



Neutral Citation Number: [2017] EWHC 3083 (Pat)

Case No: HP-2014-000005

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
PATENTS COURT

Royal Courts of Justice
Rolls Building
Fetter Lane
London EC4A 1NL

Date: 30/11/2017

Before :

THE HON. MR JUSTICE BIRSS

Between :

Unwired Planet International Ltd

Claimant

- and -

(1) Huawei Technologies Co. Ltd

(2) Huawei Technologies (UK) Co. Ltd

Defendants

- and-

Unwired Planet LLC

Tenth Party

Telefonaktiebolaget Ericsson

Eleventh Party

Thomas Jones (instructed by **Enyo Law**) for the **Claimant**
Andrew Lykiardopoulos QC and **James Segan** (instructed by **Powell Gilbert**) for the **First**
and Second Defendants

Mark Brealey QC (instructed by **Browne Jacobson LLP**) for the **Eleventh Party**

Hearing dates: 29th June 2017

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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THE HON. MR JUSTICE BIRSS

Mr Justice Birss :

1. Judgment in the FRAND trial in these proceedings was given on 5th April 2017. On that day two judgments were handed down. The two judgments were [2017] EWHC 705 (Pat) and [2017] EWHC 711 (Pat). I will refer to them as the 705 judgment and the 711 judgment. The 705 judgment sets out my reasoning in full. However it includes numerous references to material which at least one party claimed was confidential and should not be made public. So the 705 judgment remains confidential. In accordance with the court's usual practice the draft form of what became the 705 judgment was sent to the parties on a confidential basis some days before judgment was due to be given. The position on confidentiality was so complicated that I convened a hearing with the parties' solicitors to give directions about it. One serious practical difficulty was that different aspects were confidential to different groups of parties. The legal representatives were privy to details which they were not able to share with their clients. This is obviously not a desirable state of affairs but it had allowed the case to proceed in a practical manner.
2. One course would have been to give the parties more time to deal with confidentiality but that would have required a great deal more time. It is not desirable for parties to be put into a position in which they have the text of a judgment with potentially significant consequences on a confidential basis for an extended period. Moreover it was not clear that this would have worked at all because in order for representatives to take proper instructions it was necessary to have a version of the judgment which could be discussed freely with their various clients.
3. I took the view that provided the resulting public judgment fairly set out the reasoning in a manner which the public could comprehend, I would initially take a generous view of the claims to confidentiality in order to produce a public judgment at the same time as the full judgment was given formally. That exercise was successful, thanks in part to the parties taking a constructive approach. The result was the 711 judgment, handed down at the same time as the 705 judgment. The exercise did not mean simply accepting every claim to confidentiality and there are points in the 711 judgment which I was asked to keep confidential but refused. However the important thing is that the 711 judgment does fairly reflect the vast bulk of the court's reasoning.
4. Inevitably there would be a further hearing at which the confidentiality issues would be finally resolved. That would be likely to produce a third version of the same judgment. Of course having multiple versions of the same judgment is highly undesirable but in this case all the alternatives were even less welcome. I doubt any other course was practical. This judgment represents the final resolution of the confidentiality claims relating to the judgment.
5. The redactions now sought are less extensive than those in the 711 judgment but there remain substantial aspects which at least one party, and often more than one, wishes to redact.
6. I have witness statements from Timothy Elliss of Enyo Law on behalf of Unwired Planet; Peter Damerell of Powell Gilbert on behalf of Huawei, Sophie Lawrance of Bristows on behalf of Samsung and Christina Petersson, Vice-President, Head of IPR Legal Services at Ericsson. Each witness has included a table in the form of a

confidential annex which works through the various paragraphs of the 705 judgment for which redaction is sought and explains the reasons why.

Principles

7. That justice should be done in public is a vital aspect of the rule of law. In *R (Willford) v Financial Services Authority* [2013] EWCA Civ 674 the Court of Appeal held at paragraph 9 (Moore-Bick LJ) that the principles of open justice require that a judgment should be published in full unless there are overriding grounds for not doing so. Also in *R (Mohamed) v Secretary of State for Foreign and Commonwealth Affairs (No 2)* [2011] QB 218 at paragraph 41 (Lord Judge CJ) and 176 (Lord Neuberger MR), the Court of Appeal emphasised that redactions from judgments should be “rare indeed” and that all parts should be public unless there are “powerful reasons to the contrary”.
8. In the Patents Court it is not unusual for the court to have to deal with technical trade secrets. The confidentiality of this information is often protected by a combination of CPR r31.22, not reading the documents out in public and, on occasion sitting in private. The public form of the judgment may have such material redacted from it. The fact this happens relatively often in patent cases is not because the principles of open justice are different in those cases, far from it; it is because the particular circumstances in which it is appropriate to redact come up relatively frequently. The justification for redacting technical trade secrets is straightforward. It is because the trade secret would be destroyed if it was revealed. Even then however the redactions from judgments (or confidential annexes which amount to the same thing) will be kept to the absolute minimum and claims to confidentiality have to be justified with cogent evidence focussed on the specifics rather than on generalities.
9. The preservation of the confidentiality of material which was disclosed during the trial process but is not set out in the judgment raises the same basic principles, but their application in that situation is not the same. Self evidently the information is not part of the reasons the judge has given. *Lilly ICOS No 2* [2002] EWCA Civ 2 is concerned with that situation. The role the information played at trial is an important factor.
10. None of the information which I am asked to redact is a technical trade secret. It is all information relating to licensing. The information relates mostly to the terms of existing licences although a very small amount is concerned with negotiations about those terms. Most of the information relates to the financial information, such as running royalty rates, lump sums etc., but a small amount relates to other terms in licences. A fair description of it all is commercial licensing information. All of the information relates to licences to which at least one of Unwired Planet, Huawei, Ericsson or Samsung are a party, but third parties are involved too. For example some of the information relates to other well known telecommunications and IT companies named in the 711 judgment such as Apple, Qualcomm, and ZTE while other information relates to third parties who are not named (e.g. parties M, N, O and P – see paragraph 433-445 of the 711 judgment).
11. Most of the commercial licensing information derives from Ericsson but it is notable that all the parties who made submissions before me orally or in writing – i.e. Unwired Planet, Huawei, Ericsson and Samsung (in writing) - ask me to redact at

least some details from the 705 judgment. So I have not heard truly adversarial argument about the matter. I did wonder about appointing an *amicus* in this matter but it would have been disproportionate.

12. The commercial licensing information in issue is just the sort of information which would be taken into account in an intellectual property damages enquiry, which after all might set a reasonable royalty. So a rights holder claiming damages would have to disclose relevant IP licences. The terms of those licences, such as the royalty rates, would be critical evidence in assessing what an appropriate damages award would be. As far as I am aware that sort of information is not routinely redacted from judgments on intellectual property damages. The parties were asked about this. They did not cite any example of such a case in which that information has been redacted.
13. On the other hand, as Ericsson submitted, this sort of information is often redacted from judgments relating to competition law. Decisions about competition law are often redacted to remove commercial information such as pricing. Paragraph 1 of Schedule 4 of the Enterprise Act 2002 expressly provides that in preparing a decision the Competition Appeal Tribunal must have regard to the need to exclude as far as practicable (at para 1(2)(a)) information “whose disclosure would be against the public interest” and similarly to exclude (at para 1(2)(b)) “commercial information the disclosure of which would or might, in its opinion, significantly harm the legitimate business interests of the undertaking to which it relates”. Counsel referred to examples of such redactions in the CAT decision *Sainsbury v Mastercard* [2016] CAT 11 (Barling J, Prof Beath OBE and Marcus Smith QC). In paragraphs 441, 453 and 533 financial details are redacted. Another example of the same essential principles in the competition sphere (albeit the Competition and Markets Authority rather than the CAT) was case *CE/9742-13* relating to unfair pricing of the anticonvulsant drug phenytoin. Many of the actual selling prices of drugs have been redacted from the public decision.
14. Counsel for Ericsson submitted strikingly that another way of looking at this problem was to consider what the competition authorities would consider if Huawei, Samsung and Ericsson got together and exchanged these confidential royalty rates. Commercial rivals exchanging pricing information looks like a cartel. That would be a serious breach of competition law. Therefore Ericsson submitted there is a public interest in not doing so by another route. Nevertheless it strikes me that it might be said that the lack of public information about FRAND licence terms is a cause of difficulty in this sphere and perhaps more transparency about royalty rates would be a good thing, but this is not the occasion to get into that.
15. Counsel for Ericsson also submitted that this information is material which the companies concerned do certainly regard as confidential and which would harm their interests if it was made public – because for example it would enhance the bargaining position of putative licensees. He also submitted that if the court was too liberal in requiring that information of this kind become public as a result of the trial process, it would act as a “dampener to companies being willing to give disclosure to assist justice being done between the parties”.
16. It is clear that in the area of competition law, the need to keep certain information out of the public domain is well recognised. This is for two different reasons. One reason is that publication may discourage frankness and discourage companies from coming

forward and applying for leniency. That is a good reason but it is not relevant in this case. The other reason is because publication of certain information such as pricing may itself be anti-competitive. That may be because publication could work a bit like a cartel. Another way in which publication could be anti-competitive is because it could weaken the competitive position of a party relative to others in the market. This latter point plays a major part in the reasoning of the parties before me. I accept that the point is capable of being relevant but there is a risk. In such a case it is easy to make generalised assertions that publication would harm a company's interests. Just because a company regards the information as confidential and would prefer that it not be disclosed is not enough.

