

Exhibit 5

OEM CONSUMER ELECTRONICS LICENSE AGREEMENT

This Agreement is made and entered into, as of [ENTER DATE HERE], (“Effective Date”), by and between the following parties:

DivXNetworks, Inc., a company organized and existing under the laws of the State of Delaware, with its principal office located at 10350 Science Center Drive, Building 14, Suite 140, San Diego, California 92121, USA (hereinafter referred to as "DXN"),

[ENTER COMPANY NAME HERE] a company organized and existing under the laws of, [ENTER INFO HERE] with its principal office located at [ENTER INFO HERE] (hereinafter referred to as "Licensee").

W I T N E S S E T H

WHEREAS, DXN is the developer of the DivX Licensed Technology and owner of the DivX brand and desires to enable Licensee to create and market their compatible Licensee Products to consumers;

WHEREAS, Licensee is a developer of consumer electronics products sold directly or indirectly to consumers and wishes to obtain license from DXN to integrate and use such technology and brand with products sold directly to consumers, and to have such product DivX Certified;

NOW, THEREFORE, in consideration of the premises and mutual covenants set forth herein, the Parties agree as follows:

1 DEFINITIONS

- 1.1 **Additional Certification**. DivX Certification of Licensee Product for an additional level of Certification. Additional Certification only applies to an increased level of Certification for Licensee Product for the function (either encoding or decoding) for which it was originally Certified and does not include Certification for any Product upgrades. An example of this is taking a Licensee Product originally Certified at the “Home Theater” Certification Level and certifying it at the “High Definition” Certification Level
- 1.2 **Agreement** means the present technology license agreement together with all appendices thereto, as the same may be hereafter amended, modified or complemented from time to time and in accordance with the provisions herein.
- 1.3 **Critical Bug** means a bug in Licensed Technology that causes complete loss of functionality.
- 1.4 **Deliverables** means the items to which DXN shall grant a right to use, per this agreement, and deliver to Licensee, as described in **Exhibit A**.
- 1.5 **DivX Certification Test**. Shall mean those DivX compliance tests described in **Exhibit B** hereto.
- 1.6 **DivX Certified**. Licensee Products that have successfully passed the DivX Certification Test tests described in the DivX Certification Test document and related test materials including test

bitstreams.

- 1.7 **Intellectual Property Rights** means all inventions and all other proprietary rights, including but not limited to copyrights, trade secrets, research data, know-how and specifications related to the invention commonly known as DivX® video MPEG-4 equivalent video codec technology excepting trademark rights and associated goodwill.
- 1.8 **Licensee Products** means the products designed, manufactured, distributed or sold by Licensee as described in **Exhibit C** that incorporate part of or the entire Licensed Technology or any derivative thereof and are designed to be distributed to end consumers under Licensee's brand or a brand controlled by Licensee.
- 1.9 **Licensee Product Model Number** means each separate model number for Licensee Products as used by Licensee in distributing such Licensee Products to end consumers.
- 1.10 **Licensed Technology** means the Intellectual Property Rights and the technology associated with the playback of DivX™ video content, including versions 3.11 through 5.x DivX video compression, digital rights management, file format and other algorithms necessary to playback DivX video according to the DivX Certification standards.
- 1.11 **Licensee Product Upgrade Certification**. Certification of a previously-certified Product that has been upgraded to support upgraded Licensed Technology provided by DXN. Product Upgrade Certification does not include upgrades to the Licensee Products that are not associated with upgrades to the Licensed Technology and does not include upgrades to the Licensee Product that add either encoding or decoding functionality to a Product that was not previously Certified for that functionality.
- 1.12 **Port** Translation of object code executable on a specified processor to object code executable on a processor of a different architecture.
- 1.13 **Serious Bug** means a bug in Licensed Technology that causes a serious downgrade in performance of Licensed Technology, resulting in the prevention of Licensee Product from achieving certifiable performance.

2 GRANT OF RIGHTS TO LICENSEE

- 2.1 Subject to the Restrictions contained in Section 3 herein, DXN hereby grants to Licensee a non-exclusive, worldwide, non-assignable, non-transferable license and right, to use the Licensed Technology for purposes of sale of Licensee Products to end consumers.
- 2.2 The foregoing license also includes the right to combine and integrate the Licensed Technology with other software, firmware or programs as necessary to deliver Licensee Products.
- 2.3 Subject to the Restrictions contained in Section 3, DXN provides Licensee with the right to use the DivX brand and logo to market the Licensee Product as "DivX Certified" under the following terms:

- 2.3.1 The DivX Logo must be used according to the DivX Branding Guidelines as outlined in **Exhibit B**.
- 2.3.2 All usages of the DivX brand and trademark must be submitted to DXN for approval. Such approval shall be granted or withheld within ten (10) days of the delivery of such usages.
- 2.3.3 For the purposes of use of DivX brand and logo, the Licensee Product can only be marketed and promoted for the applications for which it has been successfully DivX Certified.

