

LODSYS PATENT LICENSE AGREEMENT

This PATENT LICENSE AGREEMENT (this “*Agreement*”) is entered into on _____, 2011 (the “*Effective Date*”) by and between Lodsys LLC, a Texas Limited Liability Company, with an office at 505 East Travis Street, Suite 207, Marshall, Texas 75670 (“*Licensor*”), and _____, a _____ corporation/partnership/LLC/individual with an office at _____ (“*Licensee*”). Licensor and Licensee shall be referred to herein collectively as the “*Parties*,” and individually as a “*Party*.”

BACKGROUND

WHEREAS, Licensor owns the Licensed Patents (as defined in Section 1.1 below) and desires to grant a license for certain Licensed Uses (as defined in Section 1.2 below) under the claims of the Licensed Patents.

WHEREAS, Licensee desires to obtain a release and license from Licensor under the claims of the Licensed Patents for the Licensed Uses.

WHEREAS, Licensor is willing to provide a license and release in exchange for a reduced Payment amount because Licensee is obtaining this release and license early in Licensor’s licensing campaign.

NOW, THEREFORE, in consideration of the above premises and the mutual covenants of the Parties as set forth herein, Licensor and Licensee, intending to be legally bound, agree as follows:

1. DEFINITIONS

In addition to the terms defined elsewhere in this Agreement, as used in this Agreement:

1.1 “*Licensed Patents*” means (i) United States Patents No. 5,999,908, 7,133,834, 7,222,078, and 7,620,565; (ii) all patents or patent applications claiming priority from any of the United States Patents listed in Section 1.1 (i); (iii) all foreign counterparts, reissues, reexaminations, extensions, continuations, continuations in part, continuing prosecution applications, and divisions of any of the United States Patents listed in Section 1.1 (i), and (iv) any patents and those patents counterparts as recited in (ii) and (iii) above in relation to such patents that are currently owned or, acquired later, by Licensor.

1.2 “*Licensed Uses*” means any use of inventions claimed in the Licensed Patents for the manufacture, use, sale, importation, exportation products or services provided to others on behalf of Licensee or Licensee Affiliates and excepting the manufacture, use, sale, importation, exportation, of products or the provision of services, on behalf of any third party that is not owned by Licensee or a Licensee Subsidiary.

1.3 “*Licensee Subsidiary*” means any entity that Licensee controls. For purposes of this definition, “controls” means: (a) if Licensee has voting shares or other voting securities, ownership and control of fifty percent (50%) or more of the outstanding shares or securities entitled to vote for the election of directors or similar managing authority of such entity; or (b) if Licensee does not have voting shares or other voting securities, ownership and control of fifty percent (50%) or more of the

ownership interests that represent the power to direct the management and policies of such entity. An entity shall be deemed to be a Licensee Subsidiary under this Agreement only so long as all the requirements of being a Licensee Subsidiary are met.

1.4 “*Territory*” means all jurisdictions in which Licensor has valid and enforceable patent rights.

2. LICENSE

2.1 Grant of License. Upon payment made pursuant to Section 4 for those products and services for which Licensee has included in calculations leading to such payment amounts, Licensor on behalf of itself and its successors and assigns hereby grants to Licensee and Licensee Subsidiaries a non-exclusive, non-transferable (subject to Section 10.1), non-sublicensable (subject to Section 5.3), fully paid-up irrevocable and perpetual license under the Licensed Patents solely for the Licensed Uses in the Territory for its products and services that are marked as required by Section 11.6.

3. RELEASES

3.1 Releases by Licensor. Upon full and complete payment of the amounts payable in subsection 4.1, Licensor, on behalf of itself and its successors and assigns, hereby fully, irrevocably and unconditionally releases, acquits and discharges Licensee and any Licensee Subsidiary and their respective officers, directors, agents, employees, attorneys, successors, and assigns, from any and all causes of action, claims or demands, liabilities, losses, damages, attorney’s fees, court costs, or any other form of claim or compensation, known or unknown, arising out of or based on any of the Licensed Uses on or before the Effective Date (collectively, “*Licensor Released Claims*”). This Section 3.1 shall not apply to any causes of action arising out of the breach of this Agreement by Licensee or third-party claims that are not related to the Licensor Released Claims.