17. A further submission on Ericsson's behalf was a suggestion that Ericsson should be regarded as a third party. However as Ericsson's counsel accepted, its position relative to this case is not the same as the position of true third parties named in the judgment such as Apple, Qualcomm and ZTE. For one thing under the terms of its relationship with Unwired Planet, Ericsson at least potentially benefits from royalties earned by Unwired Planet for its patents. I will return to Ericsson's position in this litigation below.
18. A number of FRAND disputes have been settled by arbitration and of course that form of dispute resolution allows all the material to remain confidential. It might be said that parties who choose not to resolve their differences by arbitration but by public litigation cannot therefore complain if material comes into the public domain. There is force in that but only up to a point. A key aspect of this kind of dispute is about the validity and essentiality of certain patents. Parties to a patent dispute will not generally have a pre-existing contract which contains an arbitration clause, and so both sides would have to agree to arbitrate after the dispute had started. That may not be easy. Also a party who refuses an offer to arbitrate may not be the one whose interests would be harmed by publicity.
19. As discussed in the main FRAND judgment, these issues are international in nature and have been considered in other courts. Samsung pointed out that in the USA in the seminal Microsoft v Motorola case, Judge Robart allowed various confidential licence terms to be protected. While not determinative, I accept that the fact that US courts considering the same FRAND issues recognise that common law principles of open justice should yield in such circumstances is relevant.
20. Finally in terms of principles I was referred to two patent cases in which financial and licensing information had been redacted or not released. One is HTC v Nokia [2013] EWHC 3247 (Pat). In that case Arnold J put the terms of a Qualcomm chip licence in an annex to the judgment which was kept confidential once the judgment was published (paragraph 148). The confidential annex also contained some of the judge's reasons (see e.g. paragraphs 150, 170, and 173) which ultimately led to the failure of a licence defence. No doubt because it was not disputed, Arnold J did not expand on the reasons why the Annex should be redacted beyond stating it was confidential but it is not difficult to see why in that case the redaction took place. Both Nokia and Qualcomm regarded the terms of the licence as highly confidential but Qualcomm were not a party to the dispute before the court.

21. The other is *Lilly Icos No2* in which one of the documents accepted as being subject to a permanent CPR r31.22 order was one containing financial information about advertising.
22. I derive the following principles applicable to a case like this:
23. Unless the public can see and understand a judge's reasons they cannot hold the courts to account. There is therefore a strong principle that all parts of a judgment should normally be publicly available. Nevertheless there are occasions on which judgments may be redacted. Redactions will require powerful reasons, supported by cogent evidence which addresses the details. Generalities will not do. Although redactions will be rare indeed when looking across the legal system in general, certain kinds of proceedings may regularly involve redactions due to the nature of the proceedings and the material involved. In any event however redactions must be kept to the bare minimum.
24. Factors which will be relevant include:
 - i) the nature of the information itself: for example cases in which some redaction may more readily be accepted could include technical trade secrets and private information about family life.
 - ii) the effect of the publication of the information. This will be a critical factor. If publication would be truly against the public interest then no doubt the information should be redacted. If publication would destroy the subject matter of the proceedings – such as a technical trade secret – then redaction may be justified. The effect on competition and competitiveness could be a factor but will need to be examined critically.
 - iii) the nature of the proceedings: for example privacy injunctions and competition law claims may require some redaction while an intellectual property damages claim may not. The point is not that different kinds of case demand a different approach, it is that the balance of factors will change in different cases (e.g. the need to encourage leniency applications in competition law).
 - iv) the relationship between the information in issue and the judgment (as well as the proceedings as a whole). Obviously judges do not deliberately insert irrelevant information into judgments but not every word of a judgment is as important as every other word. It may be that some sensitive information can be redacted without seriously undermining the public's understanding of the reasons.
 - v) the relationship between the person seeking to restrain publication of the information and the proceedings themselves (including the judgment). For example, a patentee seeking damages for patent infringement on a lost profit basis knows that they will have to disclose their profit margin in the proceedings and that those proceedings are public. A third party whose only relationship with the case is that they are a party to a contract disclosed by one of the parties to the litigation is in a different position.
25. I turn to the facts of this case.

Assessment

26. All the information sought to be redacted is commercial licensing information relating to a 2G, 3G and/or 4G telecommunications standards patent licence for which at least one of the four companies Unwired Planet, Huawei, Samsung or Ericsson is a party. The judgment deals with a number of competition law claims but is also concerned with declaring what terms of a patent licence for Unwired Planet's SEP portfolio would be FRAND. The competition law aspects are mostly not concerned with the specifics of the commercial licensing information such as actual royalty rates. Some of the material sought to be redacted is information which third parties regard as confidential. By third parties I mean the likes of Apple, Qualcomm, ZTE and other unnamed licensees of Ericsson. Ericsson's relationship to these proceedings is different. It was playing a full part in the case until the summer of 2016 when it decided to drop out after Huawei withdrew its counterclaim against Ericsson which in turn occurred after the Samsung settlement. That full part included serving evidence. There were statements from Ericsson witnesses at the trial (see judgment paragraph 38). It was obvious before Ericsson dropped out that Ericsson's licences were going to be discussed in detail at the trial. Ericsson did not have to drop out completely if it had wished to make full submissions to the court about the licences, for example to put into context an inference that might otherwise be drawn. Moreover Ericsson's ongoing contractual relationship with Unwired Planet means that Ericsson retains a financial interest in the outcome.
27. As far as the relationship between the information and the judgment is concerned, without the figures which are asked to be redacted one cannot see how the court has reached the conclusions it has on one of the critical questions, the FRAND royalty rates. The public can see what the conclusions actually are – i.e. the final FRAND royalty rates themselves. The public can also see that a critical step in that reasoning was to derive a benchmark royalty rate for Ericsson's portfolio (the value E). And the public can see what the value E was determined to be (see conclusion paragraph 807 (7)). However if I accept the redactions then the public cannot see what the underlying data was which led to that conclusion. That is a significant limitation on the public's ability to understand and to scrutinise the reasons why the court has come to the conclusion it has.
28. I turn to consider the effect of the publication of the information sought to be redacted. The reason relied on by all parties in their evidence is the same for everything. Publication would reveal information about existing licences. Save for one very minor exception, the licensor for all the licences is one of the parties (and I include Ericsson for this purpose). That information would be of help to future putative licensees seeking a licence from the same licensor and weaken the licensor's negotiating strength. For example as a putative licensee if you know what rates a licensor charged another licensee for a similar licence, you may be less inclined to accept a higher rate and the licensor will have a harder job persuading you to accept it. A similar problem would arise if you know that a licensor has accepted a lump sum from a different licensee but is trying to persuade you to take a running royalty, or vice versa. In the context of FRAND and particularly the non-discrimination aspect, there might be more to say about this question but I accept the point as a matter of principle.