3 RESTRICTIONS

- 3.1 All rights granted to Licensee under this agreement are subject to Licensee's Product being fully DivX Certified. Failure of Licensee's Product to be DivX Certified for certain applications will not prohibit licensing of the product for applications where it is DivX Certified.
 - 3.1.1 For the purpose implementation of the Licensed Technology, into Licensee Product Model Number, Licensee agrees to only use DivX Certified IC Components from DivX Certified Partners.
 - 3.1.2 Upon Request, DXN will provide to Licensee, a list of DivX Certified Partners.
- 3.2 Nothing in this Agreement should be construed to grant Licensee the right to sub-license the Licensed Technology or the DivX brand or trademark to any 3rd party.
- 3.3 All rights granted to Licensee under this agreement apply only to Licensee Products distributed to end consumers under Licensee's brand or a brand controlled by Licensee. Nothing in this agreement shall grant Licensee the right to distribute Licensee Products using any 3rd party brand (i.e., "Private Label").
- 3.4 Licensee agrees to obtain "DivX Certification" as described in **Exhibit B** for Licensee Products. The cost of DivX Certification and fees associated with Licensed Technology shall be paid as outlined in Section 5 and 6 herein. Specific rights granted under Section 2.1 are subject to Licensee obtaining DivX Certification for the Licensee Product.
- 3.5 Source Code Protections; Unless as otherwise permitted under this Agreement or another written agreement between Licensee and DXN, neither DXN nor Licensee shall under any circumstances attempt, or knowingly cause or permit others to attempt, to decompile, decipher, disassemble, "unlock", reverse engineer, create derivative works of the Licensee Product or otherwise determine the source code for the Licensed Technology
- 3.6 Neither party may cause or permit any 3rd party to lease, sell, rent, lend or transfer the Licensee Product, except as expressly authorized in this agreement.

- 3.7 Licensee's Product may only be used for Consumer products and shall not be licensed or marketed for commercial or professional use.
- 3.8 Nothing in this Agreement should be construed to grant Licensee the right to license or sub-license DivX Technology except as a part a Licensee Product.
- 3.9 Nothing in this Agreement should be construed to grant Licensee the right to use any other intellectual property of DXN.
- 3.10 Nothing in this agreement shall be construed to grant Licensee the right to certify any Licensee Product or technology as DivX Certified, to grant any product or technology the right to use the DivX brand or trademark.

4 DELIVERY

- 4.1 DXN shall deliver to Licensee the Deliverables within 30 days after the execution of this Agreement. Upon the request by Licensee, DXN shall provide assistance to Licensee if the media bearing the Deliverables are not readable .

5 CERTIFICATION OF LICENSEE PRODUCT

- 5.1 Licensee must submit each Licensee Product Model Number for separate DivX Certification. DivX Certification as described hereunder only applies for each Licensee Product Model Number that is to be appropriately DivX Certified.
- 5.2 After payment of License fee is received as outlined in Section 6.1, Licensee will submit Licensee Product Model Number, for initial DivX Certification. DXN shall implement compliance and performance testing in accord with the requirements detailed in Exhibit B. Such compliance testing shall be made in a timely manner after certification of the Licensee Product Model Number.
- 5.3 In the event that the Licensee Product Model Number passes DivX Certification requirements for any level of DivX Certification, DXN shall issue to Licensee a written "DivX Certification" detailing the level at which the Licensee Product Model Number has been certified.
- 5.4 In the event that the Licensee Product does not pass compliance and performance testing, DXN shall issue to Licensee a written explanation of such failures. Licensee will undertake reasonable measures to enhance performance of the Licensee Product Model Number in order to achieve "DivX Certification".
- 5.5 DXN reserves the right to change the requirements, procedures or fees related to the DivX Certification Test at any time. However, not all changes or upgrades to the Licensed Technology shall include or require changes to the DivX Certification Test. Such changes may include, but are not limited to, upgrades of the Licensed Technology.

- 5.6 In the event of a change to the requirements, procedures or fees, related to the DivX Certification Test, DXN will notify Licensee in a timely manner of the change, deliver to Licensee a requirements document describing how Licensee must alter the Licensee Product Model Number to remain in compliance with the changes and deliver to Licensee any such documentation or software necessary to facilitate such changes.
- 5.6.1 Licensee must upgrade Licensee Product Model Number to re-establish compliance with DivX Certification in a timely manner and all such upgrades must be submitted to DivXNetworks for Licensee Product Model Number Upgrade Certification.
- 5.6.1.1 Changed DivX Certification requirements shall not negate or remove Certification of a Licensee Product Model Number that has been Certified prior to such changed requirements.
- 5.6.1.2 Future Licensee Product Model Number or future versions of Licensee Product Model Number must be DXN Certified according to the changed requirements. For the purposes of this section, a bug fix, firmware upgrade or subdecimal upgrade shall not count as a “future version”.
- 5.6.2 When Licensee upgrades Licensee Product Model Number, Licensee shall deliver such upgraded Licensee Product Model Number to DXN for Licensee Product Model Number Upgrade Certification. DXN shall test and certify the upgraded Licensee Product Model Number in a timely manner.
- 5.6.3 Licensee may submit Licensee Product Model Number for Licensee Product Model Number Upgrade Certification at any time at no additional charge.
- 5.6.3.1 Failure of Licensee to submit Licensee Product Model Number for a Product Upgrade Certification or failure of Licensee Product Model Number to achieve such Product Upgrade Certification shall render Licensee Product Model Number no longer DivX Certified under the terms of this Section and Agreement. However, loss of Certification under this provision shall not affect licensee from distributing Licensee Product Model Number prior to the change and Licensee may continue under the terms and conditions of their prior license.
- 5.7 The Licensee Fee described in Section 6.1 herein includes the DivX Certification fee for one (1) Licensee Product Model Number subject however to the following conditions:
- 5.7.1 In the event that any given Licensee Product Model Number fails to achieve any level of DivX Certification, Licensee may resubmit said Licensee Product Model Number for DivX Certification twice at no additional charge. In the event that the said Licensee Product Model Number does not then pass Certification, the Licensee may resubmit the Licensee Product Model Number for retest two more times for an additional Five Thousand United States Dollars (US\$5,000. applicable taxes excluded) Each two attempts will incur this

Certification Retest fee, which is due and payable prior to submission for DivX Certification retest.

