



## Master Terms and Conditions

THIS DOCUMENT CONTAINS LIMITED LICENSES AND TERMS AND CONDITIONS WHICH CONTROL THE USE OF EMBER PRODUCTS AND SERVICES. PLEASE REFER TO THE SECTIONS APPLICABLE TO THE PARTICULAR EMBER PRODUCTS OR SERVICES YOU HAVE PURCHASED AND READ THEM CAREFULLY BEFORE INSTALLING ANY SOFTWARE OR USING ANY HARDWARE PRODUCTS. OPENING A DISKETTE, OR INSTALLING, COPYING OR OTHERWISE USING THE SOFTWARE, INDICATES YOUR AGREEMENT TO BE UNCONDITIONALLY BOUND BY THE TERMS OF THE APPLICABLE SOFTWARE LICENSE AGREEMENT. IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, DO NOT USE THE SOFTWARE OR DOCUMENTATION. INSTEAD, PROMPTLY RETURN THE UNUSED SOFTWARE AND DOCUMENTATION TO EMBER CORPORATION OR YOUR SUPPLIER, AS APPLICABLE, FOR A FULL REFUND. ALL PURCHASES AND USES OF EMBER HARDWARE AND SERVICES ARE SUBJECT TO THE TERMS AND CONDITIONS SET FORTH BELOW. YOUR PURCHASE OF EMBER PRODUCTS OR SERVICES ENTITLES YOU TO USE OR RECEIVE ONLY THOSE PURCHASED PRODUCTS OR SERVICES IN ACCORDANCE WITH THE APPLICABLE LICENSES AND TERMS BELOW; COPIES OF LICENSES AND TERMS AND CONDITIONS TO ADDITIONAL PRODUCTS OR SERVICES MAY BE INCLUDED IN THIS DOCUMENT FOR CONVENIENCE, BUT THEIR INCLUSION DOES NOT CONVEY ANY RIGHTS TO YOU UNLESS YOU HAVE PURCHASED THOSE PRODUCTS OR SERVICES FROM EMBER OR AN EMBER AUTHORIZED RESELLER.

### SOFTWARE DEVELOPER KIT LICENSE AGREEMENT

**READ THE FOLLOWING LICENSE AGREEMENT CAREFULLY BEFORE ACCEPTING THESE TERMS AND CONDITIONS. INSTALLING, COPYING OR OTHERWISE USING THE SOFTWARE, INDICATES YOUR AGREEMENT TO BE UNCONDITIONALLY BOUND BY THE TERMS OF THIS LICENSE AGREEMENT. IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, DECLINE THE LICENSE TERMS, DO NOT USE THE SOFTWARE OR DOCUMENTATION, AND PROMPTLY RETURN THE UNUSED DEVELOPMENT KIT TO EMBER CORPORATION OR YOUR SUPPLIER, AS APPLICABLE, FOR A FULL REFUND.**

The Software and related Documentation of Ember Corporation are subject to the following License Agreement

1. **License Grant.** In this software license agreement ("Agreement"), you, the acquirer of the license rights granted by this Agreement, are referred to as "Licensee" or "You." In accordance with and subject to the terms and conditions of this Agreement, Ember Corporation ("Licensor") grants Licensee a limited, non-transferable, non-exclusive, perpetual license to use the object code version of the accompanying EmberZNet® networking stack software and the source code versions of any accompanying sample application software (collectively, the "Software") and documentation (the "Documentation"). The Software and Documentation and any copies or modifications are referred to as the "Licensed Products." If you purchased an InSight™ Development Kit, under the license granted herein, You may (i) install one copy of the Software and its components all together on a single computer, (ii) use the Licensed Products solely for the purpose of developing applications to be used to program Ember branded integrated circuit chips purchased from Ember or its authorized distributor ("Ember Chips"), (iii) use the sample application software in source code format to develop and compile applications for use on an Ember Chip or for use on a host microprocessor that will interface through EZSP with an Ember Chip serving as a network coprocessor, and (iv) distribute the Ember Chips programmed in accordance with (ii) or (iii) above, and for no other purpose.
2. **License Restrictions.** The Licensed Products shall only be used as permitted by this Agreement. Any use of the Licensed Products not permitted by this Agreement is expressly prohibited. Without limiting the foregoing restriction, You may not assign, sublicense, encumber, rent, lease, loan, resell for profit or otherwise attempt to transfer or distribute the Software or any portion thereof to others or provide access to others on a service bureau basis or otherwise. Licensor may include features in the Software that restrict unlicensed use. You may not copy or modify the Licensed Products, except that You may make one copy the Software for the sole purpose of backup as long as all copyright and other notices are reproduced and included on the backup copy. You may not reverse compile, disassemble, alter, add to, delete from, or otherwise modify the Licensed Products. You may not publish

