

## PATENT AND SOFTWARE LICENSE AGREEMENT

This agreement (hereinafter called "License") is made and entered into by and between Skype Technologies SA, Skype, Inc., and Affiliates thereof (hereinafter called "Licensee") and Licensor, defined below, on November 19, 2009 ("Effective Date").

WHEREAS Licensor is in the business of developing, selling, servicing, and maintaining software that enables the distribution of authorized, licensed content over electronic networks;

WHEREAS Licensor is the owner of the Patents, as defined below;

WHEREAS Licensee desires to obtain certain rights being offered for license by Licensor pursuant to the terms and conditions of this License.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and obligations herein undertaken and for good and valuable consideration, Licensor and Licensee (individually the "Party" and collectively the "Parties") agree as follows:

### I. DEFINITIONS

"Affiliate" shall mean, with respect to any entity, any other entity that, directly or indirectly, controls, is controlled by or is under common control with, that entity; provided, however, that in each case any such other entity shall be considered to be an Affiliate only during the time period during which such control exists. For purposes of this definition, "control" (including, with correlative meaning, the terms "controlled by" and "under common control with"), as used with respect to any entity, shall mean the possession, directly or indirectly, of the power to direct and/or cause the direction of the management and policies of such entity, whether through the ownership of voting securities, by contract or otherwise.

"Field of Use" shall mean any and all uses, practiced worldwide, to which, and for which, the Licensee Application(s) have been designed or for which they may be used.

"Licensee Application(s)" shall be defined as those software-based products and services developed, and made commercially available for use,

by Licensee. "Licensee Application(s)" shall further include software-based products and services developed, and made commercially available, by third party licensees of Licensee's software-based products and services ("Third Party Software") but only to the extent such Third Party Software is designed to interface with, and is running in connection with, a software-based product or service developed, or made commercially available for use, by Licensee. For avoidance of doubt, Third Party Software shall not qualify as a Licensee Application if, such Third Party Software is not designed to interface with, and is not running in connection with, accessing, using, or otherwise relying upon or interfacing with a software-based product or service developed, or made commercially available for use by Licensee.

"Licensor" shall mean Brilliant Digital Entertainment, Inc., a Delaware corporation having its principal place of business at 14011 Ventura Blvd., Suite 501, Sherman Oaks, 91423 and Altnet, Inc., a Delaware corporation having its principal place of business at 14011 Ventura Blvd., Suite 501, Sherman Oaks, 91423, and any Affiliates thereof.

"Patents" shall mean (i) U.S. Patent Nos. 5,978,791, 6,415,280, and 6,928,442, and (ii) any and all improvements, modifications, continuations, continuations-in-part, divisions, re-issues and re-examinations thereof (including any patent claiming priority from or derived from U.S. Patent Application No. 08/425,160).

### II. LICENSE GRANT

Subject to the provisions of this License, Licensor hereby grants to Licensee a non-exclusive, irrevocable, non-assignable (subject to Section IX), non-transferable (subject to Section IX), royalty-free, fully paid-up, sublicense under any and all claims of the Patents for the sole purpose of making, having made, using, importing, offering to sell and selling Licensee Applications within the Field of Use. For purposes of the foregoing license grant the "selling of Licensee Applications" shall include (a) making such Licensee Applications available without charge, (b) licensing or otherwise disposing of any products or services, and (c) hosting such Licensee Applications.

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### **III. LICENSEE PERFORMANCE, WARRANTIES, AND REPRESENTATIONS**

Licensee represents and warrants that it is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation. It has all requisite corporate power and authority to own and operate its properties and assets, to execute and deliver this Agreement, and to carry out the provisions of this Agreement.

Licensee represents and warrants that it has all requisite corporate power and authority to execute, deliver and perform its obligations under this License. All corporate action on its part and on the part of its officers, directors and stockholders necessary for the authorization of this License and the performance of

all of its obligations hereunder has been taken. This License, when executed and delivered, shall be, valid and binding upon it and enforceable in accordance with its terms.