- 5.7.2 In the event that any given Licensee Product Model Number has been DivX Certified and, at Licensee's option, Licensee seeks to achieve a higher level of DivX Certification of Product, Licensee shall pay to DXN a fee of Five Thousand US Dollars (\$5,000. applicable taxes excluded) for each such Additional Certification, upon submittal of Licensee Product Model Number for Additional Certification. In the event that Licensee Product Model Number fails to achieve Additional Certification, Licensee may resubmit Licensee Product Model Number for Additional Certification twice at no additional charge. In the event that the said Licensee Product Model Number does not pass Certification, the Licensee may resubmit the Licensee Product Model Number for retest two more times for an additional Five Thousand United States Dollars (US\$5,000. applicable taxes excluded) Each two attempts will incur this Certification Retest fee, which is due and payable prior to submission for DivX Certification retest.
- 5.7.3 Neither party may market or license the Licensee Product Model Number for any applications where it is not successfully DivX Certified.
- 5.8 After DivX Certification is achieved, Licensee will provide DXN with two (2) production units for each Licensee Product Model Number with final packaging materials for compliance verification of **Exhibit B** -DivXNetworks Branding and Trade Mark Guidelines.

6 CONSIDERATION, FEES & ROYALTIES

- 6.1 **Payments:** In consideration of the license granted, by DXN hereunder, Licensee agrees to pay to DXN one upfront payment of Five Thousand Dollars (US\$5,000.00, applicable taxes excluded) (the "License Fee").
- 6.2 Licensee shall pay to DXN a royalty fee according to the schedule outlined in **Exhibit C**. Upon mutual agreement of the parties, **Exhibit C** may be amended from time to time.
- 6.3 On a monthly basis, 15 days following month end, Licensee will provide DXN a written list describing the produced product quantity of all Licensee Products as described in this Agreement.
- 6.4 Per unit royalty payments shall be made on units produced, in the given calendar Month no more than 15 days following the end of the calendar Month.
- 6.5 DXN shall have the right to audit the records of Licensee as described in **Exhibit C**, that are related to the transactions generating the royalties or other payments due to DXN.

- 6.6 The up-front royalty pre-payment as described in **Exhibit C** is due upon Agreement execution and may be applied toward future royalty payments on units produced during the term of the Agreement. The License Fee described in Section 6.1 shall not be considered an up-front royalty pre-payment.
- 6.7 DXN will charge Licensee at the rate of USD \$200 for each hour of follow-up supporting services. DXN's supporting efforts for fixing bugs existing in the source code of "Licensed Technology" shall not be charged to Licensee.
- 6.8 All payments due and payable to DXN are due immediately upon receipt of DXN invoice(s).

7 RETAIL OF THE PRODUCT

- 7.1 If Licensee supports any form of e-commerce of Licensee Product, Licensee grants DXN a non-exclusive world-wide right to sell the Licensee Product via e-commerce from DXN Web Properties.
- 7.2 The parties shall mutually agree on reasonable tracking and accounting processes to ensure reliable tracking of sales made from DXN web properties (the "Tracking Process").
- 7.3 Licensee shall pay DXN an ecommerce fee of 25% of the gross retail price on all Fully Certified Licensee Products sold from the DXN web properties as determined by the "Tracking Process".
- 7.4 Licensee shall provide DXN with an accounting of all such sales on a monthly basis and all payments due under Section 6, shall be made on a monthly basis, 15 calendar days following the end of each month.

8 WARRANTIES AND REPRESENTATIONS

DXN warrants and represents that:

- 8.1 It is a corporation duly organized and validly existing under the laws of the State of Delaware upon the execution of this Agreement.

8.2 [Section Redacted]

- 8.3 DXN has the full power and authority to enter, execute and deliver into this Agreement, other agreements and instruments executed and delivered by it incident hereto or to be executed and delivered by it pursuant to this Agreement, and to consummate the transactions contemplated by this Agreement and the associated agreements. There is nothing that may hinder it from executing this Agreement or from performing any obligation under this Agreement or may impede granting the rights and licenses granted to Licensee in this Agreement, its executing of other agreements to be signed pursuant to this Agreement or performing any obligation under such agreements.

Licensee warrants and represents that:

- 8.4 Licensee has the full power to enter into this Agreement, to carry out its obligations under this Agreement.
- 8.5 Licensee shall be responsible for all liability and warranty for any Licensee Products manufactured by or for Licensee under this Agreement and shall insure this risk accordingly. Licensee further indemnifies DXN for any and all claims brought against DXN of which the cause of action was set by any act of Licensee related to any Licensee Products covered by this Agreement.
- 8.6 Licensee's Product does not infringe the rights of any 3rd party, including, but not limited to, patent, copyright or trademark.