or transfer the Licensed Products, or any copy thereof, in whole or in part, except as expressly provided for in this Agreement. You will not transmit the Software over any network. The Software is not designed or licensed for use in hazardous environments, safety critical or life support applications, or where personal injury or bodily harm may result from Software use. You may not use the Software, or any element of the Software, to create derivative works or other works that are similar to the Software. You may not use the information within the Documentation or the Licensed Products or other items supplied to you for the purposes of designing, developing or testing a device or simulator which is, or is intended to be, wholly or partly instruction set compatible with the XAP2b processor. You may not remove any copyright, trademark, patent or other proprietary notices from the Licensed Products or any portion thereof. No license to use the Software in source code form is granted hereunder. You may only use the Software in executable form.

3. **Proprietary Rights.** All rights and title in and to the Licensed Products, including without limitation, patents, copyrights, trademarks and trade secret rights, belong to Licensor or its suppliers, and Licensor or its suppliers hold title to each copy of the Licensed Products, and any portion thereof. You acknowledge that the license granted under this Agreement does not provide You with title to or ownership of the Licensed Products, but only a right of limited use under the terms and conditions of this Agreement. Except for the rights expressly granted herein, no other rights are granted to You with respect to the Licensed Products.
4. **Confidential Information.** You agree that the Licensed Products contain confidential information, including trade secrets, know-how and other information, that comprise the exclusive property of Licensor or its suppliers. During the period this Agreement is in effect and at all times after its termination, You shall maintain the confidentiality of this information and shall not sell, license, sublicense, publish, display, distribute, disclose or otherwise make available this information to any third party nor use such information except as authorized by this Agreement.
5. **Limited Warranty and Remedies.** Licensor does not warrant that the functions contained in the Licensed Products will meet Licensee's specific requirements or that the operation of the Software will be uninterrupted or error free. Licensor does warrant that, for a period of thirty (30) days from the date of delivery of the Software to the Licensee (the "Warranty Period"), the Software will function substantially in accordance with the Documentation when used with Ember Chips and that the media on which the Software is furnished will be free from defects in material and workmanship, under normal use and service, when correctly installed and maintained. In the event that Licensee notifies Licensor, during the Warranty Period, of a failure of the Software to conform to the limited warranty contained in the previous sentence, Licensor's sole obligation, and Licensee's sole remedy, shall be, at Licensor's sole discretion, Licensor's (i) replacement of the Software, or part thereof with a functionally equivalent software product or part, or (ii) repair of the Software. Without limitation of any term or condition contained in this Agreement, this warranty does not apply to any nonconformance caused by (A) improper or inadequate maintenance or calibration, or (B) software or interfacing equipment, parts or supplies not supplied by Licensor or its authorized distributor.
6. **WARRANTY DISCLAIMER.** EXCEPT AS PROVIDED ABOVE IN SECTION 5, THE LICENSED PRODUCTS ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT AND THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THE LICENSED PRODUCTS IS WITH LICENSEE. SOME STATES DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES SO THE ABOVE EXCLUSIONS MAY NOT APPLY TO YOU. THIS WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS. YOU MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM STATE TO STATE.
7. **LIMITATION OF LIABILITY.** LICENSOR'S SOLE OBLIGATION OR LIABILITY UNDER THIS AGREEMENT IS THE REPAIR OR REPLACEMENT OF THE LICENSED PRODUCTS ACCORDING TO THE LIMITED WARRANTY ABOVE. IN NO EVENT SHALL LICENSOR OR ANY OF ITS AFFILIATES OR SUPPLIERS BE LIABLE FOR CONSEQUENTIAL, SPECIAL, INCIDENTAL OR SIMILAR DAMAGES, SUCH AS (BUT NOT LIMITED TO) LOSS OF BUSINESS REVENUES, PROFITS OR SAVINGS OR LOSS OF DATA RESULTING FROM THE USE OR INABILITY TO USE THE LICENSED PRODUCTS, EVEN IF LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM BY ANY THIRD PARTY. THIS INCLUDES, BUT IS NOT LIMITED TO, DAMAGES ARISING FROM THE FAILURE OF THE