29. For some licences another of the parties is a licensee. In that capacity that party often supports some redaction too although not always as extensive as the redactions sought by the licensor. That difference reflects the different balance of interests of licensee and licensor. The licensee's motives were not examined in detail. One will no doubt be because it perceives it has a contractual duty to do so under the confidentiality clause in the licence. Another may be because its negotiating position as a licensee itself may be harmed if putative licensors know it was prepared to accept a given term. This is a lesser point than the licensor point but tangible nevertheless.
30. A further reason relied on by Ericsson in support of redaction is that third parties could get a wrong impression from the judgment about what Ericsson's terms actually are. Of course it is true that the full terms of Ericsson's licences are not disclosed but I reject that point. It fails for two distinct reasons. First it is made in an unspecific way. There are said to be several instances but only two examples are given and neither is convincing.
31. The first is about a factor referred to in the judgment as a "UK uplift". This was calculated in Mr Lasinski's evidence based on his analysis of the terms of one of the agreements in the case. The identity of the agreement is one of the facts sought to be redacted. The wrong impression argument is that the reader of the judgment might think that the particular agreement actually contains an uplift factor for the UK whereas what in fact it contains is a set of regional royalty rates which were negotiated and "carefully calibrated" to work together. So Ericsson submits a "prospective Ericsson licensee, however, could potentially cite the judgment to insist on a licence with country by country royalty rates for a global licence" whereas that is something Ericsson has never and could never agree to. I do not believe a fair minded reader of the 705 judgment would think that the licence in question is like that at all. Apart from anything else the judgment makes clear that that the uplift factor is something which had to be calculated by one of the experts from the licence. If there really was a risk of a wrong impression being created then the remedy is to explain it to the court and if necessary a suitable change can be made. It is not a reason to redact.
32. The second example is about a licence which has a payment structure which is not typical of Ericsson's licences. As an instance of the problem of harming the licensor's competitive position vis a vis licensees, I can see the point. But as an example that a wrong impression might be created by the judgment, I do not agree. Apart from anything else, simply taking the descriptions of the various Ericsson licenses in the 705 judgment one can see that this feature is not typical.
33. The second reason this point fails is that it is founded on the suggestion throughout that Ericsson's stance is that of an uninvolved third party, with no means to influence matters or how they are portrayed. I have rejected that already. In addition to the points already mentioned above, I note that after Ericsson dropped out steps were taken to keep its representatives involved in order to protect Ericsson's position. For example Ericsson was monitoring the conduct of the trial and complained at one stage during trial when it perceived confidential information was or might be revealed. Ericsson was also given a copy of the confidential draft 705 judgment precisely in order for its interests to be protected.

34. As mentioned already, the redactions sought are less extensive than those in the 711 judgment. However they are still substantial. The 705 judgment has about 800 paragraphs and redactions are still sought to about 130 of them. So well over 10% of the paragraphs in the judgment would contain redactions.
35. The evidence is clear that all the commercial licensing information in issue is kept confidential by undertakings in this industry. Initially I was doubtful whether the redactions were justified but on reflection I am satisfied that the evidence demonstrates that publication of the commercial licensing information in issue (subject to a few exceptions below) would materially weaken the competitive position of the relevant party in each case, particularly the relevant licensor. That is true not only in a general sense but in specific terms. The evidence properly condescends to detail. Given the number of instances and their disparity I will not try to set out every point in this judgment. Subject to a few exceptions below, all the redactions stand or fall together on the single question of whether that harm is a sufficiently powerful reason to justify redaction here. I have decided it is. The public can understand how the judge reached the conclusions in the main decision without seeing those details. Although, for example, they cannot decide for themselves whether they would agree that the specific figures arrived at are justified by the data, to provide that information would substantially weaken the position of various companies mentioned in the judgment, particularly as licensors but also as licensees. That interference with the competitive position of the telecommunications market is unwarranted.
36. The exceptions are as follows.
37. In paragraph 238 I have not accepted every redaction sought and have inserted some Xs and Ys to maintain the sense of it. None of this harms the parties' legitimate interests and the differences between what was sought and what I have accepted are self-explanatory.
38. In paragraphs 384, 385, 394, 395, 396, 397, 405, 406, 411, 413, 433, 447, 448, 449, 452, 462(iv), 467, 483, 517, 604, 606, 607, 611 and 614 I have not accepted every redaction sought. The differences are minor and self-explanatory to the parties.
39. On paragraph 392, Unwired Planet seeks redactions. I accept them even though Samsung, while not opposing those redactions, does not support them. This is the same kind of information as all the rest.
40. On paragraph 419 Ericsson seeks more extensive redactions that I am prepared to accept. The point explained in the paragraph in the form I am prepared to accept is a significant aspect of the reasoning overall and I am not persuaded the risk Ericsson perceives is substantial enough to justify further redactions.
41. Paragraphs 421, 424, 425, 427, 428, 429 and 462(ii) relate to details of the 2009 Ericsson -Huawei licence. I have accepted proposed redactions which were sought by both Ericsson and Huawei. Those redactions remove the specific figures. However Ericsson sought wider redactions. They were not opposed by Huawei nor were they supported. The reason I reject them is that this licence is historic. It was signed in April 2009 and therefore negotiated before that. It expired in 2012. That is five years ago and longer ago than other expired licences in evidence. It has been replaced by another, different licence. No third party is involved. Ericsson's evidence did not

persuade me why revealing these aspects of the terms of such a historic licence was really damaging. The only specific point was an allegation that the particular point which did not corroborate Huawei's case referred to paragraph 425 made an insinuation which was confidential information. It is another historic point and I am not persuaded there is a tangible risk of real harm.

42. Paragraphs 443 and 445 relate to three licences. The identities of the licensees are not public. There is no reason to make the identities public. However Ericsson seek blanket redactions. The most significant is in 445. The suggestion is that the judgment contains an insinuation which Ericsson does not accept but that Ericsson was not able to testify as to those licenses. I do not accept that the situation is as portrayed by the submission. First, the point was not a surprising one. Second, Ericsson's evidence now does not face up to the true nature of Ericsson's position in these proceedings. Third I am not satisfied that a legitimate interest of Ericsson's is damaged by the paragraphs in the form I have accepted.
43. I have not accepted all the redactions sought to paragraph 457. Ericsson's evidence justified the redactions to paragraph 456, which I have accepted, and the redaction to 457 I have provided for but not a wider redaction.
44. In paragraphs 464 and 468 the redactions sought to remove some text which was already public in the 711 judgment. I decline to do that.
45. In paragraph 473 I have accepted the redaction. Apparently the figure in the 705 judgment which has been redacted in the public judgments is actually a typographical error. I will provide the parties with a copy of the confidential 705 judgment in which the figure has been corrected.
46. More extensive redactions to paragraph 597 and 600 are sought than I am prepared to accept on the evidence. The points are self-explanatory to the parties.
47. For all other paragraphs I have accepted the redactions sought by whoever proposed them in the form discussed at the hearing.
48. The public form of this judgment will be [2017] EWHC 3083 (Pat). The draft form of this judgment and the draft final form of the redacted public main judgment will be given to the parties on the usual confidential terms in advance. I would be grateful if they could check that the draft final form of redacted public main judgment corresponds to what they expect from the reasons given in this judgment. Any application for permission to appeal this judgment which would lead to a different set of redactions needs to be raised with me before handing down.

UK only licence terms

49. At the hearing of this matter I was asked to annex to the judgment a copy of the licence terms which the parties had agreed between themselves as a set of terms which would accord with the main judgment save for the fact that its scope is as a UK only licence. Since I have been asked to do so, I will. In annexing this licence I am not endorsing it as FRAND. I have already found such a licence would not be FRAND. Nor have I been asked to consider if I agree it might otherwise accord with the main judgment and I have not done so.

Annex

[DRAFT] Patent License Agreement
by and between

Unwired Planet International Limited

and

Huawei Technologies Co., Ltd.

Huawei Technologies (UK) Co., Ltd.

This agreement (hereinafter referred to as the “**Agreement**”) is made on this day of _____ (“**Date**”) by and between: Unwired Planet International Limited, a corporation organized and existing under the laws of Ireland, having its principal place of business at The Hyde Building, Unit 32, The Park Carrickmines, Dublin 18, 662898 Ireland (hereinafter referred to as “**Unwired Planet**” or “**Licensor**”); and Huawei Technologies Co., Ltd. , a corporation organized and existing under the laws of China, having its headquarters at Huawei Industrial Base, Bantian, Longgang District, Shenzhen, 518129, China, (“**Huawei China**”) and Huawei Technologies (UK) Co., Ltd., a corporation organized and existing under the laws of the United Kingdom, having its principle place of business at 300 South Oak Way, Green Park, Reading, Berkshire RG2 6UF (“**Huawei UK**”) (together hereinafter referred to as “**Huawei**” or “**Licensee**”).