3.2 Releases by Licensee. Licensee, on behalf of itself, its successors and assigns, and each Licensee Subsidiary, hereby fully, irrevocably and unconditionally release, acquits and discharges Licensor and its officers, directors, agents, employees, attorneys, successors and assigns from any and all causes of action, claims or demands, liabilities, losses, damages, attorney’s fees, court costs, or any other form of claim or compensation, known or unknown, arising solely out of the Licensed Patents on or before the Effective Date. Notwithstanding the foregoing, this Section 3.2 shall not apply to any causes of action arising out of the breach of this Agreement by Licensor or to any other claims or causes of action that are not enumerated in this Section 3.2.

3.3 Releases. The releases in this Agreement include an express, informed, knowing, and voluntary waiver and relinquishment to the fullest extent permitted by law. In this connection, the Parties acknowledge that they may have sustained damages, losses, costs, or expenses which are presently unknown and unsuspected and that such damages, losses, costs, or expenses as may have been sustained may give rise to additional damages, losses, costs, or expenses in the future. The Parties hereto further acknowledge that they have negotiated this Agreement taking into account presently unsuspected and unknown claims, counterclaims, causes of action, damages, losses, costs, and expenses, and the Parties hereto voluntarily and with full knowledge of its significance, expressly waive and relinquish any and all rights they may have under any state or federal statute, rule or common law principle, in law or equity, relating to limitations on general releases. The Parties voluntarily and with full knowledge of its significance, expressly waive and relinquish any and all rights they may have under any state or federal statute, rule or common law principle, in law or equity, relating to limitations on releases.

3.4 Unknown Claims. The Parties acknowledge that there is risk that after the Effective Date, they will discover, incur or suffer claims that are related to, or arise from facts connected with, the matters released under Sections 3.1 and 3.2 above, and arose in any way, in whole or in part, before the Effective Date, and that were unknown or unanticipated as of the Effective Date (collectively, the “**Unknown Claims**”). Nonetheless, to the extent that Licensee or Licensee Subsidiary is located or has operations in California, to the full extent permitted by applicable law, each of Licensor and Licensee hereby waives, relinquishes and discharges any and all Unknown Claims, and waives, relinquishes and discharges any and all rights it may have with respect to any Unknown Claims, including any rights provided by California Civil Code § 1542 (and similar provisions in other jurisdictions), which provides:

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

4. CONSIDERATION

4.1 Payment. In consideration of the license granted in Section 2.1, the release granted in Section 3.1, and other terms and conditions of this Agreement, Licensee shall pay Licensor according to the provisions contained in Section 4.2 below. Payment shall occur within ten (10) calendar days of the Effective Date. In the event that Licensee would prefer to make payment by wire transfer Licensee shall contact Licensor for instructions. Wire transfer payments must be made by Licensee including any fees required to be paid by both the sender and the receiver of such wire transfer. Payment shall be made by check and all accounting reports shall be made to the address below:

Lodsys, LLC
505 East Travis Street
Suite 207
Marshall, TX 75670

4.2 Royalties Currently Due. For all products and services for which Licensee desires to obtain a license under this agreement, sold or otherwise disposed of, on or before the date of execution of this Agreement by Licensee, an amount equal to 0.575% of the cumulative amount of all such revenues for products or services sold or otherwise disposed of within the Territory. Provided that Licensee has exceeded the Threshold Amount provided for in Section 4.3. Immediately upon execution of this Agreement by Licensee, Licensee shall provide an accounting to Licensor, current at least as of the end of the previous calendar quarter, of all applicable revenues (as defined in Section 4.3 below). Such an accounting shall list the products and services of Licensee from which the revenues derived form the basis of the report.

4.3 Future Royalties Due. In the event that the applicable total cumulative revenues of Licensee in the territory have not reached or exceeded US\$10,000 (Ten Thousand US Dollars) (the “Threshold Amount”) then Licensee shall owe no payment upon execution of this Agreement. If, during any calendar quarter after execution, Licensee’s total cumulative revenues reach or exceed the Threshold Amount, Licensee shall begin remitting payments starting with the cumulative payment of 0.575% for total cumulative revenues through the end of such calendar quarter, and then quarterly thereafter in accordance with the provision below. Licensee shall submit an accounting of all relevant revenues within 30 days of the end of each calendar quarter regardless of whether the Threshold Amount has been exceeded that includes the relevant revenues for such calendar quarter and the cumulative revenues to date. Such report shall list the products and services of Licensee from which the revenues derived form the basis of the report.

