

**YAMAHA CORPORATION****Intellectual Property Division****10-1, Nakazawa-cho, Hamamatsu-shi, Shizuoka-ken 430, Japan**

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[ Facsimile-sending TWENTY-EIGHT (28) ]

Ms. Mary Watanabe  
Senior Associate  
Office of Technology Licensing  
Stanford University

1997 July 9

Re: Hybrid Agreement with Staccato

Dear Ms. Watanabe:

Thank you for your three faxes of July 7, 1997 attaching a marked version and an unmarked new version of a draft Hybrid Agreement with Staccato.

We described our suggesting changes in the unmarked version which is enclosed herewith. The below is the reasons for main points of the suggesting changes.

- 1) Section 2.5: Licensed Intellectual Property includes Yamaha's intellectual property, which is not an object of the exclusive license to Staccato. Regarding "Licensed Patents", there seems to be no definition. Incidentally, if Attachment I is a list of the existing licensees, the phrase "existing licenses listed in Attachment I" might be a little strange, though.
- 2) Section 2.11: There will be a possibility that Sondius-XG and XG (or XG-lite) logo in the Sondius-XG XG (or XG-lite) Mark have to be placed at a distance due to the appearance nature of Licensed Product. In such a case, Sondius-XG and the XG logo are considered to be independent trademarks respectively, and the XG logo is licensed under Yamaha's trademark right. We will add XG and XG-lite logos in Attachment B and would therefore like to leave "Attachment B" in Section 2.11.
- 3) Section 8.2: We intended that "data/parameters" is to mean data or parameters such as wave data or wave parameters which we may provide to LICENSEE.

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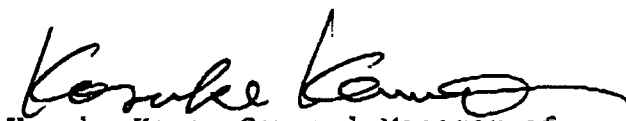
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4) Section 14.2: Generally, it seems to be burdensome to identify Stanford's patents or patent applications with respect to each model of Licensed Products unless Stanford has a special reason for this. Such identification is O.K. with us if Staccato accepts it. (However, regarding new licensees and the remaining existing licensees, it does not seem to be appropriate to impose the obligations on them.)

Other points than the above seem to be self-explanatory. Please contact us if you have any questions on the above.

We look forward to the execution of the Hybrid Agreement with Staccato soon.

Best regards,

  
Kosuke Kamo, General Manager of  
Intellectual Property Division

YI/yi

Encl: suggesting changes to a draft Hybrid Agreement with Staccato

cc: Ms. Katharine Ku, Stanford  
Mr. Jon Sandelin, Stanford

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**SONDIUS-XG TRADEMARK AND TECHNOLOGY LICENSE AGREEMENT**

An Agreement by and between:

**THE BOARD OF TRUSTEES OF THE LELAND STANFORD JUNIOR UNIVERSITY**, a body having corporate powers under the laws of the State of California and **YAMAHA CORPORATION**, a Japanese corporation, having a principal place of business at 10-1, Nakazawa-cho, Hamamatsu-shi, Shizuoka-ken 430, Japan ("LICENSORS")

and **Staccato Systems, Inc. ("LICENSEE")**, having a principal place of business at 286 Carmelita Drive, Mountain View, CA 94040.

Facsimile telephone number of LICENSORS for transmission of quarterly royalty reports: 415-725-7295

The bank and account number for wire transfer of royalty payments:

Wells Fargo Bank  
420 Montgomery Street, San Francisco CA  
Account Name: Stanford University, Attention OTL  
Account Number: 4001-047349  
ABA Number: 121000248  
Federal Tax ID# 94-1156365-N

**SIGNATURES:**

On behalf of LICENSORS

On behalf of LICENSEE

By:.....

By:.....

Name:.....

Name:.....

Title:.....

Title:.....

Date:.....

Date:.....

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## 1. BACKGROUND

- 1.1 THE BOARD OF TRUSTEES OF THE LELAND STANFORD JUNIOR UNIVERSITY ("STANFORD") and YAMAHA CORPORATION ("YAMAHA") each independently own or have assignments to intellectual property, including patents, copyrights, and trademarks, related to sound synthesis and tone generation.
- 1.2 STANFORD has registered the name Sondius as a trademark to be applied to products using STANFORD's intellectual property in sound synthesis and tone generation. STANFORD wishes that all products using STANFORD's intellectual property and meeting certain quality standards use the Sondius® trademark. A listing of such intellectual property is attached hereto as Attachment A - "A Listing of Stanford Sondius Program Intellectual Property".
- 1.3 YAMAHA has developed certain products using sound synthesis and tone generation under the brand name of "Virtual Acoustics" or "VA". YAMAHA has also created certain extensions to the General MIDI format that are referred to as "XG". YAMAHA wishes that all products using YAMAHA's intellectual property related to sound synthesis and tone generation to conform to the XG format. A listing of such intellectual property is attached hereto as Attachment B - "A Listing of Yamaha VA/XG Program Intellectual Property".
- 1.4 LICENSORS also have substantial Know-How as defined in Section 2.7 of this Agreement.
- 1.5 LICENSORS wish to encourage and promote the development and marketing of products using STANFORD and YAMAHA intellectual property, complying with the Sondius-XG format, and bearing the Sondius-XG trademarks, all under the Sondius-XG Licensing Program.
- 1.6 LICENSEE is in the business of manufacturing audio products employing sound synthesis and/or tone generation and wishes to obtain rights under LICENSORS's Licensed Intellectual Property to manufacture, use and sell products incorporating such intellectual property.