**EMBER CHIP TO TRANSMIT DATA ARISING FROM A FAILURE OF THE LICENSED PRODUCTS TO PERFORM IN SUBSTANTIAL ACCORDANCE WITH THE DOCUMENTATION. IN NO EVENT SHALL THE LIABILITY OF LICENSOR EXCEED THE AMOUNT PAID FOR THE LICENSED PRODUCT BY LICENSEE. YOU ACKNOWLEDGE THAT THE AMOUNT PAID BY YOU FOR THE LICENSED PRODUCT REFLECTS THIS ALLOCATION OF RISK. SOME STATES DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU.**

8. Term and Termination. This Agreement shall take effect on the date the Licensed Products are acquired by or delivered to Licensee, and shall remain in effect unless terminated as provided below. If You fail to comply with any obligations under this Agreement, this Agreement will immediately and automatically terminate. You may terminate this Agreement at any time by destroying all copies of the Licensed Products. Upon termination of this Agreement, Licensee shall immediately discontinue the use of the Licensed Products and shall return or provide certification to Licensor of the destruction of all copies of the Licensed Products. All provisions of this Agreement relating to disclaimers of warranties, limitation of liability, remedies or damages, and Licensor's proprietary rights, shall survive any termination.
9. Export Restrictions. You may not export or reexport the Software or any Licensed Product, or any copy thereof, in violation of any applicable laws or regulations.
10. Miscellaneous.
  - (a) This Agreement sets forth the entire agreement and understanding between the parties and neither party shall be bound by any conditions, definitions, warranties, understandings or representations with respect to the subject matter hereof other than as expressly provided herein or as duly set forth on or subsequent to the date hereof in writing and signed by a proper and duly authorized representative of the party to be bound thereby. The failure of any party at any time to require performance of any provision of this Agreement shall in no manner affect the right of such party at a later time to enforce the same. No waiver by any party of any condition or of any breach of any term contained in this Agreement, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of any such condition or of any breach of any such term or any other term set forth in this Agreement. If any provision of this Agreement is inoperative or unenforceable for any reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions contained in this Agreement invalid, inoperative, or unenforceable to any extent whatsoever. The invalidity of any portion of this Agreement shall not affect the remaining portions of this Agreement.
  - (b) This Agreement shall be governed by the laws of the Commonwealth of Massachusetts, United States of America, without regard to that state's conflicts of laws rules. The 1980 United Nations Convention on Contracts for the International Sale of Goods shall not apply. In any dispute arising out of this Agreement, the parties each consent to the exclusive personal jurisdiction and venue in the State and Federal courts located within the Commonwealth of Massachusetts, United States of America.
  - (c) If Licensee is an agency of the U.S. Government, the following will apply: The Software has been developed entirely at private expense, is regularly used for nongovernmental purposes and has been licensed to the public. The Software is a "commercial item" as that term is defined in 48 C.F.R. 2.101 (Oct. 1995), consisting of "commercial computer software" and "commercial computer software documentation" as those terms are used in 48 C.F.R. 12.212 (Sept. 1995) or as "commercial computer software" as that term is defined in 48 C.F.R. 252.227-7014 (June 1995) or any equivalent agency regulation or contract clause, whichever is applicable. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4 (June 1995), all U.S. Government agencies acquire only those rights to the Software as are expressly set forth herein.
  - (d) Any questions regarding this Agreement or other notice or other communication to Licensor shall be sent to Ember Technical Support at +1 (617) 951-0200 or via an online ticket at <http://portal.ember.com>.