9 INDEMNIFICATION & ENFORCEMENT

- 9.1 DXN agrees to indemnify, defend and hold harmless Licensee, its affiliates, and their respective officers, directors, employees, distributors, agents, successors and assigns from and against any and all loss, damage, settlement or expense (including reasonable legal expenses), as incurred, resulting from or arising out of any claims which allege that the DivX Technology or the use or sale thereof infringe upon, misappropriate or violate any patents, copyrights, or trade secret rights or other proprietary rights of persons, firms or entities who are not parties to this Agreement, [Sentence Redacted], provided that Licensee (i) promptly notifies DXN, in writing, of any notice or claim of such alleged infringement or misappropriation involving the DivX Technology of which it becomes aware; (ii) permits DXN to control, the defense, settlement, adjustment or compromise of any such claim; (iii) the claim does not result from modification of the DivX Technology which modification is not undertaken pursuant to this Agreement or may otherwise be authorized by DXN; and (iv) the claim does not result from the combination of the DivX Technology with software or equipment not provided by DXN if the DivX Technology alone would not be the subject of the claim. Licensee may employ counsel, at its own expense (provided that if such counsel is necessary because DXN does not assume control, DXN will bear such expense), to assist it with respect to any such claim. Licensee shall have no authority to settle any claim on behalf of DXN.
- 9.2 If by reason of such infringement claim, Licensee or its customers shall be prevented or are likely to be prevented by legal means from licensing or using the Licensee Product or any DivX Technology pursuant to the purposes of this Agreement, or if, in DXN's opinion, such claim is likely to occur, DXN will use its commercially reasonable efforts, at its expense, to: (i) obtain all rights required to permit the sale or use of the Licensee Product by Licensee; or (ii) modify or replace such DivX Technology to make then non-infringing (and extend this indemnity thereof), provided that any such replacement or modified DivX Technology is functionally equivalent to the DivX Technology. If DXN is unable to achieve either of the options set forth above within a reasonable period of time after the issuance of the injunction, or reasonably believes that an injunction will issue and that such options cannot be achieved within a reasonable period of time, then neither party will sell or distribute the Licensee Product other than as permitted by the terms of such injunction, or otherwise in accordance with DXN's reasonable instructions. This Section 9 states DXN's entire obligation with respect to claims that the DivX Technology or any rights therein infringe or misappropriate the rights of any third party.

- 9.3 Indemnification by Licensee. Except as provided for in Sections 9.1 and 9.2 above, Licensee will indemnify and hold DXN harmless from and against any claim, suit, or proceeding and any losses, damages, fines, and expenses (including attorneys' fees and costs) arising out of and directly relating to any claims that the Licensee Product infringes the patent, copyright, trademark, trade secret, or other proprietary rights of any third party. DXN will: (i) provide Licensee reasonably prompt notice, in writing, of any such claims and permit Licensee, through counsel chosen by Licensee, to answer and defend such claims; and (ii) provide the entity defending such claim information, assistance, and authority, at such entity's expense, to help defend such claims. Licensee will not be responsible for any settlement made by DXN without Licensee's written permission, which permission will not be unreasonably withheld or delayed. Licensee will consult with, but shall be under no further obligation to, DXN in relation to the choice of any counsel under this Section 9.
- 9.4 Settlement by Licensee. Unless Licensee obtains a complete release of DXN from any claims under this Section 9, without any admission of wrongdoing or liability, Licensee may not settle any such claim on DXN's behalf without first obtaining DXN's written permission, which permission will not be unreasonably withheld or delayed. In the event Licensee and DXN agree to settle any such claim, Licensee agrees to not disclose terms of the settlement without first obtaining DXN's written permission.

10 LIMITATION OF LIABILITY

EXCEPT FOR THE INDEMNIFICATION OBLIGATIONS IN SECTION 9, IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, ARISING OUT OF THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO LOSS OF ANTICIPATED PROFITS, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

11 CONFIDENTIALITY

- 11.1 **Obligations.** Each party (the "receiving party") acknowledges and agrees that any business and technical information provided to the receiving party by the other party (the "disclosing party") hereunder constitutes the confidential and proprietary information of the disclosing party, and that the receiving party's protection thereof is essential to this Agreement and a condition of the receiving party's use and possession thereof. The receiving party shall retain in strict confidence and not disclose to any third party (except as authorized by this Agreement) without the disclosing party's express written consent, any and all such information. Licensee acknowledges and agrees that the Licensed Technology is confidential and proprietary information of DXN.
- 11.2 **Confidentiality Of Agreement.** Both DXN and Licensee agree that the terms and conditions of this Agreement shall be treated as confidential information and that no reference to the terms and conditions of this Agreement or to activities pertaining thereto can be made in any form without the prior written consent of the other party.
- 11.3 **Exceptions.** The general existence of this Agreement shall not be treated as confidential information and The receiving party shall be relieved of this obligation of confidentiality to the extent

any such information:

- was in the public domain at the time it was disclosed or has become in the public domain through no fault of the receiving party;
- the receiving party can prove was known to the receiving party, without restriction, at the time of disclosure as shown by the files of the receiving party in existence at the time of disclosure;
- is disclosed by the receiving party with the prior written approval of the disclosing party
- becomes known to the receiving party, without restriction, from a source other than the disclosing party without breach of this Agreement by the receiving party and otherwise not in violation of the disclosing party's rights
- as required by any court or other governmental body;
- as otherwise required by law including DXN's obligations under applicable securities laws;
- to legal counsel of the parties;
- in confidence, to accountants, banks, proposed investors, and financing sources and their advisors;
- in confidence, in connection with the enforcement of this Agreement or rights under this Agreement; or
- in confidence, in connection with a merger or acquisition or proposed merger or acquisition, or the like.