WHEREAS Unwired Planet owns, controls or is otherwise entitled to grant rights under certain United Kingdom patents and patent applications relating to Licensed Products (as hereinafter defined) and Huawei manufactures, sells and distributes certain Licensed Products in United Kingdom; and

WHEREAS Unwired Planet is willing to grant a license and Huawei is willing to obtain such a license under the Licensed Patents on the terms and conditions set forth in this Agreement.

Where appropriate, Unwired Planet and Huawei shall hereinafter be referred to collectively as “**Parties**” and individually as “**Party**” or as Licensor, Licensee, Unwired Planet and Huawei as the context may require.

NOW THEREFORE in consideration of the promises and mutual covenants herein contained, the Parties hereby agree as follows:

1. **Definitions**

1.1 The following capitalized terms used in this Agreement shall have the respective meanings ascribed to them below in this Section unless otherwise expressly defined in this Agreement (such definitions shall be equally applicable to both the singular and plural forms of the defined terms). The words “hereof,” “herein” and “hereunder” and words of like import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, and Section references are to this Agreement unless otherwise specified. For the purpose of the construction and interpretation of this Agreement, the word “including” (and variations thereof such as “include” and “includes”) and the phrase “such as” will not be deemed to be terms of limitation, but rather will be deemed to be followed by the words “without limitation”.

1.2 “**Affiliate**” of a Party or Third Party means an Entity that at any time controls, is controlled by, or is under common control with such Party or Third Party. Such Entities shall only be deemed to be Affiliates hereunder for as long as such control exists. Control, in this context, (hereinafter referred as “**Control**”) exists where one entity owns more than 50% whether directly or indirectly of the Voting Power or, if the Entity in question does not have outstanding voting shares or securities, more than 50% of the equity interest in such Entity.

- 1.3 “**Combination**” means two (2) or more items comprising part of a combination of products, software and/or services being sold by Licensee or its Affiliates, as part of the same transaction or a series of linked transactions which is comprised of, at a minimum, an End User Device or a piece of Infrastructure Equipment.
- 1.4 “**Effective Date**” means 1 January 2013.
- 1.5 “**End User Device**” means a complete wireless communication device (including but not limited to mobile phones, PCs, laptops, tablets, hotspots, access points, routers, home gateways, data cards), which is ready for use (even if a battery, SIM card, or the like needs to be added for use) as Sold by Licensee or its Affiliates, and which can be directly used by an end user for 2G, 3G, and/or 4G cellular communications. End User Devices may be capable of operating according to more than one cellular standard mode (for example, 2G, 3G, 4G), but at least one of the modes must be 2G, 3G, or 4G. End-User Device does not mean, without limitation, subassemblies or parts of products such as but not limited to Intermediate Products, other than as sold already incorporated into an End User Device.
- 1.6 “**Entity**” means any individual, firm, company, corporation or other corporate body or legal entity (wherever and however incorporated or established), government, state, agency or agency of a state, local or municipal authority or government body or any joint venture, association or partnership (whether or not having a separate legal personality).
- 1.7 “**Have Made**” means the right to have a Third Party make Licensed Products for the use and benefit of the Licensee and its Affiliates provided all of the following conditions are fulfilled:
- (a) the Licensed Products are made under contract by a Third Party manufacturer for Licensee or its Affiliates and are supplied by such Third Party manufacturer solely to Licensee or its Affiliates (or directly to their customers on behalf of Licensee or its Affiliates) and to no other Third Party; and
 - (b) such Licensed Products are not re-Sold back to, or on behalf of, such Third Party manufacturers or its Affiliates.
- 1.8 “**Licensed Products**” means End User Devices and Infrastructure Equipment that are:
- (a) branded with a brand owned by or licensed to Licensee and/or its Affiliates, or co-branded with a brand owned by or licensed to Licensee and/or its Affiliates with that of a brand owned by or licensed to one or more Third Parties, or
 - (b) manufactured by, or for (under Have Made rights), Licensee and/or its Affiliates and sold to Third Parties (e.g., Vodafone, Carphone Warehouse, distributors and retailers) as Licensee’s, or Licensee’s Affiliates’ own products, or to Carriers for use and/or sale by Carrier under its own brand (“**Carrier**” being Vodafone, EE, O2, MVNOs (mobile virtual network operators), and the like that offer cellular service to customers).

Licensed Products shall not include Intermediate Products.

- 1.9 “**Infrastructure Equipment**” means radio access network elements (such as base stations (including pico base stations, and femto base stations, NodeB, and eNodeB), base station controllers and radio network controllers) including software necessary to operate and integral to any of the foregoing, regardless of whether the software is provided with the hardware or sold separately. This definition of Infrastructure Equipment does not include any End User Devices, intermediate products or subassemblies, such as but not limited to Intermediate Products, other than those that are incorporated in the complete and ready to use Infrastructure Equipment as Sold by the respective Party (and/or their Affiliates as applicable).
- 1.10 “**Infrastructure Revenue**” means all revenues derived from the Sales of licensed Infrastructure Equipment. For the avoidance of doubt, Infrastructure Revenue shall not include any revenues derived from maintenance or operation of the Infrastructure Equipment.
- 1.11 “**Intermediate Products**” means any item of equipment, including, for example, a sub-system, sub-assembly or component, in software, hardware and/or firmware form, which is sold, licensed, or supplied, or intended to be sold, licensed or supplied by Licensee or its Affiliates to a Third Party for use as an intermediate product in an end-use item, because it requires additional industrial, manufacturing or assembly processes before being used or sold as an end-use item, and is intended for incorporation into a larger item of end-use equipment or product. Examples of Intermediate Products include ASICs, chipsets, printed circuit boards, integrated circuits (ICs), processors, multi-core processors, multi-chip modules, multi-chip packages, embedded modules, core engines and M2M modules.
- 1.12 “**Patent**” shall mean patent claims (including claims of licensable patent applications, whether or not divisionals, continuations, continuations-in-part, reissues, renewals, and extensions therefore and any counterparts claiming priority therefrom), and like statutory rights other than design patents.
- 1.13 “**Licensed Patents**” shall mean all Patents that were at any time owned, controlled or licensable by Licensor, Unwired Planet LLC, UP Optis Holding LLC, UP IP Management, Inc. and/or their Subsidiaries during the Term as to which it is, or claimed, declared or otherwise asserted by the owner to be, not possible, on technical grounds taking into account normal technical practice and the state of the art generally available at the time of adoption or publication of the relevant Standards, to make, sell, offer for sale, lease or otherwise dispose of and import, repair, use or operate equipment or methods which comply with the relevant Standards, without infringing such Patents, as determined by the law of this Agreement and shall further include patents in litigation as listed in Annex B; provided, however, that (a) any Patents assigned by Unwired Planet LLC to Lenovo Group pursuant to the Patent Purchase Agreement dated 20 March 2014 and (b) Patents owned or controlled by Licensor that were owned or controlled by Samsung or its Affiliates prior to being owned or controlled by Licensor, as listed in Annex C, shall not be considered Licensed Patents under this Agreement. For

the purpose of this definition, “Subsidiary” means an Entity that at any time is Controlled by a Party.