Within 30 days of the end of each calendar quarter following the execution date of Licensee in which the first payment is due, Licensee shall remit an amount equal to 0.575% of all unpaid for cumulative revenues through the end of such calendar quarter. Licensee shall remit quarterly payments for revenues generated up to and through August 5th, 2012. Thereafter Licensee shall not be required to make any further payments under this Agreement.

Revenues as used in this Section 4 mean gross revenues paid by third parties for Licensee’s products or services before any deductions or fees charged by any third parties for services provided or acting as agents on behalf of Licensee, but excluding sales and/or use taxes collected by or on behalf of Licensee and remitted to governmental taxing jurisdictions.

4.4 Licensor Right to Audit. Licensor shall have the right to audit the books and records of Licensee, not more often than once every six months, and finally not later than 6 months following the end of the last expiring patent of the Lodsys Patents, using an independent audit firm of the choice of Licensor. The scope of the audit conducted will be limited to the determination of the amounts of royalties properly due under this Agreement by Licensee (on behalf of itself and Licensee’s Subsidiaries) to Licensor. In the event that there is a discrepancy between the amounts actually paid by Licensee, and the amounts actually due as determined by the audit, Licensee shall pay any shortfall within 10 business days, together with interest from the date the payments were actually due at the rate of 15 percent per annum, or the maximum rate allowed by applicable law, whichever is less. If the amount of underpayment is equal to or greater than 15% of the amounts actually paid by Licensee (on behalf of itself and Licensee’s Subsidiaries) or, Licensee cannot present adequate records to the auditor to verify the accuracy of the royalties previously paid or reported, Licensee shall be responsible for the amounts due to the audit firm for conduct of the audit (Licensee shall submit such amounts to Licensor within 10 business days of Licensor presenting an invoice from the audit firm detailing the cost of the audit), otherwise such costs be paid by Licensor. Each Party shall bear its own internal costs (or other external costs for advisors as they may wish to engage on their own) for the conduct of the audit. Any audit shall be conducted at the location of Licensee as provided in this Agreement during normal business hours on normal working days of Licensee at such location. Licensee hereby authorizes and appoints any audit firm engaged to conduct such an audit to retrieve information from third parties (such as suppliers, payment processors, banks, accounting firms, and any other party that may have relevant records) to request and receive those records solely for the purpose of an audit under an irrevocable (for the term of this Agreement’s right to audit) power of attorney.

5. RESERVATION OF RIGHTS

5.1 Reserved Rights. Any and all rights not explicitly granted to Licensee in Sections 2.1 and 3.1 are expressly reserved by Licensor. No licenses to the Licensed Patents are granted by Licensor to Licensee, or any other entity, either by implication, estoppel, or otherwise, other than the licenses specifically enumerated and expressly provided in Section 2.1.

5.2 No Sublicense Rights. Except as expressly provided in Sections 5.3 and 10.1, the license and releases granted to Licensee herein do not confer upon Licensee the right to grant or otherwise transfer via sublicense any rights under the Licensed Patents to any other persons or entities for any purpose.

5.3 Sublicense to Licensee Subsidiary. At its sole and absolute discretion, Licensee may sublicense all or any portion of the rights set forth in paragraph 2.1 at any time, and from time to time, to any Licensee Subsidiary on such terms as it deems fit, on the conditions that (i) the rights granted under such sublicense apply to such Licensee Subsidiary only for such time as each such Licensee Subsidiary remains a Licensee Subsidiary; (ii) no such sublicense by Licensee shall be further sublicensable; and (iii) any such sublicense granted by Licensee shall terminate promptly upon the termination of this Agreement or, with respect to the license granted under Section 2.1, upon termination of such license.

6. REPRESENTATIONS, WARRANTIES AND COVENANTS

6.1 Representations, Warranties and Covenants of Licensee. Licensee represents, warrants and covenants that: (i) execution of this Agreement by Licensee and the performance of its obligations hereunder will not violate any agreement, whether written or oral, to which Licensee is a party; (ii) Licensee has the full legal authority necessary to enter into this Agreement and perform the duties and obligations outlined herein; and (iii) neither Licensee nor any Licensee Subsidiary shall contest or assist in the contest in any forum, including the Federal Courts, whether under 28 U.S.C. §§ 2201 – 2202 or not, the United States Patent and Trademark Office, and/or the International Trade Commission, that the Licensed Patents are invalid or unenforceable; provided, however, this covenant shall not apply in the event that Licensor seeks to hold any Licensee or any Licensee Subsidiary liable for infringement of the Licensed Patents.