## AGREEMENT

LICENSORS and LICENSEE agree as follows:

## 2. DEFINITIONS



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For the purpose of this Agreement:

2.1 "Components" means Licensed Products that are integrated circuits, circuit boards or other parts or components of end-user products and that are integral parts of end-user products, but that are sold separately as components. Components do include sound-cards that are used to increase the tone generation capability of computer systems.

2.2 "Confidential Information" means all information and know-how including documents, materials and components transmitted by either party to the other during the term of this Agreement that the disclosing party identifies as confidential or that by the nature of the information or the circumstances surrounding its disclosure ought, in good faith, to be treated as confidential. Confidential Information shall not include information which (a) was known to the other party prior to its disclosure, (b) is lawfully obtained from a third party under no obligation of confidentiality, or (c) is or becomes publicly available other than as a result of any act or failure to act by the receiving party.

2.3 "Copyrighted Products" means any products created using SynthBuilder that are owned or assigned to STANFORD, such as listed on Attachment A.

2.4 "Effective Date" means the date the last party signs this Agreement.  
STANFORDS intellectual property, as defined in Attachment A,

2.5 "Exclusive" means that STANFORD has not granted rights to the Licensed Source Codes and will not, after the Effective Date of this Agreement, grant rights to ~~Licensed Intellectual Property~~ in the Exclusive Field of Use or to the Licensed Source Codes. LICENSEE acknowledges Licensed Patents may be added to existing licenses listed in Attachment I.

2.6 "Exclusive Field of Use" means sound synthesis processing and tone generation products not included in the Non-Exclusive Field of Use.  
Intellectual Property (space)

2.7 "Know-How" means any and all Proprietary Information, and may include other information known and provided to LICENSEE by LICENSORS.

2.8 "Licensed Intellectual Property" means the Stanford Sondius Program Intellectual Property as listed on Attachment A, the Yamaha VA/XG Program Intellectual Property as more fully defined in Section 2.33 and as listed on Attachment B, Synthbuilder, Know-How, and Sondius-XG Trademarks as listed on Attachment H, plus any patents, patent applications and utility models resulting from any continuations, continuations-in part, divisions, or reissue of the listed patents, patent

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applications or utility models, plus any corresponding foreign patents, patent applications and utility models to the listed patents, patent applications or utility models, plus any new patents, patent applications and utility models that are added to Attachment A or Attachment B by LICENSORS as part of the Sondius-XG Licensing Program.

2.9 "Licensed Product" means any product or part:

(a) the manufacture, use, or sale of which:

(i) is covered by the Licensed Intellectual Property. For issued patents and utility models, all claims of issued patents and utility models in the Licensed Intellectual Property will be presumed valid unless and until any such claim has been held to be invalid by a final judgment of a court of competent jurisdiction, and no appeal can be or is taken; or

(ii) is covered by any claim of a pending patent or utility model application in the Licensed Intellectual Property; or

(iii) incorporates or was developed using any of the STANFORD or YAMAHA owned Know-How; or

(iv) incorporates or was developed using any of the Licensed Source Codes; and

(b) which:

(i) implements sound synthesis or tone generation which complies with the then current Sondius-XG Specifications (hereinafter referred to as "Licensed Product A"); or

(ii) includes sound synthesis or tone generation which complies with the then current Sondius-XG Specifications, and complies with the then current XG Specifications (hereinafter referred to as "Licensed Product B"); or

(iii) includes sound synthesis or tone generation which complies with the then current Sondius-XG Specifications, and complies with the then current XG-lite Specifications (hereinafter referred to as "Licensed Product C").

Attachment D is a table provided to facilitate the understanding of the relationship between Licensed Products and applicable specifications and marks.

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- 2.10 "Licensed Source Codes" means STANFORD owned source codes for programs known as SynthServer, SynthScript and SynthBuilder and provided to LICENSEE under Prior License Agreement. A duplicate disk of the Licensed Source Codes will be stored in the safe files of STANFORD.
- 2.11 "Licensed Trademarks" means the trademarks listed in Attachment B and Attachment H. ✓
- 2.12 "LICENSEE" means the corporation identified on the title page of this Agreement and any Subsidiary thereof.
- 2.13 "Licensee Information Manual" means the LICENSORS-developed manual that will be provided to LICENSEE and may be revised by LICENSORS at their sole discretion, and includes trademark usage guidelines, the Sondius-XG, XG, and XG-lite Specifications, the Sondius Technology Information, and any additional requirements relating to the Licensed Trademarks and Sondius-XG, XG, and XG-lite design guidelines that LICENSORS may in its sole discretion subsequently provide.
- 2.14 "LICENSEE's Trade Names and Trademarks" means any trade names or trademarks used and owned or licensed by LICENSEE.
- 2.15 "LICENSORS" means STANFORD and YAMAHA.
- 2.16 "Net Sales" means the gross revenue derived by LICENSEE from Licensed Products, whether or not assembled (and without excluding therefrom any components or subassemblies thereof, whatever their origin and whether or not patent impacted), less the following items but only insofar as they actually pertain to the disposition of such Licensed Products by LICENSEE, are included in such gross revenue, and are separately billed:
- (a) Import, export, excise, consumption, and sales taxes, and custom duties;
  - (b) Costs of insurance, packing, and transportation from the place of manufacture to the customer's premises or point of installation; ~~and~~ (delete) ✓
  - (c) Credit for returns, allowances, or trades; and
  - (d) Costs of installation at the place of use.
- Licensed Products are considered sold when invoiced, or if not invoiced, delivered to the customer by LICENSEE.
- 2.17 "Non-exclusive Licensed Field of Use" means: (1) traditional electronic musical instruments and tone modules; (2) dedicated karaoke systems; and (3) dedicated console game players including any type of product for the above three fields, such as sound cards, semiconductor chips

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(including central processing units and digital signal processors) and software. Non-exclusive Field of Use does not include software products for general purpose computers or software incorporated in sound cards that can be installed or inserted into general purpose computers.

