.
- Complete Agreement. This Agreement sets forth the entire understanding of the agreement between the Adopter and the Promoters, and supersedes all prior agreements and understandings relating hereto. No modifications or additions to or deletions from this Agreement shall be binding unless accepted in writing by an authorized representative of all parties.

Promoter:

Company:	_____	Address:	_____
Signed:	_____		_____
Name:	_____	Telephone:	_____
Title:	_____	Fax:	_____
Date:	_____	e-mail:	_____

Adopter:

Company:	_____	Address:	_____
Signed:	_____		_____
Name:	_____	Telephone:	_____
Title:	_____	Fax:	_____
Date:	_____	e-mail:	_____