

TRADEMARK ASSIGNMENT

Electronic Version v1.1
 Stylesheet Version v1.1

SUBMISSION TYPE:		NEW ASSIGNMENT	
NATURE OF CONVEYANCE:		ASSIGNS THE ENTIRE INTEREST AND THE GOODWILL	
CONVEYING PARTY DATA			
Name		Formerly	Execution Date
Entity Type			
QLogic Corporation			08/25/2010
CORPORATION: DELAWARE			
RECEIVING PARTY DATA			
Name:		VMware Inc.	
Street Address:		3401 Hillview Avenue	
City:		Palo Alto	
State/Country:		CALIFORNIA	
Postal Code:		94304	
Entity Type:		CORPORATION: DELAWARE	
PROPERTY NUMBERS Total: 1			
Property Type		Number	Word Mark
Serial Number:		85093168	VFABRIC
CORRESPONDENCE DATA			
Fax Number:		3125548015	
<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent via US Mail.</i>			
Phone:		312-554-8000	
Email:		kjl@pattishall.com	
Correspondent Name:		Pattishall, McAuliffe Newbury et. al.	
Address Line 1:		311 S. Wacker Drive	
Address Line 2:		Suite 5000	
Address Line 4:		Chicago, ILLINOIS 60606	
ATTORNEY DOCKET NUMBER:		02217-VFABRIC	
NAME OF SUBMITTER:		Jeffrey A. Wakolbinger	
Signature:		/Jeffrey A. Wakolbinger/	

CH \$40.00 85093168

Date:

12/10/2012

Total Attachments: 7

source=VMware Trademark Assignment License Agmt#page1.tif

source=VMware Trademark Assignment License Agmt#page2.tif

source=VMware Trademark Assignment License Agmt#page3.tif

source=VMware Trademark Assignment License Agmt#page4.tif

source=VMware Trademark Assignment License Agmt#page5.tif

source=VMware Trademark Assignment License Agmt#page6.tif

source=VMware Trademark Assignment License Agmt#page7.tif

TRADEMARK ASSIGNMENT AND LICENSE AGREEMENT

This Trademark Assignment and License Agreement ("Agreement") is entered into by and between VMware, Inc., a Delaware corporation located and doing business at 3401 Hillview Avenue, Palo Alto, California 94304 ("VMware"), and QLogic Corporation, a Delaware corporation with its principal place of business at 26650 Aliso Viejo Parkway, Aliso Viejo, California 92656 ("QLogic"). This Agreement shall be effective as of the date upon which it has been executed by both parties, as indicated below.

WHEREAS, QLogic has adopted, used, is using, and is, to the best of its knowledge and belief, the owner of the trademark **vFabric**, and all other rights appurtenant thereto, including, but not limited to, United States Trademark Application Serial No. 85/093,168, filed on July 26, 2010, all common law rights, trade name rights and the right to recover for past infringement worldwide (hereinafter collectively referred to as the "VFABRIC Mark"), however VMware agrees that the rights granted herein exist only to the extent that QLogic owns such rights (the "QLogic Rights"), **and no warranty, express or implied, is made with respect thereto or to the trademark vFabric or with respect to the rights of any third parties that may conflict with the rights granted herein, and**

WHEREAS, VMware now wishes to acquire all rights and goodwill that QLogic holds in the VFABRIC Mark, and QLogic agrees to assign to VMware all rights and goodwill that it has acquired in the VFABRIC Mark but also wishes to continue its current use of the VFABRIC Mark;

NOW, THEREFORE, in consideration of the covenants and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which the parties hereby accept and acknowledge, the parties agree as follows:

1. **Trademark Assignment.**

a. QLogic hereby assigns and transfers all the QLogic Rights to VMware and shall do nothing inconsistent with VMware's exclusive ownership of those rights (subject to the license to QLogic described in paragraph 3 below).

b. Upon or promptly after execution of this Assignment by both parties, QLogic shall deliver to VMware all of the following:

(i) all documentation, as described in paragraph 4, not previously delivered to VMware; and

(ii) QLogic's complete trademark application and registration file(s) relating to the VFABRIC Mark, including at least one extra sample of each specimen provided to the USPTO in support of registration of **the VFABRIC Mark.**

2. **Warranties.** QLogic hereby represents and warrants to VMware as follows:

a. QLogic has the full right and legal authority to enter into this Agreement.

b. No assignment, sale, agreement or encumbrance has been or will be made or entered into which would conflict with the assignments contemplated herein.

c. QLogic's Rights in the VFABRIC Mark are free and clear of all liens, security interests, encumbrances, financing statements or other pledges which in each case arise from the actions of QLogic.

d. After execution of this Agreement no individual or legal entity other than VMware will have any right, title or interest in and to the intellectual property rights (which right, title or interest, in each case arise out of the actions of QLogic) assigned to VMware under this Agreement, with the exception of the rights licensed by VMware to QLogic hereunder.

e. Since the date of QLogic's first use of the VFABRIC Mark, QLogic has not been contacted by any third party (i) asserting that QLogic's use of the VFABRIC Mark conflicts with the intellectual property rights of such third party; (ii) demanding that QLogic cease using the VFABRIC Mark; (iii) otherwise asserting that QLogic's use of the VFABRIC Mark was in contravention of the rights of any third party or applicable law.