### **IV. LICENSOR PERFORMANCE, WARRANTIES, AND REPRESENTATIONS**

Licensor represents and warrants that Licensor has sufficient rights in the Patents to grant the License as set forth herein, and Licensor's grant of any license herein and the practice of the rights granted herein does not, to the best of Licensor's actual knowledge as of the Effective Date, infringe (i) any proprietary rights of any third party under any United States patent law, or (ii) any intellectual property rights of Licensor that are not licensed hereunder.

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### **V. CONSIDERATION**

In consideration of the licenses, releases, and covenants granted herein, Licensee has received good and valuable consideration (the "Fee"), receipt of which is hereby acknowledged by Licensor. The licenses, releases, and covenants granted herein remain in full force and effect, throughout the term of

this Agreement, without any other payments of money or other consideration or compensation.

## **VI. TERM AND TERMINATION**

This License shall commence upon Licensor's countersignature of this Agreement after being signed by Licensee, and shall continue until the expiration of the last to expire of the Patents or termination in accordance with the terms of this Section VI. This License shall be non-terminable and irrevocable.

Notwithstanding any other terms in this Section 6, this Agreement shall automatically terminate if Licensee, or any party on Licensee's behalf, pursuant to Licensee's instructions, or under Licensee's control, challenges the validity of one or more claims in the Patents.

## **VII. RELEASE AND COVENANT NOT TO SUE**

**General Release.** Each Party, on behalf of itself and each of its Affiliates (the "Releasing Party"), hereby unconditionally and irrevocably releases, remises, acquits and forever discharges the other Party and each of its Affiliates, and its and their respective successors, assigns, employees, directors, officers, and agents, past and present, from any and all actions, causes of action, proceedings, suits, accounts, rights, claims, demands, liabilities, interest, costs and expenses, of any kind or nature, whether in law or in equity, known or unknown, in each case, on account of, arising out of or relating in any way to the Licensed Patents or infringement thereof, whether direct, indirect, contributory or by inducement.

**Unknown Claims.** The Releasing Party, on behalf of itself and its Affiliates, hereby irrevocably and forever expressly waives all rights that the Releasing Party and/or its Affiliates may have arising under California Civil Code Section 1542 and all similar rights under the laws of any other applicable jurisdictions with respect to the release granted by the Releasing Party under Section 3.1. The Releasing Party understands that Section 1542 provides that:

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.

The Releasing Party acknowledges that it has been fully informed by its counsel concerning the effect and import of this Agreement under California Civil Code Section 1542 and similar laws of any other applicable jurisdictions and knowingly waives all rights under Section 1542 and similar laws of other applicable jurisdictions

## **VIII. NOTICE**

All communications and notices required under this License shall be considered duly given if sent by courier requiring signed receipt upon delivery or if timely mailed by U.S. Postal Service, first class, postage prepaid and addressed as follows:

(a) If to Licensor:  
Brilliant Digital Entertainment,  
12711 Ventura Boulevard, Suite 210  
Studio City, CA 91604

(b) If to Licensee:  
Skype Technologies S.A.  
22.24 Boulevard Royal  
L-2449 Luxembourg  
Telephone No.: +442071937201  
Facsimile No.: +352 26 10 21 34

or such mailing address as either party may from time to time specify in writing.

## **IX. MISCELLANEOUS**

Nothing contained in this License shall be interpreted to grant to Licensee any rights with respect to any other patents or software than those specified in Section 2.

This License may be modified or terminated in whole or in part consistent with the law and applicable regulations upon mutual agreement of Licensee and Licensor evidenced in writing and signed by both parties. This License sets forth the

entire agreement and understanding between the Parties as to the entire subject matter thereof and merges all prior discussions between them.

The relationship between the Parties is contractual only. Neither this License nor the conduct of the Parties shall be construed to make Licensee and Licensors partners, joint venture partners, or agents of one another. Neither Party shall have any authority or ability to enter into any agreement or obligation on behalf of the other Party, or to bind the other Party in any manner whatsoever.