2.18 "OEM Customer" means any customer of LICENSEE who resells, uses or leases, or intends to resell, use or lease, a Licensed Product under a trade name or trademark other than LICENSEE's Trade Names and Trademarks.

2.19 "Prior License Agreement" means the <sup>Technology</sup> Sondius License Agreement between STANFORD and LICENSEE, with effective date March 11, 1997. ✓

2.20 "Proprietary Information" means all information and know-how including documents, materials, and components and Copyrighted Products transmitted by LICENSORS to LICENSEE during the term of this Agreement that the LICENSORS identify as proprietary, or that by the nature of the information or circumstances surrounding its disclosure ought, in good faith, to be treated as proprietary. Proprietary Information is material that is of value to LICENSORS, and is to be treated as protectable intellectual property.

2.21 "Software Products" means Licensed Products that are software that is sold, leased, sublicensed, or otherwise disposed of to OEM customers or end users.

2.22 "Sondius Technology Information" means the Information for Sondius Technology products as described in the Licensee Information Manual, and as may be revised by LICENSORS at their sole discretion.

2.23 "Sondius-XG Mark" means the mark provided in Attachment E.

2.24 "Sondius-XG Specifications" means the technical specifications for the Sondius-XG format created by STANFORD and YAMAHA.

2.25 "Sondius-XG Trademarks" means the trademarks jointly owned by LICENSORS and described in Attachment H.

2.26 "Sondius-XG XG Mark" means the mark provided in Attachment F.

2.27 "Sondius-XG XG-lite Mark" means the mark provided in Attachment G.

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- 2.28 "Subsidiary" means any corporation or other business at least 50% of whose voting stock or interest is directly or indirectly owned by the LICENSEE.
- 2.29 "SynthBuilder" means the computer software program SynthBuilder as described in Attachment C, and any improvements, upgrades or other modifications provided to LICENSEE by STANFORD, whether or not described in Attachment C.
- 2.30 "Systems" means end-user products. For determination of earned royalty payments, Systems means all Licensed Products that are not Components or Software Products.
- 2.31 "XG Specifications" means the technical specifications for the XG format created by YAMAHA.
- 2.32 "XG-lite Specifications" means the technical specifications for the XG-lite format created by YAMAHA.
- 2.33 "Yamaha VA/XG Program Intellectual Property" means the intellectual property as listed on Attachment B which comprises Virtual Acoustic intellectual property listed on Attachment B subset B-1, XG intellectual property listed on Attachment B subset B-2, and Wave Table (WT) intellectual property listed on Attachment B subset B-3. Any use of only those patents listed on Attachment B subset B-2 and Attachment B subset B-3 other than as expressly permitted is excluded from this Agreement.

### 3. NOVATION

STANFORD and LICENSEE agree that the Prior License Agreement is hereby terminated and superseded in its entirety by this License Agreement. Both parties agree that no further rights or obligations survive from such superseded License Agreement.

### 4. LICENSED TRADEMARKS

#### OWNERSHIP

- 4.1 LICENSEE acknowledges that LICENSORS are the exclusive owner of the Licensed Trademarks.
- 4.2 LICENSEE acknowledges and agrees that the Licensed Trademarks and all good will and other rights associated therewith will inure to the benefit of LICENSORS.

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- 4.3 LICENSEE will not register the Licensed Trademarks, or any mark, symbol or phrase that is confusingly similar to the Licensed Trademarks, in any country, region, or under any arrangement or treaty.

#### **REGISTRATION AND MAINTENANCE**

- 4.4 LICENSEE will comply with the respective country's trademark laws and practices where LICENSEE sells Licensed Products, including the notice of registration and the recording of LICENSEE as a registered or licensed user of the Licensed Trademarks. LICENSEE will pay for the recording of LICENSEE as a registered user, and all other expenses associated with the use of the Licensed Trademarks in any country where the LICENSEE sells a Licensed Product.

#### **USE AND DISPLAY OF THE SONDIUS-XG TRADEMARK**

- 4.5 LICENSEE will:

- (a) use and promote the use of:
  - (i) the Sondius-XG Mark on Licensed Product A;
  - (ii) the Sondius-XG XG Mark on Licensed Product B;
  - (iii) the Sondius-XG XG-lite Mark on Licensed Product C;

which will be released as a new model after the conclusion of this Agreement; and

- (b) use the Licensed Trademarks only as prescribed in Attachments E, F, and G and the Licensee Information Manual. Any use of the Licensed Trademarks that is not in conformity with this Agreement, Attachments E, F, and G, and the Licensee Information Manual will be a material breach of this Agreement

- 4.6 If LICENSORS become aware that LICENSEE's use of the Licensed Trademarks does not conform to the specifications of Attachments E, F, and G and the Licensee Information Manual or is otherwise in violation of this Agreement, LICENSORS will inform LICENSEE in writing stating the breach in material obligation, and LICENSEE will have 60 days from receipt of notice to make the necessary changes in the use of the Licensed Trademarks. If LICENSEE does not make the changes required within the notice period, LICENSORS may terminate this Agreement pursuant to Section 16.3 without any further notice.

