

TALARI NETWORKS, INC.
INTELLECTUAL PROPERTY INFRINGEMENT INDEMNIFICATION

All capitalized terms not defined in this document shall have the meaning ascribed to them in the NACR Sales Agreement.

Infringement Indemnity. VENDOR, at VENDOR's expense, will defend, indemnify, and hold harmless NACR and NACR's owners, officers, directors, and employees (individually and collectively, an "Indemnified Party") from any third party claim, action, suit, or proceeding against an Indemnified Party (a "Claim") to the extent that such Claim is based upon an allegation that a Product infringes any right of any third party. VENDOR will indemnify an Indemnified Party for any judgments, settlements, reasonable costs, and reasonable attorneys' fees resulting from a Claim. VENDOR's obligations under this Section are conditioned upon the following: (i) upon becoming aware of the Claim, an Indemnified Party provides to VENDOR prompt written notice of the Claim; (ii) an Indemnified Party gives to VENDOR sole authority and control of the defense and/or settlement of the Claim; provided, however, that VENDOR shall not enter into any settlement that binds NACR and/or End User (as the case may be) in any way without the consent of NACR and/or End User (as the case may be), which consent shall not be unreasonably withheld, delayed, and/or conditioned; and (iii) an Indemnified Party, at VENDOR's expense, provides all reasonable information and assistance requested by VENDOR to handle the defense and/or settlement of the Claim. An Indemnified Party, at its expense, may hire legal counsel of its choice to participate in an advisory capacity in discussions, negotiations, or proceedings of the Claim.

Remedial Measures. If a Product becomes the subject of a Claim, or if VENDOR reasonably believes that use of such Product may become the subject of a Claim, then VENDOR shall do, at its own expense and option, at least one (1) of the following: (i) procure for NACR and/or End User (as the case may be) the right to continue use of the Product at no additional cost to NACR and/or End User (as the case may be) for such right; (ii) replace the Product with a non-infringing product while maintaining the Product's essential specifications; (iii) modify the Product so that it becomes non-infringing while maintaining the Product's essential specifications; or (iv) refund to NACR a pro-rated portion of the applicable purchase price and license fees paid to VENDOR for the Product (and, where applicable, the fees paid to VENDOR for Services), based upon a linear monthly depreciation over a five (5)-year useful life, in which case NACR will both cease all use of the Product and return the Product to VENDOR. VENDOR agrees to consider the preceding remedial measures in the order that they are presented above and will select (iv) only with consent of NACR and/or End User (as the case may be).

Exceptions. VENDOR will have no defense or indemnity obligation for any Claim to the extent that the Claim is based upon (i) a Product that has been modified by someone other than VENDOR (or a subcontractor of VENDOR), if such modification results in the allegation of the infringement; (ii) a Product that has been modified in accordance with

either NACR-provided or End User-provided specifications or instructions, if such modification results in the allegation of the infringement; (iii) use or combination of a Product with Third Party Products, if such use or combination results in the allegation of the infringement; or (iv) End User products or Third Party Products. The term “Third Party Products” means any products manufactured by or provided by a party other than VENDOR, and may include, without limitation, products ordered by NACR from third parties pursuant to VENDOR’s recommendations. However, Third Party Products do not include components of Products that both (a) are not recognizable as standalone items; and (b) are not identified as separate items on VENDOR’s price list, quotes, orders, or documentation.