3. **License to Use the VFABRIC Mark for Certain Goods.**

a. VMware hereby grants QLogic a royalty-free license (the "License") to use the VFABRIC Mark in connection with network switching software and hardware. QLogic may neither assign nor sublicense its rights under the License; provided, that QLogic may sublicense the VFABRIC Mark to QLogic's OEM and distributor customers solely for use in the network switching software and hardware and solely in connection with such customer's sale of QLogic products (whether branded QLogic or the brand of an OEM customer).

b. QLogic shall not oppose or seek to cancel any registration that VMware may obtain for the VFABRIC Mark or any trademark or service mark that includes "VFABRIC."

4. **Quality Standards.**

a. QLogic shall comply with VMware's reasonable quality standards related to any goods put out by QLogic under the VFABRIC Mark. VMware finds QLogic's current quality standards acceptable, and QLogic shall not materially change them during the term of the License.

b. QLogic shall comply with any reasonable branding guidelines that VMware may promulgate relating to the display of the VFABRIC Mark.

c. QLogic shall comply with all applicable laws, regulations and rules of any governmental body, agency or other body with competent authority over QLogic's VFABRIC-branded goods. QLogic shall provide to VMware copies of any correspondence with and any documents filed with or received from any such body related to use of the VFABRIC Mark.

d. Upon VMware's request, QLogic shall provide VMware with copies of any advertisement or promotional material in which QLogic uses the VFABRIC Mark.

e. VMware shall have the right from time to time inspect QLogic's records relating to QLogic's use of the VFABRIC Mark, and any facilities at which QLogic fabricates or assembles any VFABRIC-branded goods.

5. **Cooperation.** QLogic will provide to VMware upon request all pertinent facts and documents relating to the QLogic Rights as may be known and accessible to QLogic. In the event the QLogic Rights are ever contested, QLogic will testify and cooperate with VMware in any proceeding related thereto. QLogic will promptly execute and deliver any and all papers,

instruments or affidavits that may be necessary or desirable to obtain, maintain, register or enforce the QLogic Rights.

6. **Trademark Documentation.** QLogic shall furnish to VMware within 14 days after receipt of the payment described in paragraph 8 below written documentation substantiating QLogic's use and ownership of the VFABRIC Mark. Such documentation shall include, generally, materials showing QLogic's first use of the VFABRIC Mark on or in connection with any associated goods and services; QLogic's first use of the VFABRIC Mark in interstate commerce; and QLogic's continuing use of the VFABRIC Mark through August of 2010. Such materials may include, for example: invoices to customers; labels, name plates, cartons and like materials bearing the VFABRIC Mark as used by QLogic in its sale of goods; advertising, business literature and other materials showing the sale and offering of services under the VFABRIC Mark; media articles concerning QLogic's goods and services marketed and sold under the VFABRIC Mark; and other materials such as brochures, stationery, business cards and Internet webpages showing use of the VFABRIC Mark by QLogic.

7. **Consent.** QLogic hereby consents to and shall not challenge or object to the use or registration of the VFABRIC Mark by VMware, its affiliates, subsidiaries, partners, assignees, transferees or direct or indirect licensees.

8. **Payment.** As consideration for the Assignment of the QLogic Rights, VMware shall pay QLogic the sum of One Hundred Thousand U.S. Dollars (U.S.\$100,000.00) and certain marketing and engineering commitments, per the specifications set forth in Exhibit "A." QLogic shall be responsible for any taxes due in connection with receipt of said payment. Such cash payment shall be made by check payable to QLogic and sent to the notice address set forth below within thirty (30) days after the execution of this Agreement.

9. **Indemnification.** QLogic shall indemnify, defend and hold VMware harmless from and against any losses, costs, expenses (including without limitation attorneys' fees), claims, liabilities or damages arising out of or in connection with any breach by QLogic of its obligations, representations or warranties hereunder. The provisions of this paragraph shall survive any termination or expiration of this Assignment.

10. **Attorney-In-Fact.** QLogic hereby appoints VMware as its irrevocable attorney-in-fact for the sole purpose of enforcing and protecting, at the option of VMware, all rights, licenses, privileges and property granted herein, to prevent any infringement of such rights and to litigate, collect and receive compensation for all damages arising from such infringement, using the name of QLogic in the discretion of VMware, and joining QLogic as party plaintiff or defendant in any such suit or proceeding; provided that VMware has provided reasonable notice to QLogic of such intended use of the QLogic name .