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- 4.7 LICENSEE will not use the Licensed Trademarks on or in connection with products that do not meet SONDIUS-XG quality standards as described in this Agreement and the Licensee Information Manual, as may be subsequently modified by LICENSORS at their sole discretion.
- 4.8 LICENSEE agrees that if LICENSEE enters into a contractual agreement to develop any technical or other component of a Licensed Product with a third party, for example for music data and/or parameters and wave data and/or parameters, such third party will be required to use on its developed work product:
- (a) the Sondius-XG Mark if Licensed Product A comprises the work product;
  - (b) the Sondius-XG XG Mark if Licensed Product B comprises the work product; and
  - (c) the Sondius-XG XG-lite Mark if Licensed Product C comprises the work product.

## **5. SYNTHBUILDER, COPYRIGHTED PRODUCTS AND LICENSED SOURCE CODES**

### **FURNISHING**

- 5.1 LICENSORS will promptly after the Effective Date furnish to LICENSEE a Licensee Information Manual. STANFORD has provided Copyrighted Products to LICENSEE under Prior License Agreement.

### **USE**

- 5.2 Except as expressly stated within this Agreement, LICENSEE will not reproduce or disclose the Copyrighted Products or Licensed Source Codes. During the period of this Agreement STANFORD may obtain from LICENSEE any enhancements, in the form of object code, made by LICENSEE. STANFORD agrees not to further distribute such enhancements without the prior written consent of LICENSEE.
- 5.3 Any source code disclosed by STANFORD to LICENSEE under this Agreement will be considered Licensed Source Codes and will not be used or disclosed by LICENSEE except as otherwise permitted by this Agreement. LICENSEE will use its best efforts to protect the confidentiality of such source code, including: (i) strictly restricting access to the source code to those employees, customers and consultants who have entered into appropriate confidentiality agreements and have a need to have access to the source code to perform their functions, and (ii) restricting access from anyone other than the individuals to whom access is to be granted pursuant to the preceding clause (i).

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## 6. KNOW HOW

### FURNISHING

6.1 LICENSORS will promptly after the Effective Date furnish to LICENSEE copies of all documents, materials, information and components of LICENSORS that comprise the Know-How.

### USE

6.2 Know-How will be used solely for the purpose of manufacturing, selling, evaluating, and assisting in the development of Licensed Products under this Agreement.

## 7. QUALITY STANDARDS/ LICENSORS'S RIGHT TO INSPECT

LICENSEE agrees to adhere to the compliance requirements as described in the Licensee Information Manual and to adhere to the then current Sondius-XG, XG, and XG-lite Specifications. The quality standards described in such Manual will apply to components and to aspects of Licensed Products not directly relating to the components but that influence or reflect upon the quality or performance of the Licensed Products as perceived by the end user. LICENSEE may, at its choice, provide to STANFORD samples prior to the introduction of a Licensed Product for review and certification. If LICENSEE does not provide such samples prior to the product introduction, LICENSEE must provide to STANFORD such samples within 30 days following the offering of such Licensed Product for sale, and thereafter upon request.

## 8. NOTICES

### SONDIUS-XG PROGRAM PATENTS

8.1 To the fullest extent practical, LICENSEE will mark every manual or other written material associated with a Licensed Product as follows: "Licensed under patents of Stanford University and Yamaha Corporation as listed on the following web site: [www.sondius-xg.com](http://www.sondius-xg.com)"

### SONDIUS-XG PROGRAM COPYRIGHTED WORKS

8.2 LICENSEE will include, at minimum, the following copyright notice: data/parameters

"This product contains one or more programs and/or ~~data-parameters~~ data/parameters protected under international and U.S. copyright laws as unpublished works. They are confidential and proprietary to the Board of Trustees of the Leland Stanford Junior University or to Yamaha Corporation ("Owners"). Their reproduction or disclosure, in whole or in part, or the production of derivative works therefrom without the express



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written permission of Owners is prohibited. Copyright 1986-CURRENT YEAR by Owners. All rights reserved."

on all:

- (a) Licensed Products, either on an exposed surface, or in a manner that the first use of a Licensed Product by a purchaser requires the breaking of a wrapping or seal prominently displaying the copyright notice, whichever is most appropriate;
- (b) Media that contains software portions of the Licensed Products;
- (c) Printed copies made of the Copyrighted Products; and
- (d) On all manuals or other written material relating to Licensed Products.

#### **NON-COMPLIANT PRODUCTS**

8.3 If LICENSEE is notified in writing that a Licensed Product does not comply with the requirements described in the Licensee Information Manual, LICENSEE will, within 90 days of the written notice, suspend the lease, sale or other disposal of the respective Licensed Products. Also, if LICENSEE is notified by LICENSORS that a Licensed Product does not comply fully with the Sondius-XG, XG or XG-lite Specifications, LICENSEE will, within 90 days, provide evidence of compliance satisfactory to LICENSORS or LICENSEE will suspend the lease, sale or other disposal of the respective Licensed Products.