## SOFTWARE DEVELOPER KIT DEVELOPER SUPPORT AGREEMENT

1. **Technical Support.** Ember provides technical support to EmberZNet application developers through training, through a web based support portal, or by phone, subject to the terms of this Developer Support Agreement. To access technical support, including software and documentation updates, sign up for support at [http://www.ember.com/support\\_index.html](http://www.ember.com/support_index.html) and log in to the Ember Support portal at <http://portal.ember.com>.
2. **Term of Developer Support.** Your purchase of Developer Support from Ember includes the services described below for a period of 30 days after such purchase (such initial term and any renewal or extensions are referred to collectively as the “Developer Support Term”). A subscription for the Developer Support for each Developer Kit purchased is mandatory. Thereafter, Ember and You may agree to renew such Developer Support for additional blocks of time per the terms at Ember’s then current fee. The Developer Support shall automatically terminate upon expiration of each Developer Support Term, unless otherwise renewed, and upon any termination of the Developer Kit Software License Agreement.
3. **Scope of Developer Support.** During the Developer Support Term, Ember will provide technical support in English, via the support portal or phone, to respond to questions from Certified Developer Contacts (as defined below) regarding the use of the Licensed Product included in the Developer Kit. Phone and portal support is provided Monday through Friday, excluding major US holidays, from 9 am to 5 pm Eastern Time. Technical support contact information is listed below.  
Phone: +1 (617) 951-0200  
Web: <http://portal.ember.com>  
Telephone and portal support will cover general questions about using the Licensed Product to create applications, EmberZNet functionality, the documentation, integration of Ember hardware and applications with Your hardware and platforms, run-time problems, and troubleshooting the integration of applications with Supported Host Processor Platforms (as defined at [www.ember.com](http://www.ember.com)).  
Ember will use reasonable efforts to respond to support requests within two (2) business days, during its normal business hours. Ember shall only be required to respond to Certified Developer Contacts and shall not be required to respond to requests from other persons. Support regarding how to design an application with a specific functionality or assistance debugging actual applications is not part of Developer Support, but may be provided by Ember to You pursuant to a Professional Services Agreement, as described in Section 7.2 below.
4. **Certified Developer Contacts.** Ember shall periodically offer a multi-day training course on the Developer Kit in the greater Boston, Massachusetts area, and as required in other geographic regions. During the Developer Support Term, You may have your employees attend such training courses by purchasing a Training Seat for each of your sponsored attendees. Any attendee who completes the training course shall be deemed a “Certified Developer Contact.” Attendees are required to have the minimum computer programming, technical experience and training then reasonably required by Ember. By special arrangement, training courses may be held at Your designated site for an additional fee.
5. **Updates.** During the Developer Support Term, Ember shall provide to You any updates that Ember, in its sole discretion, elects to make generally available at no additional charge to subscribers of Developer Support. Ember shall provide You with instructions for installation of updates, and You shall be responsible for installing the updates.
6. **Training Seats.** You may elect to purchase additional Training Seats at any time at Ember’s then current purchase price.
7. **Additional Support.** Ember provides the following two options if You require additional support outside of the scope of this Agreement.
  - 7.1 **Additional Hourly Support.** You may purchase additional phone and email support for Certified Developer Contacts in blocks of 40 hours each. Each block of 40 hours must be used within 1 year from the date of purchase. Ember will provide pricing for such support upon request.
  - 7.2 **Professional Services.** Dedicated support and assistance with project development, design and application debugging may be provided pursuant to a written Professional Services Agreement. The Professional Services Agreement will set forth the scope of services to be provided, project milestones, timelines, pricing and any other applicable terms. Each party must sign the Professional Services Agreement prior to Ember’s provision of services.
8. **General**
  - 8.1 **Warranty Disclaimer.** EMBER MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE DEVELOPER SUPPORT, AND DOES NOT GUARANTEE THAT ANY SOFTWARE PROVIDED WITH THE DEVELOPER KIT IS ERROR FREE OR THAT ANY ERRORS WILL BE CORRECTED.
  - 8.2 **Limitation of Liability.** EMBER’S LIABILITY FOR ANY CLAIMS ARISING OUT OF DEVELOPER SUPPORT SHALL NOT EXCEED THE DEVELOPER SUPPORT FEE. IN NO EVENT SHALL EMBER BE LIABLE FOR

INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES ARISING OUT OF THE DEVELOPER SUPPORT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

9. Governing Law. This Agreement will be governed by the laws of the Commonwealth of Massachusetts, without regard for its conflicts of laws provisions.

## Ember Hardware Terms and Conditions

1. **Definitions.** “Ember Hardware” means the hardware components ordered by Purchaser and provided by Ember pursuant to these Terms and Conditions and which are listed by title on the invoice. “Ember” shall mean Ember Corporation. “Purchaser” shall mean the business entity or person who has ordered delivery of the Ember Hardware.
2. **Payment Terms.** Purchaser shall pay the full price of the Ember Hardware stated on the invoice within thirty (30) days after the mailing date stated thereon. All payments shall be made in U.S. dollars by check mailed to Ember's principal office identified on the front of the invoice. Any amount not paid when due shall bear a late payment charge, until paid, at the rate of 1.5% per month or, if lesser, the maximum amount permitted by law. Purchaser shall reimburse Ember for all reasonable costs (including attorneys' fees) incurred by Ember in collecting late payments, including late payment charges, from Purchaser. Ember may, in its sole discretion, suspend shipment of Ember Hardware in the event that Purchaser is in arrears with respect to any sums due Ember. In no event shall Purchaser offset any amounts due for the Ember Hardware by amounts that may be due Purchaser from Ember under any other order of equipment or any other agreement with Ember. All payments required hereunder are exclusive of all federal, state, local and foreign taxes, levies and assessments. Purchaser agrees to bear and be responsible for the payment of all such taxes, levies and assessments imposed upon Purchaser or Ember for the sale of Ember Hardware to Purchaser, excluding any income tax imposed on Ember by a governmental entity of the United States. Such payments shall be grossed-up for any non-refundable, withholding tax imposed on Ember by a foreign governmental entity.
3. **Shipping and Deliveries.**
  - 3.1 **Shipping.** Purchaser shall provide Ember with written instructions as to the preferred method of delivery of the Ember Hardware, and Ember will make arrangements for shipment of the Ember Hardware as it is ready for shipment. All Ember Hardware will be shipped to the location specified by Purchaser in Purchaser's purchase order and as may be subsequently modified by Purchaser in writing prior to Ember having made arrangements for shipment of the Ember Hardware (the “Place of Destination”). All shipping costs shall be paid by Purchaser. Ember or its agents will, at Ember's expense, prepare and pack all Ember Hardware for shipment. Unless Purchaser otherwise specifies in writing, all Ember Hardware shall be suitably prepared and packed for shipment according to good commercial practices suitable for the mode of transportation selected above. If Purchaser requests that Products be packaged in a manner more stringent and expensive than such standards, then Purchaser shall bear the additional expense. All shipments are INCOTERMS 2000: FCA – Free Carrier-Origin, with title and risk of loss for damage passing from Ember to Purchaser upon delivery of the Ember Hardware to the common carrier or pickup by Purchaser.
  - 3.2 **Forecasts.** Customer shall provide Ember, on a monthly basis, a rolling six (6) month product order forecast.
  - 3.3 **Reschedules.** Limited to one (1) per order and never outside the current quarter scheduled. Requests for increased quantity and/or delivery pull-ins are subject to material availability and availability of test resources. Maximum allowable changes:

### Maximum Allowable Variance From Purchase Order Quantities/Shipment Dates

# of days before Shipment Date on Purchase Order	Allowably Quantity Increases in Percent	Maximum Reschedule Quantity in Percent	Maximum Reschedule Period in Days
0 - 14	0%	0%	0
15 - 30	10%	15%	30 days, but within current quarter
31 - 60	30%	10%	30 days
61 - 90	50%	20%	30 days
91 - 120	100%	100%	60 days

- 3.4 **Cancellation.** Customer may not cancel any portion of product quantity of an accepted purchase order without Ember’s prior written approval.
4. **Use of Trademarks and Trade Names.** Purchaser shall not alter, remove, or obscure Ember's name, trade names, trademarks, and logos (“Ember Marks”) appearing on the Ember Hardware. All use and accompanying goodwill of Ember Marks (whether



registered or unregistered) shall inure solely to the benefit of Ember. Purchaser shall prominently place the Ember Mark designated by Ember on the outside exterior of each product into which Purchaser integrates Ember Hardware (an "Integrated Product"), shall not alter, remove, or obscure such Ember Mark, and shall contractually prohibit the alteration, removal or obscuring of such Ember Mark by customers of such Integrated Product. To the extent that an Integrated Product is intended to be incorporated in the interior of a larger product by a customer, Purchaser shall contractually require such customer to prominently place the Ember Mark designated by Ember on the outside exterior of such product and to not alter, remove, or obscure such Ember Mark. In each case, Purchaser shall comply with Ember's trademark guidelines. No other use of Ember Marks, any part thereof, or any mark or name confusingly similar thereto, is authorized without the prior written consent of Ember. Purchaser shall not register any of Ember Marks or any mark closely resembling any of them.