1.14 “**Selling Price**” shall mean with respect to each Licensed Product Sold by Licensee or any of its Affiliates, one of the following, whichever is applicable:

- (i) When Sold to an Unrelated Buyer, the Selling Price will be a) the selling price charged by Licensee or its Affiliate for such Licensed Product, or b) if the Licensed Product has been Sold as part of a Sale including other type of products (i.e. not only Licensed Products) and the selling price in question is an amount lower than the Average Selling Price (as defined below), then such Average Selling Price shall be used for the Selling Price. For the purpose of this Agreement, “**Average Selling Price**” shall mean the average selling price, charged by Licensee and its Affiliates for equivalent or substantially equivalent Licensed Products that have not been Sold as part of a Sale including other type of Licensee’s products, during the same or most recent calendar quarter in which Licensee and its Affiliates Sold substantial quantities of such equivalent Licensed Products (or if substantial quantities of such equivalent Licensed Products have not been Sold during any such calendar quarter, substantial quantities of substantially equivalent Licensee Products that have not been Sold as part of a Sale including other type of Licensee’s products,) to Unrelated Buyers, or if substantial quantities of such equivalent or substantially equivalent Licensed Products have not been Sold to an Unrelated Buyer by Licensee and its Affiliates in accordance with above during any such calendar quarter, the costs to Licensee or its Affiliate, as the case may be, to produce (or otherwise acquire) such Licensed Products plus twenty percent (20%) of such costs; or
- (ii) With respect to Sales to a Related Buyer, the Selling Price for each such Licensed Product shall be a) the selling price charged by the final vendee Related Buyer of such Licensed Product to an Unrelated Buyer for such Licensed Product, or b) if the Licensed Product has been Sold as part of a Sale including other type of Licensee’s products (i.e. not only Licensed Products) and selling price in question is lower than the Average Selling Price, then such Average Selling Price shall be used instead, or, if no further Sale of such Licensee Product is made by the Related Buyer to an Unrelated Buyer, then the Selling Price for each such Licensed Product shall be the Average Selling Price for the Licensee Product.

1.15 “**Net Selling Price**” shall mean the Selling Price of each Licensed Product that is not Infrastructure Equipment, in the form in which it is Sold plus 4% to take account of the roaming in the UK of End User Devices purchased overseas; whether or not assembled and without excluding therefrom any components or subassemblies thereof. In determining the Selling Price, Value Added Tax shall be deducted in its entirety, and import tax, export tax and other sales taxes and/or customs duties levied or imposed directly upon the Sale of such Licensed Products shall be excluded, and a four percent (4%) of the actual invoiced amount shall be deducted representing usual trade discount, packing costs, insurance and transportation costs. For the avoidance of doubt, any price for after sales support, which is either specified on the invoice or the contract for such Huawei Products Sold, shall not be included in the Net Selling Price definition.

- 1.16 “**Related Buyer**” means an Entity that is not an Unrelated Buyer or an Affiliate.
- 1.17 “**Unrelated Buyer**” means a person or Entity that does not control Licensee or its Affiliates, is not controlled by Licensee or its Affiliates, and is not in common control with Licensee or its Affiliates; and the term “control” for the purposes of this definition means the direct or indirect ownership or control of more than a thirty percent (30%) equity interest or more than thirty percent (30%) of the Voting Power.
- 1.18 “**Sale**”, “**Sell**” or “**Sold**” or any similar variation of such term, means the delivery of Licensed Products in the Territory to a Third Party for compensation, if any, including lease, rent or similar transaction, or the putting into use of the Licensed Products by the Licensee and/or its Affiliates for any purpose other than routine testing, quality control or certification – with a Sale being deemed to have occurred upon invoicing or such putting into use in the Territory, whichever shall first occur. For the avoidance of doubt, any delivery of samples, repairs or replacements of End User Devices in the Territory, regardless of the basis for compensation, shall not be considered to be a “Sale”.
- 1.19 “**Standards**” means the agreed protocols by 3GPP, ETSI, ARIB, and/or other relevant telecommunications standards setting bodies that are applicable to the 2G, 3G and/or 4G telecommunications standards (as defined herein) including any updates, modifications and extensions of such protocols. For clarity, Standard shall not include 5G telecommunications standards.
- 1.20 “**Term**” means the term of this Agreement which shall be from and including the Effective Date through and ending on 31 December 2020, unless earlier terminated in accordance with the provisions herein.
- 1.21 “**Territory**” means the territory of the United Kingdom.
- 1.22 “**Third Party**” means any Entity that is not a Party or an Affiliate of a Party.
- 1.23 “**Value Added Tax**” means value added tax imposed in any member state of the European Union pursuant to Council Directive (EC) 2006/112 on the common system of value added tax, and national legislation implementing that Directive or any predecessor to it, or supplemental to that Directive, or any similar tax which may be substituted for or levied in addition to it or any value added, sales, turnover or similar tax imposed in any country that is not a member of the European Union.
- 1.24 “**Voting Power**” means the right to exercise voting power with respect to the election of directors or similar managing authority of an Entity (whether through direct or indirect beneficial ownership of shares or securities of such Entity or otherwise).
- 1.25 “**2G**” means Global System for Mobile Communications (GSM) and General Packet Radio System (GPRS) including Enhanced GPRS (E-GPRS or “EDGE”) standard specifications released or published by 3GPP and/or relevant local standardization bodies such as ETSI, TTA, TTC, ARIB, TTC and CCSA, irrespective of the transmission medium, frequency band or duplexing scheme, at

the time of the Effective Date as well as updates in respect of such standard specifications during the Term.

- 1.26 “**3G**” means UTRA (FDD mode (including but not limited to WCDMA) and TDD mode), including HSPA and UMTS core network standard specifications, however excluding TD-SCDMA standard specifications, released or published by 3GPP and/or relevant local standardization bodies such as ETSI, TTA, TTC, ARIB, TTC and CCSA, irrespective of the transmission medium, frequency band or duplexing scheme, at the time of the Effective Date, as well as any updates in respect of such standard specifications during the Term.
- 1.27 “**4G**” means E-UTRA (FDD mode and TDD mode (including but not limited to LTE, TD-LTE and LTE-SAE)), standard specifications released or published by 3GPP and/or relevant local standardization bodies such as but not limited to ETSI, TTA, TTC, ARIB, TTC and CCSA, irrespective of the transmission medium, frequency band or duplexing scheme, at the time of the Effective Date, including Release 8 and LTE-Advanced, as well as any updates in respect of such standard specifications during the Term.

2. Grant of License

- 2.1 Subject to payment of royalties in accordance with Section 4 of this Agreement, Licensor, on behalf of itself, its Affiliates, and their respective predecessors, successors and assigns, hereby grants (and shall procure that its Affiliates grant) Licensee a non-exclusive, non-transferable, royalty bearing license under the Licensed Patents in the Territory during the Term to:
- 2.1.1 possess, use, import, Sell and offer for Sale, lease, furnish, transfer or otherwise dispose or supply of any and all Licensed Products;
- 2.1.2 make, import, use and maintain machines, tools, materials and all other instrumentalities and to practice methods, processes and services for the development, manufacture, testing and repair of Licensed Products; and
- 2.1.3 make, manufacture and Have Made Licensed Products.
- 2.2 For the express avoidance of doubt, the rights provided at Section 2.1 above do not include any rights or licenses:
- 2.2.1 to sell or offer to sell Intermediate Products except for the purpose of repair and maintenance of any Licensed Product;
- 2.2.2 under any Patent other than the Licensed Patents;
- 2.2.3 to manufacture or sell products that are based on a Third Party design and are sold by Licensee or its Affiliates to or on behalf of such Third Party as the Third Party’s own product and not a Licensed Product. Save always that this Section 2.2.3 shall not apply to Carriers, whether those Licensed Products are made to the Carrier’s specifications or not, or whether those Licensed Products carry a Licensee brand or not.
- 2.3 Subject to the payment according to Section 4 of this Agreement, the licenses granted herein by Licensor shall include the right of Licensee to grant sublicenses under Section 2.1 herein, without further payment to Licensor for such right of

sublicense, to its Affiliates in the Territory during the Term. No such sublicense shall be broader in any respect than the license held at that time by Licensee. The right to grant sublicenses to an Affiliate shall apply only during the time period when such Affiliate meets the requirements of an Affiliate. Licensee acknowledges that any sublicensed Affiliate will be bound in all respects to all of the obligations contained in this Agreement and Licensee shall be responsible for compliance by its sublicensed Affiliates with such obligations. Licensee shall be primarily responsible for the compensations set forth in Section 4 below for the activities of any sublicensed Affiliate. Any sublicense granted in accordance with this Section 2.3 shall immediately terminate if an Affiliate ceases to be an Affiliate of Licensee and otherwise upon termination of this Agreement