6.2 Representations, Warranties and Covenants of Licensor. Licensor represents, warrants and covenants that: (i) it has full authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby; (ii) it holds the entire rights, title, and interest necessary to grant the license to the Licensed Patents and has not transferred or assigned any rights to bring any claim for patent infringement, against Licensee or any Licensee Subsidiary for damages, or otherwise under the Licensed Patents to any third-party; (iii) the execution of this Agreement by Licensor and the performance of its obligations hereunder will not violate any agreement, whether written or oral, to which Licensor is a party; and (iv) Licensor represents and warrants that it has not assigned or transferred any interest in any claim released hereunder.

6.3 No Further Representations or Warranties. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS SECTION 6, LICENSOR MAKES NO REPRESENTATIONS OR WARRANTIES TO LICENSEE OF ANY KIND, EITHER EXPRESS OR IMPLIED, WITH REGARD TO THE VALIDITY OR ENFORCEABILITY OF THE LICENSED PATENTS AND ASSUMES NO RESPONSIBILITIES WHATSOEVER WITH RESPECT TO THE USE OR

OTHER DISPOSITION BY LICENSEE, A LICENSEE SUBSIDIARY, FOR THE LICENSED USES OF THE LICENSED PATENTS UNDER THIS AGREEMENT. IN ADDITION, LICENSOR MAKES NO REPRESENTATION THAT USE OF THE LICENSED PATENTS WILL NOT INFRINGE, DIRECTLY, CONTRIBUTORILY, OR BY INDUCEMENT, ANY PATENT, COPYRIGHT, TRADEMARK OR OTHER PROPRIETARY RIGHT OF ANY THIRD PARTY.

7. LIMITATION OF LIABILITY

7.1 Limitation of Liability. EXCEPT IN THE EVENT OF FRAUD, LICENSOR'S TOTAL LIABILITY UNDER THIS AGREEMENT SHALL NOT EXCEED THE PAYMENT SET FORTH IN SECTION 4.1 OF THIS AGREEMENT THAT IS ACTUALLY PAID BY LICENSEE AND RECEIVED BY LICENSOR. EXCEPT IN THE EVENT OF FRAUD, LICENSEE'S TOTAL LIABILITY UNDER THIS AGREEMENT SHALL NOT EXCEED THE PAYMENT SET FORTH IN SECTION 4.1 OF THIS AGREEMENT. THE PARTIES ACKNOWLEDGE THAT THESE LIMITATIONS ON POTENTIAL LIABILITIES WERE AN ESSENTIAL ELEMENT IN SETTING CONSIDERATION UNDER THIS AGREEMENT.

7.2 Limitation on Consequential Damages. NEITHER PARTY SHALL HAVE ANY OBLIGATION OR LIABILITY (WHETHER IN CONTRACT, WARRANTY, TORT (INCLUDING PASSIVE OR IMPUTED NEGLIGENCE AND STRICT LIABILITY OR OTHERWISE), FOR ANY INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES OR LOSS OF REVENUE, PROFIT, SAVINGS, OR BUSINESS ARISING FROM OR OTHERWISE RELATED TO THIS AGREEMENT, EVEN IF A PARTY OR ITS EMPLOYEES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

8. CONFIDENTIALITY

8.1. The terms of this Agreement (but not the existence of the Agreement) shall be regarded as "**Confidential Information**." The Parties agree that they shall not disclose any Confidential Information without prior written consent of the other Party; provided, however, that each Party may disclose Confidential Information to such Party's fiduciary professionals, including its auditors, accountants, and attorneys, without prior written consent, and each such disclosing Party shall ensure that the Confidential Information remains confidential in accordance with this Section 8 with such fiduciary professionals; provided further that either Party may disclose this Agreement and its terms to lawyers and retained expert witnesses in any litigation in which that Party becomes involved for use subject to any pending Protective Order after providing written notice to the other Party of that disclosure, but without requiring prior consent from that other Party.