11.4 **Confidentiality Agreements.** The receiving party, prior to permitting access by any individual to any of the disclosing party's confidential information, shall enter into a confidentiality agreement with each such individual which (i) incorporates the protections and restrictions set forth herein for the disclosing party's confidential information; (ii) provides that the individual's obligations with respect to the disclosing party's confidential information shall continue after termination of the individual's employment, consulting relationship or other relationship with the receiving party; and (iii) provides that the disclosing party is a direct and intended beneficiary of the agreement and entitled to enforce it directly against the individual.

11.5 **Notification Of Security Breach.** The receiving party agrees to notify the disclosing party promptly in the event of any breach of its security under conditions in which it would appear that the trade secrets contained in the Licensed Technology were prejudiced or exposed to loss. The receiving party shall, upon request of the disclosing party, take all other reasonable steps necessary to recover any compromised trade secrets disclosed to or placed in the possession of the receiving party by virtue of this Agreement. The cost of taking such steps shall be borne solely by the receiving party.

11.6 **Injunctive Relief.** Each receiving party acknowledges that any breach of any of its obligations with respect to confidentiality or use of the disclosing party's confidential information hereunder is likely to cause or threaten irreparable harm to the disclosing party, and, accordingly, the receiving party agrees that in the event of such breach the disclosing party shall be entitled to seek equitable relief to protect its interest therein, including but not limited to preliminary and permanent injunctive relief, as well as money damages

12 TERM & TERMINATION

12.1 Initial Term of this Agreement shall become effective on the Effective Date and shall remain in effect for a period of two years therefrom. This Agreement may be renewed upon the mutual

written agreement of the parties.

- 12.2 Termination. Neither party may terminate this Agreement for any reason, other than substantial breach of a provision of this Agreement such as:
- 12.2.1 immediately, without prior written notice to the other Party, upon any Party having instituted or otherwise becoming a party, voluntarily or involuntarily, to a proceeding alleging or pertaining to the insolvency or bankruptcy of such Party, or has been dissolved or liquidated, or has made an assignment of its material assets for the benefit of creditors, or has initiated or been subject to reorganization proceedings; or
 - 12.2.2 by either Party, if any representation or warranty made by the other Party in this Agreement is untrue in any material respect, or if the other Party shall have defaulted in any material respect in the performance of any obligation under this Agreement, which default remains uncured after notice to cure has been given according to Section 13 herein.
- 12.3 Except as provided for in Section 4, upon default by either Party in the performance of any of its obligations under this Agreement, the other Party may give notice in writing to the defaulting Party, specifying the nature of default. Unless such default be cured within thirty (30) days following the giving of such notice, or, if such cure cannot be completed within such thirty-day period, the Party giving such notice may give further written notice to such defaulting Party to terminate this Agreement, in such event this Agreement shall terminate on the date specified in the termination notice after notice to terminate has been given according to Section 13 herein.
- 12.4 In the event of termination as stated in Section 12 herein, this Agreement and the *Exhibits* thereof shall become void, which, however, shall not affect the obligations or liabilities of the Parties incurred or existing prior to the termination, nor shall relieve the defaulting Party from any and all liabilities at law or in equity to the other for breach of this Agreement. Waiver by either Party of a single default or a succession of default shall not deprive such Party of any right to terminate this Agreement, arising by reason of any subsequent default.
- 12.5 Upon termination of this Agreement, for any reason, nothing herein shall be construed to release either party of any obligation which matured prior to the effective date of such termination or which may continue beyond such termination, and any unpaid payments under this Agreement shall become immediately due and payable to DXN.
- 12.6 Survival. Articles 1, 3, 6, 7, 8, 9,10, 11, 12, 13, shall survive the termination and expiration of this Agreement.

13 NOTICES

- 13.1 All notices, requests, demands and other communications required or permitted to be given by a Party to the other Party under this Agreement shall be in writing and shall be deemed to have been duly given if properly addressed, delivered or mailed by registered or certified mail, postage prepaid, return receipt requested, or its international equivalent, at the following addresses, or at such other address as either Party shall have specified in a written notice to the other Party in the same

manner provided above:

If to DXN	If to Licensee
Attn.: Shahi Ghanem	Attn:
Title: President & Chief Operating Officer	Title:
Add: DivXNetworks, Inc. 10350 Science Center Drive Building 14, Suite 140 San Diego, California 92121 USA	Add:
Email: sghanem@divxnetworks.com	Email:
Fax.No.: 1-858-909-5301	Fax No.:
Tel. No.: 1-858-909-5330	Tel No

- 13.2 Notwithstanding the foregoing provisions, any written notice or other communication from one Party to the other Party shall be deemed to have been received by the other Party on the date seven (7) days after posting, or two (2) days after being transmitted via e-mail or facsimile, provided that any notice or communication to such Party shall be sent by registered airmail as confirmation.