- 2.4 For the avoidance of doubt, the license granted by Licensor and its Affiliates to Licensee herein shall convey to any direct or indirect customer of Licensee without additional compensation to Licensor with respect to any Licensed Product Sold by Licensee to such customer (whether or not as part of a Combination) the benefit under the license herein.
- 2.5 Licensee acknowledges that the rights and licences granted hereunder only pertain to the Territory. No royalty shall be paid under this agreement for Licensed Products made and sold or otherwise disposed of anywhere outside of Territory provided that Licensee can provide reasonable written evidence showing that those products were placed in or directed for use in a market outside the Territory. If Licensee or its Affiliates sells or otherwise disposes of Licensed Products to a third party outside the Territory and if Licensee, having made reasonable enquiries, becomes aware that those products are subsequently exported into the Territory (or if Licensor provides reasonable evidence that those products are subsequently exported into the Territory), such products are subject to the royalty rates payable by Licensee inside the Territory. In addition, if Licensee, having made reasonable enquiries, becomes aware that there is a regular volume (being approximately the same amount each year) of export of those products into the Territory (or if Licensor provides reasonable evidence of such regular volume of export), the relevant royalty base shall be adjusted for the remainder of the Term of the Agreement to take such export into account.
- 2.6 All rights not expressly granted herein by Licensor are hereby expressly reserved. Nothing in this Agreement shall be construed as conveying whether explicitly, by principles of implied license, or otherwise, any license rights not explicitly granted herein. Furthermore, nothing in this Agreement shall be construed as conveying whether explicitly, by principles of implied license, or otherwise, any rights to any Third Party user or purchaser of the Licensed Products, under any Licensed Patent covering any combination of the Licensed Products with any other product (not licensed hereunder) where the patent claim applies specifically to the combination and not to the Licensed Product alone, except to the extent that (i) such claim would have been infringed (either directly, by inducement, or by contributory infringement) by Licensed Products or its process in the absence of such combination, that (ii) such claim would have been infringed by such combination where a Licensed Product is an essential element of such infringement, or that (iii) such claim would be subject to patent exhaustion based on sales of Licensed Products.

3. Release

- 3.1 Subject to Licensee's payment of it and its Affiliates unlicensed past activities (activities between the Effective Date and the Date) in the form of royalties as set out at Section 4, but only in the Territory, Licensor, on behalf of itself, its Affiliates, and its and their respective predecessors, successors and assigns, (the "Licensor Releasing Parties"), forever releases and discharges, but only in the Territory, Licensee and its Affiliates, their predecessors, successors and assigns, their respective directors, officers, managers, their contract manufacturers, distributors, resellers, and their direct and indirect customers (the "Licensee Released Parties"), from any and all claims, counterclaims, causes of action (regardless of whether they are now known or unknown, suspected or unsuspected) that the Licensor Releasing Parties may have on account of the Licensee Released Parties' acts of infringement or alleged infringement by reason of having done any of the acts specified in Sections 2.1.1-2.1.3 inclusive until (but not including) the Date, provided always that such act would be licensed under this Agreement had it occurred subsequent to the Date.

4. Payment

- 4.1 In consideration of the license and release granted herein, Licensee shall pay to Licensor the following amounts (referred to in this Section 4 as either "royalty sum", "royalties" or royalty") in respect of Licensee's and its Affiliates' activities in the Territory during the Term:
- 4.2 For End User Devices:
- 4.2.1 0.128% of the Net Selling Price for each End User Device compliant with 2G only;
- 4.2.2 0.064% of the Net Selling Price for each End User Device compliant with at least 3G but not 4G;
- 4.2.3 0.124% of the Net Selling Price for each End User Device compliant with at least 4G.
- 4.3 For Infrastructure Equipment:
- 4.3.1 0.128% of Infrastructure Revenue for Infrastructure Equipment compliant with 2G only;
- 4.3.2 0.032% of Infrastructure Revenue for Infrastructure Equipment compliant with at least 3G but not 4G;
- 4.3.3 0.144% of Infrastructure Revenue for Infrastructure Equipment compliant with at least 4G

The Parties acknowledge and agree that to the extent the Infrastructure Equipment is only compliant with one Standard individually (for example 4G), this clause shall not be interpreted as an admission that Licensee shall pay for the other Standards (for example 2G and/or 3G) and no separate payment shall be due for the other Standard(s); nor shall this clause be interpreted as Licensee's admission that it has Infrastructure Equipment operating in more than one Standard (i.e. a combination of 2G and 3G).

- 4.4 In the event that Licensee purchases components that carry a license (“**Pass Through License**”) under any of the Licensed Patents (“**Prior Licensed Patents**”) and such components are used by Licensee in Licensed Products in a manner licensed under such Pass Through License, then, for the term of such Pass Through License, Licensee shall have no license under this Agreement to such Prior Licensed Patents and will have no royalty obligation, under this Agreement, with regard to such Prior Licensed Patents to the extent licensed under such Pass Through License. For the avoidance of doubt, if a patent applies to both 3G and 4G Standards and is licensed under the Pass Through License for 3G but not 4G, then the patent would be a Prior License Patent for 3G and remain a Licensed Patent for 4G. In the event of a dispute, Section 9 herein (the dispute resolution procedures) shall apply.
- 4.5 Licensee shall, on behalf of itself and its Affiliates, pay to Licensor the royalties as specified in Sections 4.2 and 4.3 above no later than forty-five (45) days from and including the day the report is due according to Section 4.7 below. Licensor shall issue written invoices, corresponding to the reported amounts and applicable report period, no later than thirty (30) days from and including the payment due date provided in this Section 4.4. Any termination of this Agreement shall not preclude the right of Licensor to be paid all royalties due and accruing during the Term.
- 4.6 Royalty payments shall be made to the applicable designated bank account of Licensor in the currency as specified below, or as may be otherwise notified by Licensor to Licensee:
- Bank Name: Allied Irish Bank
Address: 3rd Floor, 1 Adelaide Road
City: Dublin 2
Country: Ireland
Account Name: Unwired Planet International Limited
Account Number: (IBAN): IE41 AIBK93006726505816
Swift Code: AIBKIE2D
Currency: GP Pounds
- 4.7 Licensee, on behalf of itself and its Affiliates, shall submit a written report signed by a person duly authorized by Huawei UK to Licensor within forty-five (45) days of the Date (with day 1 being the Date) using the template report as in **Annex A** for each type of Licensed Product Sold from 1 January 2013 (the Effective Date) and through the most recent complete calendar quarter ending prior to the Date. Thereafter Licensee, on behalf of itself and its Affiliates, shall for the Term continue to submit such written reports (in the format as previously specified in Annex A) for each subsequent calendar quarter within forty-five (45) days of the end of any such calendar quarter, or on termination of this Agreement, within forty-five (45) days of such termination date. Licensee warrants that each such report shall be complete and accurate and shall be signed by a duly authorized person and provided to Licensor in accordance with the aforementioned timeframes.
- 4.8 All sums due under this Agreement shall be exclusive of any Value Added Tax, or any other additional sales tax or duty which shall be payable on the rendering by Licensor of an appropriate invoice to Licensee. Any and all other taxes, levies, charges, duties or fees shall be paid by the Party required to do so by applicable

law. Specifically, Licensor will be responsible for any taxes to which it is subject as a result of the receipt of royalties made by Licensee to Licensor under this Agreement. Notwithstanding the foregoing in this Section 4.7, should Licensee elect to make any payments due under this Agreement from an Entity other than Huawei UK and if any additional tax (e.g., withholding tax) is imposed as a result of that election, then Licensee shall be responsible for that tax and will increase, or gross up, the amount of the payment such that Licensor receives the same amount they would have received if the payment was made by Huawei UK.