5. **Proprietary Rights.** Title, ownership, and all rights in copyrights, patents, trademarks, trade secrets and other intellectual property rights in the Ember Hardware and any copy, portion, or modification thereof, shall not transfer to Purchaser or its customers and shall remain in Ember and its licensors. No source code rights are granted to Purchaser or its customers with respect to any software embedded into the Ember Hardware. Purchaser agrees not to copy, modify, alter, translate, decompile, disassemble, or reverse engineer the Ember Hardware (including without limitation any embedded software) or attempt to disable any security devices or codes incorporated in the Ember Hardware. Purchaser shall not alter, remove, or obscure any printed or displayed legal notices contained on or in the Ember Hardware.
6. **Limited Warranty to Purchaser.** Ember warrants that Ember Hardware delivered to Purchaser shall be free from defects in material and workmanship and shall substantially conform to the technical specifications for the Ember Hardware delivered to Purchaser with the Ember Hardware in both cases as follows: Ember Development Kit hardware warranty is 90 days; Ember silicon warranty is 12 months after delivery to the Purchaser. Ember's obligations under the express warranties in this Section 6 are limited to repair or replacement of the affected Ember Hardware, or, at Ember's discretion, refund of the full purchase price for such affected Ember Hardware.
7. **Disclaimer of Warranties.** The warranty set forth in Section 6 above is in lieu of all other warranties, and Ember disclaims all other warranties, whether express or implied, oral or written, including, without limitation, any implied warranty of merchantability, fitness for a particular purpose, non-infringement, or warranties arising by statute or otherwise in law or from a course of dealing or use of trade. The Ember Hardware and the wireless network that it enables are not fault tolerant and are not designed, manufactured, or intended for use or resale as online control equipment in hazardous environments requiring fail-safe performance, such as in the operation of nuclear facilities, aircraft navigation, or communications systems, air traffic control, direct life support machines, or weapons systems, in which the failure of such products could lead directly to death, personal injury, or severe physical or environmental damage. This disclaimer of warranty constitutes an essential part of these Terms and Conditions and the sale of the Ember Hardware.
8. **Warranty to Ember.** Purchaser warrants and represents that it shall not make or pass on to its customers any warranty or representation on behalf of Ember.
9. **Limitation of Liability.** Except with respect to indemnification obligations in Section 10 below, Ember's maximum and cumulative liability arising out of or relating to the Ember Hardware and its purchase hereunder, whether based upon warranty, contract, tort or otherwise, shall not exceed the actual amount of payments received by Ember in connection with the specific transaction or incident in question. In no event shall Ember be liable to any other party for special, incidental, indirect, exemplary or consequential damages, or for any claims or demands, regardless of whether Ember has been previously advised of the possibility of such damages, claims or demands.
10. **Indemnification.**
- 10.1 **Indemnification by Ember.** Except as provided below, Ember shall defend and indemnify Purchaser, its officers, directors, employees, and shareholders from and against any damages, liabilities, costs and expenses (including reasonable attorneys' fees) (collectively "Damages") arising out of any third party claim that Ember Hardware infringes a valid United States patent or copyright or misappropriates a trade secret of a third party. Should any Ember Hardware become or, in Ember's opinion, be likely to become the subject of a claim or an injunction preventing its use as contemplated herein, Ember may, at its option, (1) procure for Purchaser the right to use such Ember Hardware, (2) replace or modify such Ember Hardware so that it becomes non-infringing, or, if (1) and (2) are not reasonably available to Ember, then (3) repurchase the Ember Hardware from Purchaser at the original purchase price. Purchaser shall immediately inform Ember as soon as Purchaser becomes aware of any threatened or actual claim by a third party relating to the Ember Hardware. Ember shall have no liability or obligation to Purchaser hereunder with respect to any patent, copyright or trade secret infringement or claim thereof based upon (i) use of Ember Hardware in combination with devices or products not provided by Ember, (ii) use of Ember Hardware in an application or environment for which such Ember Hardware is not designed or contemplated, (iii) modifications, alterations or enhancements of Ember Hardware not created by or for Ember, or (iv) any claims of infringement of a patent, copyright or trade secret in which Purchaser or any affiliate of Purchaser has an interest. Purchaser shall defend, indemnify and hold Ember harmless from all Damages arising from any claim enumerated in clauses (i) through (iv) above. This Section 10.1 states the entire liability of Ember with respect to infringement of patents, copyrights, and trade secrets by Ember Hardware or any part thereof or by their operation.