14 MISCELLANEOUS

- 14.1 **Assignment:** Neither this Agreement nor any rights, licenses or obligations hereunder, may be assigned by either party without the prior written approval of the non-assigning party. Notwithstanding the foregoing, either party may assign this Agreement to a subsidiary or any acquiror of all or of substantially all of such party's equity securities, assets or business relating to the subject matter of this Agreement, except to a direct competitor of the other party. As a condition to such purported assignment, the purported assignor shall provide to the other party written confirmation prior to such assignment of such successor's assumption of this Agreement. Any attempted assignment in violation of this Section shall be void and without effect. Subject to the foregoing, this Agreement will benefit and bind the parties' successors and assigns
- 14.2 **Expenses:** Except as otherwise expressly provided in this Agreement, each Party will bear its respective expenses incurred in connection with the preparation, execution, and performance of this Agreement and the transactions contemplated hereby, including all fees and expenses of its agents and representatives.
- 14.3 **Arbitration:** In case of any dispute, controversy, default or claim relating to or arising from this Agreement, it shall be settled by the Parties through discussions and negotiations in good faith. Failure to settle the dispute, the Parties agree to submit such dispute to arbitration to be held in San Diego, California in accordance with the provisions of the Arbitration Law of the United States. The arbitral award shall be final and binding upon the Parties, and judgment thereon may be entered by any court having jurisdiction thereof or application may be made to such court for judicial recognition of the award or an order of enforcement, as the case may be.
- 14.4 **Independence of the Parties:** This Agreement shall not constitute the designation of either party as the representative or agent of the other, nor shall either party by this Agreement have the right or

authority to make any promise, guarantee, warranty, or representation, or to assume, create, or incur any liability or other obligation of any kind, express or implied, against or in the name of, or on behalf of, the other. In giving effect to this Agreement no Party shall be or be deemed to be an agent or employee of the other Party for any purposes whatsoever, and the relationship between the Parties are and shall be that of independent contractors. Nothing in this Agreement shall constitute a partnership, joint venture between the Parties.

14.5 [Section Redacted].

14.6 [Section Redacted].

14.7 **Amendment:** This Agreement may not be amended or modified except by a written agreement of both Parties.

14.8 **Entire Agreement:** This Agreement supersedes all prior negotiations and agreements between the Parties with respect to the subject matter thereof and constitutes (along with the exhibits hereto) a complete and exclusive statement of the terms and conditions of the Agreement between the Parties with respect to the subject matter.

14.9 **Governing Law:** This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of California (United States of America) without regard for its rules on conflict of laws.

14.10 **Severability:** If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

14.11 **Headings:** The headings of Sections in this Agreement are provided for convenience only and shall not affect its construction or interpretation.

14.12 **Counterparts:** This Agreement may be executed in two or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, will be deemed to constitute one and the same Agreement.

14.13 **Waivers:** Failure by either Party to enforce any provision of this Agreement shall not be deemed a waiver of future enforcement of that or any other provisions.

14.14 **Press Release:** Each Party has the right, subject to each Party's published policies of use pertaining to communication, trademarks and trade names, to announce or publish the existence and general intent of this Agreement, and announce or publish successful business obtained under this Agreement. Licensee and DXN agree to give the other reasonable notice of such announcements or publications and to obtain the other's prior written approval not to be unreasonably withheld.

14.14.1 Initial joint press release announcing the general intent of this agreement shall be submitted to Licensee for its prior written approval as outlined in section 14.14 herein. Once receiving Licensee approval, DXN may issue press release with Licensee no later than (thirty) 30 days after the execution of this Agreement. The content of any joint press release is subject to the approval of Licensee and DXN.

14.15 **Web site:** Upon written approval, which shall not unreasonably be withheld, DXN may use Licensee Company Name and Logo on DXN Certified Partner Page of www.divxnetworks.com and www.divx.com.

14.15.1 Licensee shall provide high-resolution logo in mutually agreed upon format and brief boilerplate description for inclusion on DXN Certified Partner Page of www.divxnetworks.com and www.divx.com. corporate partner page and attendant company collateral.

14.16 **Force Majeure:** Neither Party shall be liable for any delay or non-performance of its obligations hereunder in the event and to the extent that such delay or non-performance is due to an event of Force Majeure. The Party affected by an event of Force Majeure shall inform the other Party in writing without delay of its occurrence, probable duration and cessation. For purposes of the foregoing, events of Force Majeure shall mean events beyond the control of the Party which occur after the date of signing of this Agreement and which were not reasonably foreseeable at the time of signing of this Agreement and whose effects are not capable of being overcome without unreasonable expense and/or loss of time to the Party concerned. Events of Force Majeure shall include, without being limited to, war, civil unrest, strikes, lock-out and other general labor disputes, acts of government, natural disasters, breakdown or general unavailability of transport facilities, general shortages of energy and materials, accidents, fire, explosions and Acts of God.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respectively authorized representatives as of the day and year first above written.

DivX:

Licensee:

DivXNetworks, Inc.

By: _____
(Name) R. Jordan Greenhall
(Title) Chief Executive Officer

By: _____
(Name)
(Title)

**Exhibit A:
Deliverables**

1. Licensed Technology

“The Licensed Technology” is a set of algorithms for decoding DivX® video formats. The Licensed Technology includes object code derivatives of the source code and documents describing the algorithms in enough detail to assist Licensee with the design and development of Licensee products.