#### **9. GRANT**

- 9.1 LICENSORS hereby grant and LICENSEE hereby accepts, a non-exclusive, worldwide license to use the Licensed Trademarks, as described in this Agreement, on certified Licensed Products and to authorize OEM Customers to utilize the Licensed Trademarks, as described in this Agreement, on certified Licensed Products developed by LICENSEE that are marketed by OEM Customers.
- 9.2 LICENSORS hereby grant, and LICENSEE hereby accepts, an Exclusive license to the Licensed Source Codes, an Exclusive license in the Exclusive Field of Use and a non-exclusive license in the Non-exclusive Field of Use to:
  - (a) Develop, make, have made, use, lease, and sell Licensed Products;

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- (b) Use the Licensed Intellectual Property and Licensed Source Codes to develop Licensed Products distributed by LICENSEE or its OEM Customers;
- (c) Reproduce and create derivative works of Copyrighted Products for the purpose of manufacture, use, lease, and sale of Licensed Products, including replacement parts solely for the repair of Licensed Products manufactured under this Agreement, and royalty-bearing upgrades to Licensed Products;
- (d) Use SynthBuilder to develop derivative Copyrighted Products that will be used in Licensed Products; and
- (e) Develop, make, have made, use, lease, and sell SynthBuilder, SynthScript, SynthServer or derivative works.

**9.3 LICENSEE will not:**

- (a) Prepare, make, or have made derivative works based on the Copyrighted Products or use SynthBuilder, for purposes other than development, manufacture, use, lease, sale and other disposition of Licensed Products;
- (b) Grant sublicenses to any of the Licensed Intellectual Property, except when used in conjunction with sale of Software Products as software is normally not "sold" but rather use is granted under a license;
- (c) Use any trademark (other than the Licensed Trademarks), service mark, trade name, or symbol of or associated with LICENSORS. LICENSEE will not identify LICENSORS in any promotional advertising or other promotional materials to be disseminated to the public or any portion thereof without first receiving LICENSORS written consent; or

**9.4 LICENSEE understands and agrees that the license to the Yamaha VA/XG Program Intellectual Property, as listed on Attachment B herein, extends only to Licensed Products that comply with the Sondius-XG, XG or XG-lite Specifications and that YAMAHA reserves the right to enforce its intellectual property rights against any products or any parts of products of LICENSEE that do not comply with the Sondius-XG, XG or XG-lite Specifications and that infringe the Yamaha VA/XG Program Intellectual Property. LICENSEE further understands and agrees that, in addition to the foregoing, the YAMAHA wavetable patents listed in Attachment B subset B-3 may be used only in connection with the Licensed Products.**

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- 9.5 LICENSEE acknowledges and understands that STANFORD has already granted licenses that include the Exclusive Field of Use.
- 9.6 LICENSORS acknowledges that YAMAHA has not been granted sublicensing rights to STANFORD's intellectual property, as defined in Attachment A, in the Exclusive Field of Use.
- 9.7 For the Exclusive Field of Use and Exclusive license to Licensed Source Code, this Agreement will have a term of 8 years from the Effective Date; thereafter this Agreement will become a non-exclusive license in all fields of use.
- 9.8 If LICENSEE has difficulty meeting market demands in the Exclusive Field of Use, LICENSEE and LICENSORS will negotiate to modify LICENSEE's Exclusive Field of Use.

## 10. DILIGENCE

As an inducement to LICENSORS to enter into this Agreement, LICENSEE agrees to use all reasonable efforts and diligence to proceed with the development, manufacture, and sale or lease of Licensed Product and to diligently develop markets for the Licensed Product. Unless LICENSEE has a Licensed Product available for commercial sale or license prior to September 1, 1998, LICENSORS may terminate this Agreement. LICENSORS may also terminate this Agreement if LICENSEE, or an OEM customer, has not sold a Licensed Product for any period of one (1) year subsequent to the first sale of Licensed Product.

## 11. ROYALTIES

- 11.1 In addition to payment already made under the Prior License Agreement, LICENSEE will pay to STANFORD the remainder of the non-refundable, non-creditable license issue royalty as follows:
- \$45,000 on August 1, 1997
  - \$75,000 on January 1, 1998
- 11.2 As a non-refundable, non-creditable license issue royalty for the Exclusive rights to Licensed Source Codes, LICENSEE agrees to:
- (a) Issue to STANFORD 500,000 shares of LICENSEE's Series A Preferred stock. STANFORD shares shall include anti-dilution protection that ensures that such STANFORD shares remain equal to 2.5 percent of LICENSEE's equity on a fully diluted basis. Such anti-dilution protection shall expire immediately

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following the closing of an underwritten public offering of the LICENSEE's common stock.

- (b) For purposes of this Section 11.2, "LICENSEE's equity on a fully diluted basis" shall mean LICENSEE's total equity assuming conversion of all preferred stock into common stock, exercise of all options, and conversion or exercise of all other securities convertible into or exercisable for common stock of LICENSEE, in each case for the maximum number of shares of common stock issuable in exchange for such preferred stock, option or other security.
- (c) The rights of any preferred stock issued to STANFORD shall be equal to or greater than the rights of any preferred stock issued in any equity financing, and shall in any event include without limitation tag along and drag along rights, a liquidation preference, right to convert into common stock (initial conversion ratio of one-for-one, with weighted average anti-dilution protection), voting rights (one vote for every share of common stock) and standard negative covenants.
- (d) In the event of any proposed merger or sale of all or substantially all of LICENSEE's assets (each an "Acquisition") to a third party prior to the issuance to STANFORD of the STANFORD shares, LICENSEE shall notify STANFORD at least 15 business days prior to the consummation of such Acquisition and, upon STANFORD's election, shall issue the STANFORD shares to STANFORD immediately prior to the consummation of such Acquisition.