5. Record and Audit

- 5.1 Licensee shall, and shall procure that its Affiliates shall, keep accurate and complete books and records which relate to the Licensed Products in sufficient detail (consistent with generally accepted accounting practices for the industry) to enable the royalties payable hereunder to be determined. Such books and records shall include, at a minimum, all records and accounts as may, under internationally recognised accounting practices, contain information bearing upon the amount of royalties payable in accordance with this Agreement, and be kept by Licensee for a period of three (3) years after the calendar quarter to which the books and records apply (but not more than 2 years after any termination of this Agreement).
- 5.2 Licensor shall have the right at any time during the Term and for 2 years thereafter, upon the provision of at least thirty (30) days' notice from Licensor, to nominate, at its own expense, a Third Party independent auditor, acceptable to Licensee (such acceptance not to be unreasonably withheld and where the said auditor is either PWC, DLT, KPMG and EY shall be deemed automatically given with the exception that Huawei may remove one auditor from this list based upon conflict of interest concerns) to examine and audit any and all books and records to the extent relevant to determination of the royalties paid in any specified period at the premises of Huawei UK or Huawei China (at the election of UP). The audit shall be conducted during Huawei UK's normal business hours and without undue interference with Licensee's normal business. Any such audit shall take place no more than once per calendar year, and any particular calendar quarter shall be audited only once.
- 5.3 The auditor shall conduct the audit on consecutive days and shall complete the audit within a reasonable period, and Huawei UK shall assemble in a single location all books and records necessary for such audit to be carried out and make such personnel available as may be reasonably necessary to answer the questions of the auditor.
- 5.4 The Third Party auditor shall sign a non-disclosure agreement on reasonable terms to be discussed and agreed between said Third Party auditor and Licensee in advance of the commencement of any audit. Licensee shall have the right to refuse further access to confidential information in case it is demonstrable that the auditor is in breach of its confidentiality obligation.
- 5.5 Any independent auditor is authorised to report to Licensor, only whether Licensee is or is not (and if not, in what manner and the amount of underpayment) in compliance with its obligations in this Agreement and shall not

disclose to Licensor or any Third Party any other information obtained during the audit. When providing the final audit report to Licensor, the auditor shall also furnish Licensee with a copy of such report.

- 5.6 Licensor shall use the information resulting from such audits exclusively for the implementation of, and ensuring compliance with, this Agreement and shall treat such information confidentially with the same degree of care as is used with respect to Licensor's own equally important confidential information to avoid disclosure to any Third Party.
- 5.7 If an overpayment is identified during such audit, Licensor will credit the amount overpaid to Huawei UK against the next payment due under this Agreement. To the extent that no further payment is due under this Agreement, Licensor shall within sixty (60) days after the later of (i) such determination or (ii) receipt of an invoice from Huawei UK, pay Huawei UK the amount by which royalties were determined to be overpaid. In the event that the audit identifies any underpayment, then the Parties shall meet and confer within thirty (30) days of such audit determination to discuss such underpayment, during which Huawei UK will provide such data and evidence it considers reasonably necessary to support its position, subject to Licensor agreeing to keep any such material confidential. Without prejudice to any other remedies available to the Parties (including dispute resolution in accordance with Section 9 of this Agreement), after such thirty (30) days, Huawei UK shall within thirty (30) days after the later of (i) such determination or (ii) receipt of an invoice from Licensor, pay Licensor the shortfall plus the interest specified at Section 5.8 on the amounts which such royalties were underpaid. In the event that any underpayment for the audit period exceeds five percent (5%) of the royalty amount actually due, Licensee shall bear the actual cost of the audit and Licensor shall share with Licensee copies of invoices of the auditor as evidence thereof.
- 5.8 Licensee shall be liable for interest on any overdue payment required to be made pursuant to this Section 5. Such interest shall commence on the date such payment becomes due until such payment is made, at an annual rate of five percent (5%). If at any time such interest rate exceeds the maximum legal amount in the United Kingdom, the interest rate shall be reduced to such maximum legal rate.
- 5.9 Licensor's rights of audit as set out in this Section 5 shall survive for two (2) years after the termination of the Agreement provided, however, that there shall be no right to audit for a time period for which an audit has been completed.

6. Term and Termination

- 6.1 This Agreement shall come into force upon the Date and shall remain in effect during the Term.
- 6.2 A Party may terminate this Agreement by written notice if the other Party (or an Affiliate) at any time commits a material breach of any of its significant obligations under this Agreement (which shall expressly include any non-payment) and, in the event of a breach capable of remedy, fails to cure, or procure the cure of, such breach within thirty (30) days after receipt of a notice specifying the nature of such breach and requiring remedy of the same.

- 6.3 A Party shall provide written notice to the other Party immediately upon the occurrence of any of the following events: (i) its insolvency, bankruptcy or liquidation or filing of any application therefor, or other commitment of an affirmative act of insolvency; (ii) attachment, execution or seizure of substantially all of the assets of the notifying Party or filing of any application therefor; (iii) assignment or transfer of that portion of the business to which this Agreement pertains to a trustee for the benefit of creditors; (iv) termination of its business or dissolution; or (v) in the case of Licensee, within ninety (90) days after the closing of a merger, acquisition, consolidation, transfer or otherwise wherein more than fifty percent (50%) of the ownership or Control of Licensee is acquired by an Entity then engaged in the manufacture or sale of End User Devices. The other Party shall have the right to terminate this Agreement with immediate effect by giving written notice of termination at any time upon such occurrence.
- 6.4 All licenses and rights granted hereunder shall be terminated, provided always that any rights and releases which occur before termination shall remain unaffected SAVE ALWAYS that the foregoing shall not be deemed to limit either Party's right to specifically enforce this Agreement, or to recover damages resulting from any breach of this Agreement by the other Party. The Parties agree that the failure to identify in this Agreement the breach of any particular obligation as a "material breach" does not preclude any Party from contending in the future that such breach is "material."

7. Assignment

- 7.1 From the Date:
- 7.1.1 nothing contained herein shall prohibit Licensor from selling or assigning any Licensed Patent, provided that Licensor shall procure from its buyer or assignee that any such sale or assignment of any such Licensed Patent shall still be subject to the license, covenant and release granted to Licensee herein;
- 7.1.2 if Licensor or any of its Affiliates transfers its business in whole or in part through divestiture, merger or otherwise to a Third Party, Licensor shall procure, prior to the divestiture, that the license, covenant and release granted to Licensee under this Agreement shall continue (as if no such divestiture occurs) for the Term; and
- 7.1.3 if any of Licensor's Affiliates ceases to be its Affiliate and owns or controls any Licensed Patents, Licensor shall procure, prior to the Affiliate ceasing to be an Affiliate that such licenses, covenant and release (if any) continue for the Term.
- 7.2 Notwithstanding Sections 7.1.1-7.1.3 above, in the event that any successor-in-interests or assigns of Licensor ("Assignees") make any claim or assertion in a legal proceeding or otherwise against Licensee or its Affiliates or any of their past or present customers, distributors, retailers or end users, Licensor shall

immediately investigate the facts and provide information to Licensee upon the request of Licensee, shall use its commercially reasonable best efforts to ensure compliance with Sections 7.1.1-7.1.3 by Assignees and shall indemnify Licensee from any such claims and assertions, including directly intervening in any such claim or legal proceedings. In addition, Licensee shall allow this Agreement to be introduced in evidence in any litigation (with confidentiality safeguards) brought by an Assignee of Licensed Patents, in any case where this Agreement would be a defence to infringement of such assigned Licensed Patents.

- 7.3 Save as otherwise set out herein neither Party may grant or assign any rights or delegate any obligations under this Agreement to any Third Party (save to an Affiliate) without the prior written consent of the other, which shall not be unreasonably withheld, and any attempted assignment without such consent shall be null and void. In the event Licensor consents to Licensee assigning any rights or delegating any obligations under this Agreement to a Third Party acquiring the Licensee business in whole or in part through divestiture, merger or otherwise, its shall be expressly understood that the rights assigned and/or obligations delegated shall not extend beyond those possessed by Licensee at the time of the acquisition and shall expressly exclude the acquiring Third Party's business at the time of acquisition.

8. Representations

- 8.1 Licensor hereby represents and warrants that (i) it has received all necessary corporate approvals and that the signatory below is duly authorized to execute this Agreement on behalf of Licensor; (ii) Licensor and/or its Affiliates own and have the right to license the Licensed Patents licensed to Licensee hereunder; and (iii) it has not made and shall not make any agreements, assignments or encumbrances inconsistent with the provisions of this Agreement.
- 8.2 Licensee hereby represents and warrants that (i) it has received all necessary corporate approvals and that the signatory below is duly authorized to execute this Agreement on behalf of Licensee; and (ii) it has not made and shall not make any outstanding agreements, assignments or encumbrances inconsistent with the provisions of this Agreement.
- 8.3 Nothing contained in this Agreement shall be construed as:
- 8.3.1 a warranty or representation either expressed or implied by either Party as to the validity, enforceability or scope of any Licensed Patent herein;
 - 8.3.2 an agreement to bring or prosecute actions or suits against third parties for infringement; or
 - 8.3.3 conferring any right to use, in advertising, publicity or otherwise, any name, trade name, trademark, or any contraction, abbreviation or simulation thereof.

and except as expressly set forth herein, neither Party makes any representations nor extends any warranties of any kind, either express or implied.