2. Deliverables

- a) Object code and documentation delivered by a Certified partner of DivXNetworks

Exhibit B: DivX Certification

Steps to DivX® Product Certification

- (1) DivX® technology partner signs a license agreement with DivXNetworks.
- (2) Depending on the type of license agreement signed, the licensee will receive one or more of the following:
 - i. DivX® technology from the DivX Software Developers Kit (SDK). Licensee is responsible to provide a local hardware key to be used for product registration/identification in product key encryption.
 - ii. DivX® Certification Kit for the type of product being developed. A Kit typically includes –
 - a. Certification Requirements
 - b. Certification Test Instructions
 - c. Certification Test clips
 - d. Certification Test Tools
 - e. Certification Test Results Form
 - f. Certification Branding Guidelines
 - g. Official DivX® Video and DivX® Certified Logos
- (3) Licensee submits a certification application for either an electronic device or software product to a DivX Certification Center. The web application must be filled out completely. A copy of the completed application must always be included with products shipped to the DivX Certification Center for testing.
<http://www.divxnetworks.com/support/hwcertification.php>
- (4) Licensee is contacted by DivXNetworks Technical Support to schedule a Certification Requirements Technical Overview. A meeting may be scheduled at the customer's request to review the certification requirements and certification kit contents with licensee's assigned engineers and/or project manager.
- (5) Licensee is contacted by DivXNetworks Account Management to schedule a Certification Program Overview. A meeting is scheduled to review the agreement terms, roles and responsibilities of both the licensee and DivXNetworks including production planning & reporting, royalties collection, OEM and retailer relationship management with licensee's project manager and financial and/or executive representative.

- (6) Depending on the license agreement signed, DivXNetworks will issue a DivX® model identifier to the licensee when the completed application is received.
- (7) Licensee implements the DivX® technology using the DivX® SDK or obtains an already DivX® Certified component. Licensee should purchase DivX Certified components. Products that are not using DivX® Certified components may not be compatible or meet DivX® Certification requirements.
- (8) Licensee conducts a dry run of the tests required for the targeted product.
- (9) DivXNetworks Technical Support or a DivX® approved technology partner will assist to resolve questions that arise during the initial product certification dry run testing.
- (10) Licensee delivers to the DivX Certification Center:
 - i. Copy of the Certification Application
 - ii. Product to be certified
Engineering sample or final product including power supply and cabling.
 - iii. Dry run test results
Results of the licensee conducted tests to be used as a baseline for DivX Certification Center testing.
 - iv. Operating instructions
How to start up and use the device including how to display the version of firmware used in the device. In some instances, it may be desirable for an engineer to accompany the device. This must be pre-arranged with the DivX® Certification Center.
 - v. Upgrade instructions
Instructions on how to update the firmware for products that offer this capability.
- (11) DivX® Certification Center will perform the initial device function test. If there are any problems with the device, the licensee will be notified and attempts will be made to resolve or reschedule the testing.
- (12) DivX® Certification Center will verify that all requirements identified in the Certification Requirements document are met for the type of product submitted. The tests identified in the Test Instructions document will be performed and the results recorded in the Test Results form. The test process is normally completed within one week following receipt of a scheduled product. If the product was not scheduled, the testing

may take longer depending on demand. Licensee is encouraged to schedule in advance.

- (13) Licensee will be contacted when the certification tests are completed. The licensee is notified with the product test results:
 - i. PASS indicates the licensee is authorized to use the DivX® Logo for the newly certified product.
 - ii. RETEST indicates the licensee must resolve the noted failure condition(s) and submit corrections to the DivX® Certification Center.

- (14) Licensee must meet all product branding requirements prior to being issued the DivX® Certified Product Certificate. When the licensee successfully passes the DivX® Certified Product requirements, Licensee is responsible to ship 2 production units to DivXNetworks for firmware and product branding verification. DivXNetworks will keep the product submitted by licensee to enable future certification compatibility testing and technical support.

- (15) Licensee will receive a DivX® Certified Product certificate at confirms the brand identification, the model number, reference chip and certified firmware version certified by DivXNetworks. Licensee will also be contacted by DivXNetworks for permission to publish a press release regarding product certification and provide retailer and/or consumer endorsement on the DivX.com web site.

- (16) Licensee is contacted by DivXNetworks Account Management periodically to schedule certification program updates. A conference call meeting is scheduled to review any open business or relationship issues, production schedules and timelines, contractual issues or any ODM/OEM and retailer relationship management updates with licensee's project manager and financial and/or executive representative.