- 11.3 LICENSEE will pay to STANFORD, within two (2) weeks of the first day of each new year beginning January 1, 1999, and continuing thereafter for the life of this Agreement, a yearly maintenance royalty of \$50,000. Said yearly royalty payments are nonrefundable, but they are 100% creditable against earned royalties otherwise payable to LICENSORS in the same year.
- 11.4 Until the expiration of the last to expire of any issued patent or utility model of the Licensed Intellectual Property, LICENSEE will pay to STANFORD earned royalties as follows:
- (i) For Components — for each Component (except for Software Products, see Section 9.3 [iii] below) the greater of 4% of Net Sales or One U.S. Dollar (\$1); and
  - (ii) For Systems — for each System, the greater of 2% of Net Sales or Three U.S. Dollars (\$3); and
  - (iii) For Software Products— 5% of Net Sales.

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- 11.5 LICENSEE will pay to STANFORD earned royalty payments on Net Sales for each copy of SynthBuilder sold at a rate of 50% before June 1, 1998; 40% for Net Sales after June 1, 1998 and before June 1, 1999; 30% for Net Sales after June 1, 1999 and before June 1 2000; 20% for Net Sales after June 1, 2000 and before June 1, 2001; 10% thereafter.
- 11.6 Following the expiration of the last to expire of any issued patent or utility model of the Licensed Intellectual Property, LICENSEE will pay to STANFORD, , earned royalties of 1% of Net Sales for use of Know-How and Licensed Trademarks.
- 11.7 Royalty payments to LICENSORS will be in U. S. Dollars and the royalty on sales in currencies other than U.S. Dollars will be calculated using the appropriate foreign exchange rate for the currency quoted by the Bank of America (San Francisco) foreign exchange desk, on the close of business on the last banking day of each calendar quarter.

## **12. OEM CUSTOMER, SUBSIDIARY, AGENTS, DISTRIBUTORS, DEALERS, AND OTHER THIRD PARTIES**

If LICENSEE sells or leases Licensed Products to an OEM Customer, Subsidiary, agent, distributor, dealer, or other third party that is not an end-user and if such party does not hold a license from LICENSORS to the Licensed Intellectual Property, then LICENSEE will ensure such OEM Customer, Subsidiary, agent, distributor, dealer, or other third party fully understands and complies with the requirements of this Agreement and requirements as specified in the Licensee Information Manual.

## **13. SUSPECTED INFRINGEMENT AND ENFORCEMENT**

- 13.1 LICENSEE will promptly inform LICENSORS of any suspected infringement of any Licensed Patent by a third party. During the Exclusive period of this Agreement, in the Exclusive Field of Use, LICENSORS and LICENSEE each will have the right to institute an action for infringement of the Licensed Patents against such third party in accordance with the following:
- (a) If LICENSORS and LICENSEE agree to institute suit jointly, the suit will be brought in both their names, the out-of-pocket costs thereof will be borne equally, and any recovery or settlement will be shared equally. LICENSEE and LICENSORS will agree to the manner in which they will exercise control over such action. LICENSORS may, if it so desires, also be represented

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by separate counsel of its own selection, the fees for which counsel will be paid by LICENSORS;

(b) In the absence of agreement to institute a suit jointly and if LICENSORS notifies LICENSEE that it has decided not to join in a suit, as provided in (a) above, LICENSEE may request permission to institute suit and, at its option, join LICENSORS as a plaintiff. Upon receipt of written permission from LICENSORS, LICENSEE may institute suit and LICENSEE will bear the entire cost of such litigation and will be entitled to retain the entire amount of any recovery or settlement, provided, however, that any recovery in excess of litigation costs will be deemed to be Net Sales, and LICENSEE will pay LICENSORS royalties thereon at the rates specified herein.

- 13.2 Should LICENSEE commence a suit under the provisions of Section 13.1 and thereafter elect to abandon the same, it will give timely notice to LICENSORS who may, if it so desires, continue prosecution of such suit, provided, however, that the sharing of expenses and any recovery in such suit will be as agreed upon between LICENSORS and LICENSEE.
- 13.3 If action is taken, or likely to be taken, under <sup>Section</sup> Paragraph 13.1, LICENSEE may request permission from LICENSORS to sublicense Licensed Intellectual Property and Licensed Source Codes in the Exclusive Field of Use. LICENSEE will pay LICENSORS 50% of all license issue and annual royalties; in addition Licensed Product sales by sublicensees shall be considered to be sales by LICENSEE under this agreement and LICENSEE shall pay earned royalties as specified in Sections 11.4, 11.5 and 11.6.
- 13.4 LICENSEE will immediately inform LICENSORS of all potential, suspected, or actual infringements of the Licensed Intellectual Property that may come to its attention. In the Non-exclusive Licensed Field of Use, LICENSORS may, at their sole discretion, bring action with respect to infringement. LICENSEE will cooperate with LICENSORS by furnishing without charge, except for incidental expenses, evidence, documents and testimony as may be required.