8.2 Confidential Information shall not include information that: (i) is or at any time becomes publicly available through no fault of the receiving Party, its employees, consultants, or agents; (ii) is received without restriction from a third party lawfully in possession of such information and lawfully empowered to disclose such information; (iii) was rightfully in the possession of the receiving Party without restriction prior to its disclosure by the disclosing Party; (iv) was independently developed by employees, consultants, or agents of the receiving Party without access to such Confidential Information; or (v) is required to be disclosed pursuant to the order or requirement of a court, administrative agency, or other governmental body; provided, however, that the receiving Party either makes such a disclosure under a protective order that discloses the information only to outside counsel and experts under an obligation of confidentiality, or provides prompt notice of such court order or requirement to the disclosing Party to enable the disclosing Party, at its sole expense, to seek a protective order or otherwise prevent or restrict such disclosure and that the receiving Party only discloses such information as is necessary to comply with such order or requirement.

9. TERM

This Agreement shall commence as of the Effective Date, after execution of this Agreement by all Parties, and shall continue until six years after the expiration of the last-to-expire Licensed Patent or the expiration of any cause of action arising out of or related to the Licensed Patents, whichever is later, unless earlier terminated as allowed by this Agreement.

10. ASSIGNMENT

10.1. Assignment by Licensee. Neither this Agreement, nor any rights or obligations hereunder, may be assigned, encumbered, or otherwise transferred by Licensee, except as expressly allowed herein. Licensee may delegate any or all of its duties under this Agreement to one or more Licensee Subsidiaries as long as Licensee remains responsible for, and guarantees the execution of, those duties by Licensee's Subsidiaries under this Agreement. Licensee may further assign its rights and responsibilities under this Agreement to a purchaser of all of the outstanding equity interests or all or substantially all of the assets of Licensee with the provision that such an assignment shall only be effective with respect to the products and services then currently offered by Licensee.

10.2 Assignment by Licensor. Licensor may sell, assign, or otherwise transfer this Agreement, the Licensed Patents, or any rights hereunder to a third party, provided that: (i) Licensor provides such third party with prior notice of the existence of this Agreement; and (ii) such third party agrees to be bound by the terms and conditions, including all licenses, releases, and covenants set forth in this Agreement. IF SUCH THIRD PARTY DOES NOT AGREE TO BE BOUND BY ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, THEN SUCH ASSIGNMENT OR TRANSFER SHALL BE NULL AND VOID.

11. MISCELLANEOUS

11.1 No Agency. Nothing in this Agreement is intended or shall be deemed to constitute a partnership, agency, employer-employee, or joint venture relationship between the Parties. Neither Party assumes any liability of or has any authority to bind, or control the activities of, the other.

11.2 Entire Agreement, Amendments, and Waivers. This Agreement constitutes and contains the entire agreement between the Parties, and supersedes any and all prior negotiations, conversations, correspondence, understandings, and letters respecting the subject matter hereof. The section headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. This Agreement may only be amended or modified by written document that is signed by both Parties. Failure by either Party to enforce any term of this Agreement shall not be deemed a waiver of future enforcement of that or any other term in this Agreement or any other agreement that may be in place between the Parties.

11.3 Severability. If any provision of this Agreement is found to be invalid or unenforceable, then the remainder of this Agreement shall have full force and effect, and as to the invalid provision the Parties shall attempt in good faith to negotiate a substitute for any such provision, which shall most nearly approximate the intent of the Parties in entering into this Agreement.

11.4 Compliance With Laws. Notwithstanding anything contained in this Agreement to the contrary, the obligations of the Parties shall be subject to all laws, present and future, of any government having jurisdiction over the Parties and this transaction, and to orders, regulations, directions or requests of any such government.

11.5 Counterparts; Electronic Signatures. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together constitute one and the same instrument. Subsequently, upon the request of either Party, each Party shall execute and deliver to the other Party a copy of this Agreement bearing its original signature. The Parties acknowledge that copies of this Agreement transmitted via email of a .pdf file, photocopy, facsimile or other process of complete and accurate reproduction and transmission shall be deemed original documents.

11.6 Marking Requirement. Licensee and Licensee's Subsidiaries shall mark all products and/or services, to which Licensee desires the License under this agreement to apply, in accordance with the requirements of 35 U.S.C. Section 287.

In witness whereof, the Parties have executed this Patent License Agreement as of the Effective Date.

LICENSOR:

Lodsys LLC

By: _____

Name: Mark Small

Title: CEO

Date: _____

LICENSEE:

By: _____

Name: _____

Title: _____

Date: _____