DivX® Product Certification Process

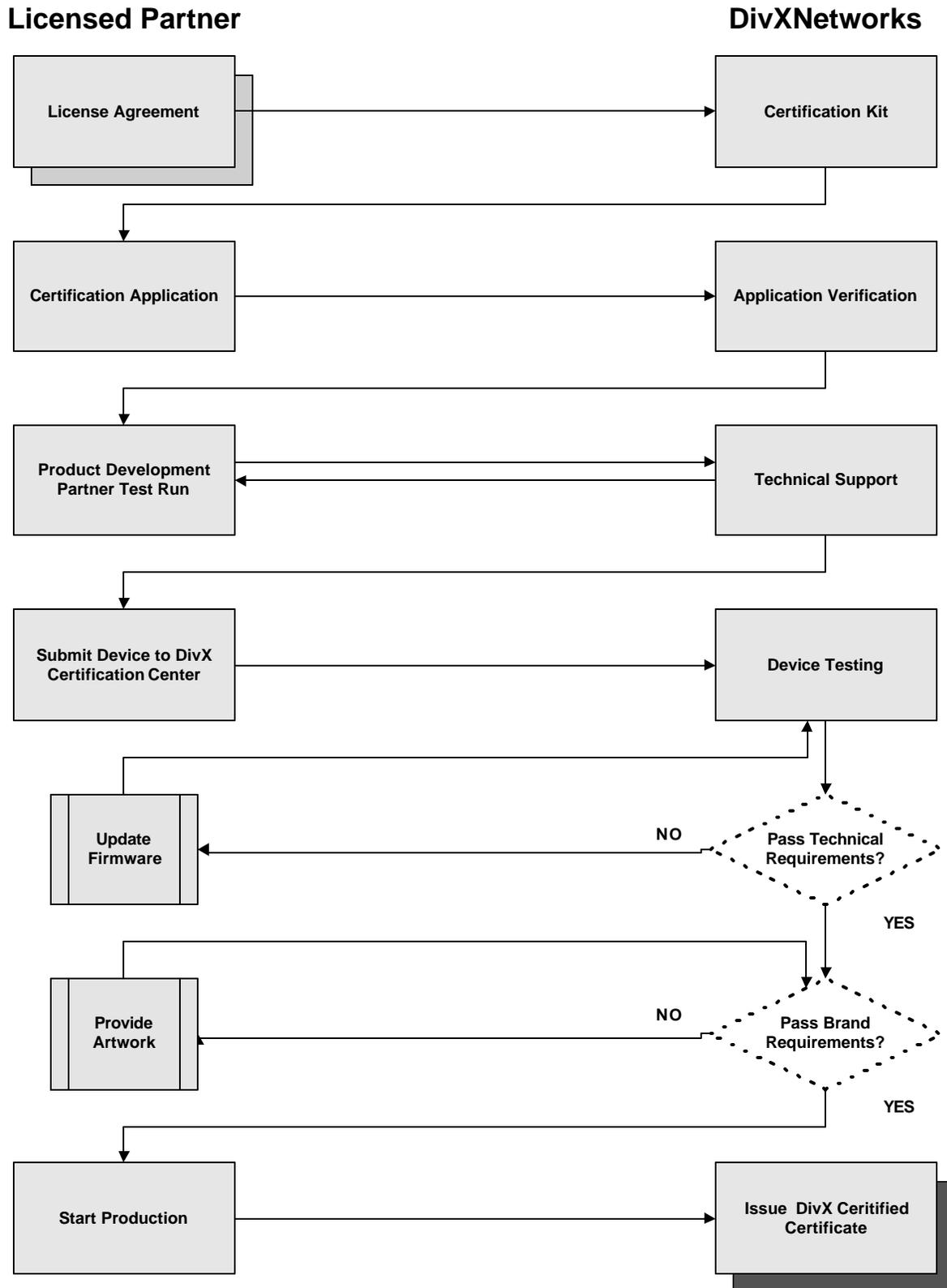


Exhibit C: Royalty Schedule for Licensee Product

As outlined in Section 6 the following per unit royalty shall apply:

1.0 Annual OEM Royalty:

Device Type	List	100K - 250K	250K - 500K	500K - 1M	1M - 2M	2M - 5M	5M+
DVD Stand Alone (Decoder Only)	\$2.00	\$1.80	\$1.70	\$1.50	\$1.20	\$1.00	\$0.80

- 1.1 License requires a royalty pre-payment of \$20,000. Licensee shall remit all OEM royalties due and payable to DXN.
- 1.2 Royalty fee includes the following Licensee Product Model Number:
[Insert Licensee Product Model Number]
- 1.2.1 Additional Model Numbers may be added from time to time via written notice in accordance with Section 13 herein.
- 1.3 If Licensee is in default of per unit royalty payment to DXN as outlined in herein, then immediately upon written notice by DXN, OEM shall remit outstanding per unit royalty payment directly to DXN.
- 1.4 Notwithstanding Section 5 herein, Licensee Product Model Number [INSERT Licensee Product Model Number] will not require DivX Certification if Licensee Product Model Number [INSERT Licensee Product Model Number] is functionally identically to ODM Product Model Number [INSERT ODM Product Model Number].
- 1.4.1 Licensee will provide DXN with two (2) production units for each Licensee Product MODEL NUMBER with final packaging materials for compliance verification of **Exhibit B - DivX Networks Branding and Trade Mark Guidelines**.
- 1.4.2 If Licensee Product Model Number is not functionally identical to Model Number then Licensee shall submit Licensee Product Model Number for DivX certification as outlined in Section 5 herein. DivX Certification fee of (Five Thousand United States Dollars) \$5,000.00 USD (applicable taxes excluded) is due prior to submittal of Licensee Product Model Number for DivX Certification test.
- 1.5 DXN shall have the right to audit the records of Licensee that are related units shipped, transactions generating the royalties or other payments due to DXN.
- 1.5.2 In the event of a royalty discrepancy where DXN is due additional royalty payment, Licensee will be invoiced immediately with payment terms “due upon receipt” in addition to reimbursement of DXNs audit expenses. On a case by case basis, interest and penalties may apply.
- 1.5.3 In the event of a royalty discrepancy where Licensee has overpaid DXN, DXN will i) apply royalty overpayment toward future royalty payments due, or ii) at the request of Licensee, DXN will reimburse to amount of royalty overpayment to Licensee.