#### **14. REPORTS AND PAYMENTS**

- 14.1 LICENSEE will deliver to STANFORD quarterly reports within 45 days after each calendar quarter ending with the last day of March, June, September and December. Earned royalty payments will be due for each quarter at the same time as each quarterly report and paid by wire transfer in United States funds to STANFORD's bank as identified on the cover

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page of this Agreement or any other bank that STANFORD may otherwise designate.

- 14.2 LICENSEE's first report will be for the calendar quarter that LICENSEE sells its first Licensed Product. The first quarterly report and all subsequent reports will contain, at a minimum, a listing of each product name and model number, number of units sold, aggregate Net Sales of Licensed Products leased, sold, or otherwise disposed of for each product name/model number during the respective calendar quarter, and STANFORD patents or patent applications used in each Licensed Product.
- 14.3 LICENSEE will deliver a final report and payment of royalties to STANFORD within 45 days after termination of this Agreement. Such a final report will include a report of all royalties due with respect to Licensed Products not previously reported to LICENSORS.
- 14.4 LICENSEE will pay interest on any overdue royalties or fees, including the Initial Payment and the yearly maintenance royalties, to LICENSORS from the due date to the date payment is made at a rate of 10% per annum, or the maximum interest rate allowable by law, whichever is less.
- 14.5 Except as provided for in the definition of Net Sales, LICENSEE will pay any and all U. S. and non-U.S. taxes, local fees, duties, or charges of any kind and will not deduct them from the royalties due to LICENSORS.
- 14.6 LICENSEE will keep complete books and records of all manufactures, sales, leases, uses, returns, or other disposals by LICENSEE of Licensed Products for a period of three years for the date of manufacture or sale, whichever is longer.
- 14.7 LICENSEE will, when requested by LICENSORS, advise LICENSORS within 30 days of all countries where Licensed Products are made, sold, leased, used or otherwise disposed of.

## **15. AUDIT**

- 15.1 LICENSORS will have the right, upon 30 days notice, through a professionally registered accountant and at LICENSORS expense, to audit, examine and make abstracts of books and records that may be necessary to verify the accuracy of the books and record and of the reports and statements provided under this Agreement. Such inspection and examination will be made during business hours upon reasonable notice and not more often than once per calendar year.

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- 15.2 Except as necessary to enforce the provisions of this Agreement, LICENSORS will not divulge to third parties any confidential information obtained from the books and records of LICENSEE as a result of the inspection unless the information can be documented as:
- (a) Known to LICENSORS before its acquisition by LICENSORS as a result of the inspection;
  - (b) Subsequently known to LICENSORS from sources other than directly or indirectly from LICENSEE; or
  - (c) Public knowledge other than by breach of this Agreement by LICENSORS.
- 15.3 If the results of an audit reveal an underreporting of royalties due LICENSORS of 5% or more, then the audit expense will be paid by LICENSEE.
- 15.4 LICENSEE will cooperate with LICENSORS in conducting the audit of this Section 15 and pay for its own associated expenses.

## 16. TERM AND TERMINATION

- 16.1 Patents and utility models of the Licensed Intellectual Property will be deemed as deleted upon expiration of their respective patent and utility model term.
- 16.2 LICENSEE may terminate this Agreement by giving LICENSORS notice in writing at least 30 days in advance of the effective date of termination selected by LICENSEE.
- 16.3 If LICENSEE breaches any of its material obligations under this Agreement, this Agreement will terminate upon LICENSORS giving 60 days advance notice in writing stating the breach in material obligation. If LICENSEE, within the 60 day period, remedies the failure or default, then the notice will not become effective and this Agreement will continue in full force and effect.
- 16.4 Upon termination of this Agreement, all rights granted to LICENSEE under this Agreement will revert in LICENSORS and LICENSEE will return all Know-How and other materials provided to LICENSEE by LICENSORS. Surviving termination are:



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- (a) LICENSEE's obligation to deliver a final royalty report and supplements thereto as required by Section 14.
- (b) LICENSORS's right to receive and LICENSEE's obligation to pay royalties under this Agreement, including interest on overdue royalties, accrued or accruable for payment at the time of termination and interest on overdue royalties accruing subsequent to termination;
- (c) LICENSEE's obligation to maintain books and records and LICENSORS right to examine, audit, and copy as provided in Section 14.6;
- (d) Any cause of action or claim of LICENSEE or LICENSORS accrued or to accrue because of any breach or default by the other party;
- (e) LICENSEE's obligations to cooperate with LICENSORS with respect to the enforcement of the Licensed Intellectual Property, with respect to matters arising before termination;
- (f) The provisions of this Section 16.4; and
- (g) LICENSEE's obligations of confidentiality under Section 19.2.

## **17. WARRANTIES, INDEMNITY, DISCLAIMERS, AND LIABILITIES**

**17.1 LICENSORS have provided LICENSEE the rights and privileges contained in this Agreement in good faith. However, LICENSEE acknowledges that nothing contained in this Agreement will be construed as:**

- (a) A warranty or representation by LICENSORS as to the validity or scope of any patents or utility models of the Licensed Intellectual Property;
- (b) A warranty or representation that anything made, used, sold, or otherwise disposed of under a license granted by this Agreement is or will be free from infringement of patents, copyrights, trademarks, service marks, or other proprietary rights of third parties;
- (c) An agreement to defend LICENSEE against actions or suits of any nature brought by any third parties or an obligation to bring or prosecute actions or suits against third parties for any reason;
- (d) Granting by implication, estoppel, or otherwise any licenses or rights under other patents or other rights of LICENSORS than the Licensed Intellectual Property, regardless of whether such other patents or other

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rights are dominant or subordinate to any of the Licensed Intellectual Property;

(e) An obligation to furnish any technology or technological information other than Know-How except as provided for elsewhere in this Agreement; or

(f) An obligation to enforce against any alleged infringement.