11. **Notices.** Any notice, request, instruction or other communication to be given hereunder by either party hereto shall be in writing and shall be deemed to have been duly given (a) on the date of delivery, provided delivery is actually tendered at the appropriate address, addressed to the persons identified below (i) in person, or (ii) by courier service, or (iii) by facsimile copy (with original copy mailed the same day), or (b) three (3) calendar days after deposit in the U.S.

mails by first class certified mail, postage prepaid, return receipt requested, all addressed as set forth below:

a. If to QLogic:

26650 Aliso Viejo Parkway
Aliso Viejo, California 92656
Attn: General Counsel
Telephone No. (949) 389 - 6000
Facsimile No. (940) 389- 6488

b. If to VMware:

3401 Hillview Avenue
Palo Alto, California 94010
Attn: General Counsel
Telephone No. 650.427.1000
Facsimile No. 650.427.5023

12. **Miscellaneous.**

a. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of California without regard to choice of law principles. Any action brought to enforce any term of this Agreement shall be brought in state or federal courts located in the State of California. In the event that either party sues to enforce any provision of this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs.

b. Neither the License nor the Agreement as a whole creates a principal/agent relationship, a partnership or a joint venture between the parties, and neither party shall have any authority to act or grant any license on behalf of the other party.

c. If any provision of this Agreement is found invalid or unenforceable by a court of competent jurisdiction, such provision shall be deemed to be severed herefrom, without affecting the remaining portions of this Agreement, which shall remain in full force and effect, provided that the severing of such provision does not materially change the substance of this Agreement.


d. The rule of contract construction providing that ambiguities are resolved against the drafter shall not apply to any portion of this Agreement. Each party acknowledges that it has been advised by independent legal counsel with respect to this Agreement.

e. This Agreement shall be binding upon and shall inure to the benefit of both parties, their respective representatives, principals, successors, affiliates, subsidiaries and assigns.

f. Each of the undersigned warrants that he or she has authority to enter into this Agreement on behalf of the party for whom he or she signs.

g. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties have signed this Agreement on the dates indicated below.

QLOGIC CORPORATION
By: 
Name: Roger Klein
Title: VP & GM, HSG
Date: August 25, 2010

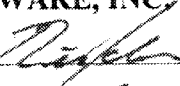
VMWARE, INC.
By: 
Name: Rick Jackson
Title: CMO
Date: 8/24/10



EXHIBIT "A"
TO
TRADEMARK ASSIGNMENT AND LICENSE AGREEMENT

In consideration of the consent and release, VMware agrees to provide QLogic marketing and engineering assistance, per the following specifications:

MARKETING COMMITMENTS

- Q4'10 – 2H'11: VMware will participate in a QLogic road show for QLogic distributors and channel partners across North America, Europe and Asia, highlighting the value of their combined solutions for Virtual Data Centers;
- Q4'10: VP+ participation in October analyst briefings supporting QLogic position in market and support for QLogic converged networking solutions;
- Q4'10: QLogic and VMware will issue a joint press release highlighting their relationship and the initiatives they will have in place to help customers drive to greater degrees of data center efficiency;
- Q2 '11: Teaming with IBM, LSI and QLogic on a Disaster Recovery and Virtual Desktop event series (need to confirm commitments from IBM and LSI);
- Ongoing: We value our relationship and we will be very open to help Qlogic throughout the life of our partnership.

ENGINEERING COMMITMENTS

- IOVP Certification/VMware support for QLogic NIC partitioning (NPAR) implementation for emulated mode of operation on ESX 4.0/4.1. To be completed by March 31, 2011;
 - VMware will provide IOVP certification for QLogic NPAR by March 2011 (NIC functions only).
 - VMware will work to expand the IOVP Cert for NPAR to include FCoE. VMware and QLogic will map out this project and work towards completing this certification by March, 2011. Given QLogic's request to add FCoE, if the certification testing and log reviews cannot be completed by March, 2011, VMware may need additional time to complete (estimated additional time to be one to two months).
- Kernel APIs for VMware's vSwitch configuration in ESX 4.0/4.1 to enable QLogic to implement NPAR in an optimized manner by 09/2010;
 - VMware will provide access to ESX 4.1 kernel APIs that will allow QLogic to get certain vSwitch configuration data (QLogic to provide a detailed proposal). However,

at this time VMware cannot commit to provide IOVP certification for drivers that utilize those APIs. A follow up technical discussion between VMware and QLogic on the APIs usage will be required to make that determination.

- Hyperic monitoring support development for QLogic SANboax switch;
- VMware engineering and QLogic engineering will work together to ensure VMware vMotion technology supports the InfiniBand interconnect standard during calendar 2010;