9 Applicable Law and Dispute Resolution

- 9.1 This Agreement shall be governed by and construed in accordance with the substantive law of England & Wales without regard to conflicts of law rules.
- 9.2 In the event of any and all disputes arising under, out of or in connection with this Agreement (including any Annex and any amendment made thereto), including any question regarding its existence, validity or termination, representatives of both Parties shall enter into good faith negotiations with the aim of resolving the dispute. An attempt to arrive at a settlement shall be deemed to have failed as soon as one Party so notifies the other Party in writing. Such notification shall not be sent earlier than thirty (30) days after the dispute arises. Provided always that nothing in the foregoing will prevent a Party from commencing proceedings for the purpose of seeking interim or pre-emptive relief on an emergency basis.
- 9.3 All disputes, differences or questions arising out of or relating to the interpretation or performance of this Agreement, between the Parties shall be finally settled before the High Court of England and Wales.

10 Notices

Any and all notices, requests, demands, consents, agreements and other communications required or permitted to be given or made under this Agreement shall be given in writing and in the English language and shall be (i) delivered personally; or (ii) sent by facsimile; or (iii) mailed by registered mail; or (v) delivered by courier to the following addresses of the Parties or to such other address as the Party concerned may subsequently notify in writing to the other Party in accordance with this Section 10.

Licensor

Name: Thomas Miller
Title/Department: Head of Licensing
Address: 7160 Dallas Parkway, Suite
250, Plano, Texas, 75024, USA
Fax: +1-972-312-9217
E-mail: tmiller@panoptis.com

Licensee

Name: Xiaowu (Emil) Zhang
Title/Department: Deputy Director of IP
Litigation Dept.
Address: Huawei Base, Bantian,
Longgang, Shenzhen, Guangdong, China,
518129
Fax: +86-755-28785911
E-mail: zhangxiaowu@huawei.com

Unless otherwise specifically provided for in this Agreement, such communications shall take effect upon receipt by the addressee, provided such communications shall be deemed to have been duly given or made and shall be deemed to have been received by a Party: (i) if delivered personally, at delivery; (ii) if mailed by registered mail, unless actually received earlier, on the expiration of seven (7) days after the date of mailing; (iii) on the day of the receipt of sender's facsimile confirmation of the transmission in case of facsimile; or (iv) if delivered by courier, on the date of delivery.

11 Non-waiver

Neither this Agreement nor any provision hereof may be waived without the prior written consent of the Party against whom such waiver is asserted. No delay or omission by either Party to exercise or assert any right or power shall impair any such right or power to be construed to be a waiver thereof. Consent by either Party to, or waiver of, a breach by the other Party shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.

12 Force Majeure

Neither Party shall be in default or liable for any loss or damage resulting from delays in performance or from failure to perform or comply with terms of this Agreement due to any unforeseeable, unavoidable and unpreventable causes, which causes include but are not limited to Acts of God; riots and insurrections; natural catastrophe; social unrest; war; fire; strikes and other labour difficulties (whether or not the Party is in a position to concede to such demands); embargoes; judicial action; lack of or inability to obtain export permits or approvals; and acts of civil or military authorities.

13 Miscellaneous

- 13.1 This Agreement, and its Annexes, constitutes the entire and only agreement between the Parties with respect to the subject matter hereof and merges and supersedes all prior and contemporaneous oral or written discussions, negotiations, understandings, representations, warranties and agreements of the Parties.
- 13.2 Any amendment or modification of any of the provisions of this Agreement or any right, power or remedy hereunder shall not be effective unless made in writing and signed by authorized representatives of both Parties.
- 13.3 This Agreement is considered to be jointly drafted and neither Party shall benefit from who actually drafted the Agreement.
- 13.4 Notwithstanding any termination or expiration of this Agreement, any Section set forth in this Agreement remaining to be performed in whole or in part, capable of taking effect following termination, or which by its nature is contemplated to survive the termination or expiration of this Agreement shall survive and continue in full force and effect despite termination or expiration.
- 13.5 If any of the provisions of this Agreement is or becomes invalid, illegal or unenforceable, the validity, legality, and enforceability of any other provision of this Agreement shall in no way be affected or impaired thereby, and such invalid or unenforceable term, Section or provision shall be deemed deleted from this Agreement, and this Agreement shall continue in full force and effect. Should such case arise, the Parties shall negotiate in good faith a replacement but legally valid, term, Section or provision that best meets the intent of the Parties.
- 13.6 Save as otherwise set out herein, nothing in this Agreement precludes Licensee from challenging or denying the validity of any Licensed Patent by filing or participating in an opposition, an invalidity action or any declaratory judgment action challenging or denying the validity of such claim. However, any finding or judgment by a Court that any of the Licenced Patents are not valid or essential

shall not affect the royalty rates to be paid to the Licensor hereunder and the Licensee shall not be entitled to any reduction in those said royalty rates as a result of any such finding or judgment.

- 13.7 The relationship between Licensor and Licensee is that of independent contractors. Licensor and Licensee are not joint ventures, partners, principal and agent, master and servant, employer or employee, and have no other relationship other than independent contracting parties. Each Party is executing this Agreement solely on behalf of itself and its Affiliates and is not acting on behalf of, and does not represent, any other company or entity or any government agency. Nothing in this Agreement shall be construed as creating a partnership, joint venture, or other formal business organization of any kind.
- 13.8 Each Party agrees, upon reasonable request by the other Party, to consent to the registration of this Agreement to the extent required by the laws of England and Wales.
- 13.9 This Agreement may be executed in counterparts in the English language and each such counterpart shall be deemed an original thereof. Facsimile signatures or signatures delivered by e-mail in .pdf or similar format will be deemed original signatures for purposes of this Agreement.
- 13.10 The headings and sub-headings of the Sections are inserted for convenience or reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement.

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IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be signed by their duly authorized representatives and executed on the Date.

Huawei Technologies Co., Ltd.

Unwired Planet International Limited

Name

Name

Title

Title

Signature

Signature

Huawei Technologies (UK) Co., Ltd.

Name

Title

Signature

ANNEX A – Reporting template

Huawei Technologies Co., Ltd. and Huawei Technologies (UK) Co., Ltd (“Licensee”) is providing the below information pursuant to the terms of the patent license agreement between Unwired Planet International Limited and Huawei Technologies Co., Ltd. and Huawei Technologies (UK) Co., Ltd. (“Agreement”). This report relates to the period [[INSERT] – [INSERT]][calendar year ending [INSERT]]

Specify End User Terminal	Standards Complied to (2G, 3G, 4G etc.)	Total units Sold	Total Selling Price (with no deductions) in currency sold at	Net Selling Price (with permitted deductions specified in this Agreement) in currency sold at		Royalties (including all exchange rate conversion calculations)
Total in applicable currency						

Specify Infrastructure Equipment	Standards Complied to (2G, 3G, 4G etc.)	Total units Sold	Total Selling Price (with no deductions) in currency sold at	Net Selling Price (with permitted deductions specified in this Agreement) in currency sold at	Infrastructure Revenue in currency invoiced	Royalties (including all exchange rate conversion calculations)
Total in applicable currency						

ANNEX B – Patents in Litigation

- EP(UK) 2,229,744
- EP(UK) 2,119,287
- EP(UK) 2,485,514
- EP(UK) 1,105,991
- EP(UK) 1,230,818

ANNEX C – List of Samsung Patents

Application Number	Country	Patent No.
09808387.6	European Patent	
PCT/KR2009/004598	Patent Cooperation Treaty	
08000316.3	European Patent	
08000317.1	European Patent	1944876
PCT/KR2008/000131	Patent Cooperation Treaty	
PCT/KR2008/000132	Patent Cooperation Treaty	
11830924.4	European Patent	
PCT/KR2011/007410	Patent Cooperation Treaty	
07117145.8	European Patent	
PCT/KR2007/000262	Patent Cooperation Treaty	
08013689.8	European Patent	2026521
15151887.5	European Patent	
08013689.8	United Kingdom	2026521
PCT/KR2008/004442	Patent Cooperation Treaty	
06732907.8	European Patent	
PCT/KR2006/001718	Patent Cooperation Treaty	
9930478.4	United Kingdom	2347588
06006533.1	European Patent	
02257546.8	European Patent	
98119620.7	European Patent	