- 17.2 LICENSORS MAKES NO REPRESENTATIONS AND EXTENDS NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED. THERE ARE NO EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR THAT THE USE OF THE LICENSED PRODUCTS, SYNTHBUILDER, OR ANY OTHER PART OF THE TECHNOLOGY UNDER THE SONDIUS-XG LICENSING PROGRAM WILL NOT INFRINGE ANY PATENT, COPYRIGHT, TRADEMARK, OR OTHER RIGHTS, OR ANY OTHER EXPRESS OR IMPLIED WARRANTIES. LICENSORS WILL NOT BE LIABLE FOR ANY LIABILITY OR DAMAGES WITH RESPECT TO ANY CLAIM BY LICENSEE OR ANY THIRD PARTY ON ACCOUNT OF OR ARISING FROM THIS LICENSE, OR THE USE OF THE TECHNOLOGY UNDER THE SONDIUS-XG LICENSING PROGRAM, OR ANY ASSOCIATED SERVICE OR SUPPORT.
- 17.3 LICENSEE will indemnify, hold harmless, and defend LICENSORS and their respective trustees, officers, employees, students, or agents against any suit or proceeding brought against LICENSORS insofar as the suit or proceeding is based on a claim for death, illness, personal injury, property damage, and improper business practices arising out of the manufacture, use, sale, or other disposition by LICENSEE, Subsidiaries or their customers of Licensed Products, Licensed Intellectual Property, or any part of the technology under the Sondius-XG Licensing Program.
- 17.4 LICENSORS will not be liable for any indirect, special, consequential, or other damages whatsoever, whether grounded in tort (including negligence), strict liability, contract, or otherwise. LICENSORS will not have any responsibilities or liabilities whatsoever with respect to Licensed Products.
- 17.5 LICENSEE will at all times comply, through insurance or self-insurance, with all statutory workers' compensation and employers' liability requirements covering any and all employees with respect to activities performed under this Agreement.

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### **18. ASSIGNMENT**

LICENSEE may only assign this Agreement upon the sale, merger, or other transfer of LICENSEE's entire business, or the sale, merger, or other transfer of that part of LICENSEE's business to which the license granted hereby relates, and then only if the assignee meets the specifications of a North American Company, as defined in Attachment J, and has agreed in writing to be bound by the terms and provisions of this Agreement. Upon the assignment of this Agreement to such assignee the term "LICENSEE" as used herein shall include such assignee.

### **19. MISCELLANEOUS PROVISIONS**

- 19.1 **NOTICES:** All notices under this Agreement will be deemed to have been fully given when done in writing, addressed to the addresses on the cover page of this Agreement, and with acknowledged receipt by the receiving party to the other. Either party may change its address upon written notice to the other party.
- 19.2 **LICENSORS and LICENSEES** agree that the recipient of Confidential Information will use the information only for the purposes contemplated by this Agreement and will not disclose the Confidential Information to a third party unless otherwise agreed to in writing, and that any Confidential Information disclosed by one party to the other will be maintained in confidence and will be treated with at least the same degree of care as the recipient of the information uses to maintain the secrecy of its own proprietary, confidential and trade secret information.
- 19.3 **APPLICABLE LAW:** This Agreement will be governed by the laws of the State of California applicable to agreements negotiated, executed, and performed wholly within California.
- 19.4 **DISPUTE RESOLUTION:**  
Any controversy arising under or related to this Agreement, and any disputed claim by either party against the other under this Agreement, excluding any dispute relating to patent validity or infringement, that can not be resolved by good faith negotiation between the parties, shall be settled by arbitration in accordance with the Arbitration Rules of the American Arbitration Association. The arbitration will be conducted in Palo Alto, California. Upon request by either party, arbitration will be by a third party arbitrator mutually agreed upon in writing by LICENSEE and LICENSORS within 30 days of the arbitration request.
- 19.5 **COMPLETE AGREEMENT:** This Agreement contains the entire agreement and understanding between LICENSORS and LICENSEE and merges all contemporaneous oral or written communication between them. Neither LICENSORS nor LICENSEE are bound by any oral or

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written communication that commenced before the Effective date of this Agreement. All subsequent agreement between LICENSORS and LICENSEE must be in writing and duly executed by both LICENSORS and LICENSEE.

- 19.6 **SEVERABILITY:** Should any portion of this Agreement be declared null and void by operation of law, or otherwise, the remainder of this Agreement will remain in full force and effect.
- 19.7 If there are any inconsistencies or contradictions among the body of this Agreement, the Attachments, or the Licensee Information Manual, the body of this Agreement will govern.
- 19.8 In the event that a Subsidiary of a LICENSEE is sold or otherwise ceases to be a Subsidiary of the LICENSEE, all rights of the Subsidiary under this Agreement will immediately terminate.
- 19.9 **EXECUTION: IN WITNESS WHEREOF,** LICENSORS and LICENSEE have executed this Agreement in duplicate originals by their duly authorized officers or representatives signatures on the cover page of this Agreement.