In the event that any one or more of the provisions contained in this License or any application thereof is held to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby, unless a manifest injustice or inequity would result from the applicability or enforceability of such remaining provisions; and the parties agree to substitute for the invalid, illegal or unenforceable provision a provision which most closely approximates the intent and economic effect of the invalid, illegal or unenforceable provision or to reform the invalid, illegal or unenforceable provision to the maximum which would be valid, legal and enforceable.

This License will inure to the benefit of, and be binding on the Parties and their respective successors and permitted assigns. The undersigned warrant that they have full authority to sign and bind their respective entities to this License.

Licensee may not assign, delegate, sell, transfer, sublicense or otherwise dispose of, voluntarily or involuntarily, by operation of law or otherwise, any or all of its rights or obligations under this Agreement to any other person, business or entity without the prior written consent of Licensors. Any such attempted assignment shall be null and void. Notwithstanding the above, Licensee may assign its rights hereunder to any other person, business or entity, without the prior written consent of Licensors, if such assignment is being made pursuant to the sale of all or substantially all of its interests in, and to, the source code and object code for Global Index software

(whether by assignment, merger, consolidation or otherwise). In such a case, Licensee will no longer have any rights to practice the Patents, as provided herein, and all such rights shall inure to the benefit of the acquirer of the source code and object code for Global Index software.


This License may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document. The Parties may rely upon facsimile copies of this License as though they were originals.

Each Party acknowledges that if it breaches any of its obligations under this Agreement, it will cause damage of an irreparable and continuing nature to the other party, for which money damages will not provide adequate relief. Therefore, in addition to any money damages to which the non-breaching party is entitled, the non-breaching party also is entitled to obtain injunctive relief (including but not limited to immediate entry of a temporary restraining order) to prohibit the breaching party's continuing breach of the applicable term. The non-breaching party will have the right to obtain such relief without having to prove any damages or post any bond.

Licensee covenants that, during the term of this Agreement, it shall not attack, compromise, file suit against or in any manner attempt to vitiate or commit or fail to take any action, which could vitiate any of the rights, titles or interests of the Licensors in the Patents.

This Agreement shall be governed by and construed in accordance with the laws of the State of California, exclusive of its provisions on conflicts of laws. In respect of any dispute relating to this Agreement, such dispute shall be brought exclusively in a court of competent jurisdiction sitting in Los Angeles County, California.

The losing party in any proceeding related to or arising out of this Agreement, including actions in tort, shall pay the costs and expenses (including reasonable attorneys' fees) of the prevailing party. Any and all remedies herein expressly conferred upon a party shall be deemed cumulative and not



exclusive of any other remedy conferred hereby or by law, and the exercise of any one remedy shall not preclude the exercise of any other.

No waiver of any provision of this License shall be effective as against the waiving Party unless such waiver is in writing signed by the waiving Party. Waiver by a Party in respect of a specific matter shall

not be construed as, or constitute, either a continuing waiver or a waiver of any other matter. This License may only be modified, supplemented or amended by a written instrument executed by all of the Parties hereto.

The headings contained in the License are for the sole purpose of convenience of reference.

[Signature Page to Patent and Software License Agreement]

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by their duly authorized representatives.

LICENSOR:

Brilliant Digital Entertainment, Inc. and Altnet, Inc.

By: \_\_\_\_\_  
Kevin Barmelster, President and CEO

\_\_\_\_\_  
< SIGNATURE >

Date: \_\_\_\_\_

LICENSEE:

Skype Technologies SA

By: Laura Stenstrom

\_\_\_\_\_  
< SIGNATURE >

Date: Nov 16 2009

Skype, Inc.

By: Laura Stenstrom

\_\_\_\_\_  
< SIGNATURE >

Date: Nov 16 2009

Confidential

[Signature Page to Patent and Software License Agreement]