- 10.2 Indemnification by Purchaser. Except for claims covered by Section 10.1, Purchaser shall defend and indemnify Ember, its officers, directors, employees, and shareholders from and against any Damages for any third party claim arising from Purchaser's use or distribution of the Ember Hardware (included as integrated with other products).
- 10.3 Claims for Indemnification. The party that intends to claim indemnification under this Section 10 (the "Indemnified Party") shall promptly notify the other party (the "Indemnifying Party") of any Damages in respect of which the Indemnified Party intends to claim such indemnification reasonably promptly after the Indemnified Party is aware thereof, and the Indemnifying Party shall assume the defense of any related third party action, suit or proceeding with counsel mutually satisfactory to the parties; provided, however, that an Indemnified Party shall have the right to retain its own counsel, with the fees and expenses to be paid by the Indemnifying Party, if representation of such Indemnified Party by the counsel retained by the Indemnifying Party would be inappropriate due to actual or potential differing interests between such Indemnified Party and any other Party represented by such counsel in such proceedings. The indemnity agreement in this Section 10 shall not apply to amounts paid in settlement of any claim, loss, damage or expense if such settlement is effected without the consent of the Indemnifying Party, which consent shall not be withheld or delayed unreasonably. The failure of an Indemnified Party to deliver notice to the Indemnifying Party within a reasonable time after becoming aware of any such matter, if prejudicial to the Indemnifying Party's ability to defend such action, shall relieve the Indemnifying Party of any liability to the Indemnified Party under this Section 10, but the omission so to deliver notice to the Indemnifying Party will not relieve it of any liability that it may have to an Indemnified Party otherwise than under this Section 10. The Indemnified Party under this Section 10 and its employees and agents shall cooperate fully with the Indemnifying Party and its legal representatives in the investigation of any matter covered by this indemnification.
11. Compliance with Laws. Purchaser shall not export, directly or indirectly, Ember Hardware, or other information or materials provided by Ember hereunder, to any country for which the United States or any other relevant jurisdiction requires any export license or other governmental approval at the time of export without first obtaining such license or approval. It shall be Purchaser's responsibility to comply with the latest United States or other governmental export regulations, and Purchaser shall defend and indemnify Ember from and against any damages, fines, penalties, assessments, liabilities, costs and expenses (including reasonable attorneys' fees and court costs) arising out of any claim that Ember Hardware or other information or materials provided by Ember hereunder were exported or otherwise shipped or transported in violation of applicable laws and regulations. Purchaser shall comply with all laws, legislation, rules, regulations, governmental requirements and industry standards with respect to the Ember Hardware and the performance by Purchaser of its obligations hereunder, existing in any jurisdiction into which Purchaser directly or indirectly distributes the Ember Hardware. In the event that the sale of Ember Hardware to Purchaser is required to be registered with any governmental authority, Purchaser shall cause such registration to be made and shall bear any expense or tax payable in respect thereof.
12. Governing Law; Jurisdiction. All questions concerning the validity, operation, interpretation, and construction of these Terms and Conditions will be governed by and determined in accordance with the substantive laws of the Commonwealth of Massachusetts without regard to its conflicts of law provisions. Both parties acknowledge and agree that the U.N. Convention on Contracts for the International Sale of Goods shall not apply to the sale of Ember Hardware hereunder. All disputes arising under, out of, or in any way connected with the sale of Ember Hardware or these Terms and Conditions shall be litigated exclusively in the state and federal courts sitting in Suffolk County, Commonwealth of Massachusetts, and in no other court or jurisdiction. Each party stipulates that the courts of the Commonwealth of Massachusetts shall have personal jurisdiction over its person, and it hereby irrevocably (i) submits to the personal jurisdiction of said courts and (ii) consents to the service of process, pleadings, and notices in connection with any and all actions initiated in said courts and without any objection to venue. The parties agree that a final judgment in any such action or proceeding shall be conclusive and binding and may be enforced in any other jurisdiction.
13. Notices. Unless expressly stated otherwise herein, any notice, demand, request or delivery required or permitted to be given by a party hereunder shall be in writing and properly addressed and shall be deemed given (a) when delivered personally, (b) on the next business day after timely delivery to an overnight courier, (c) on the third business day after deposit in the U.S. mail (certified or registered mail return receipt requested, postage prepaid), and (d) upon confirmation of receipt by facsimile transmission.
14. Force Majeure. Neither party shall be liable for any default or delay in the performance of its obligations hereunder if and to the extent and while such default or delay is caused, directly or indirectly, by fire, flood, earthquake, elements of nature or acts of God, acts of war, terrorism, riots, civil disorders, rebellions or revolutions in the United States, strikes, lockouts, or labor difficulties or any other similar cause beyond the reasonable control of such party. Notwithstanding the foregoing, this Section 14 shall not limit or otherwise relieve Purchaser's obligation to pay any monies due Ember when due hereunder.
15. Agreement; Amendment. These Terms and Conditions supersede any conflicting terms and conditions contained in Purchaser's purchase order or elsewhere with respect to the sale of Ember Hardware and may be amended or modified only by a subsequent writing that specifically refers to these Terms and Conditions and the sales of the Ember Hardware and is signed by both Purchaser and Ember. Any purchase order, acknowledgment or other communication issued by Purchaser shall be construed to be for record and accounting purposes only.