



OEM License Agreement (Licensor-favorable)

Document 4049A

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OEM LICENSE AGREEMENT

This OEM LICENSE AGREEMENT (this “**Agreement**”) is entered into by and between [NAME OF LICENSOR], a [____] corporation (the “**Licensor**”), and [NAME OF LICENSEE], a [____] corporation (the “**Licensee**”), as of [____, 20_] (the “**Effective Date**”).

RECITALS

WHEREAS, Licensor is engaged in the business of designing and developing systems and products in the nature of [DESCRIBE SPECIFIC TECHNOLOGY] and has acquired and developed substantial and valuable technical knowledge, know-how, and experience in the design and development of such systems and products described in detail in Schedule A attached hereto (the “**Technology**”); and

WHEREAS, Licensee is in the business of distributing similar Technology, including product development and support services;

WHEREAS, Licensor and Licensee believe it is in their mutual interest for Licensee to use the Technology in the manufacture and sale of the products listed in Schedule B attached hereto (the “**Licensed Products**”) pursuant to the terms and conditions hereinafter provided;

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained in this Agreement, the parties agree as follows:

1. License Grant.

(a) Licensor hereby grants to Licensee and its sublicensees, for the Term of this Agreement (as defined below), a nonexclusive, non-assignable right and license to use [market and promote] the Technology in order to manufacture, process, prepare, distribute and sell the Licensed Products solely in the territory identified in Schedule C attached hereto (the “**Territory**”).

(b) Licensor hereby grants Licensee for the Term of this Agreement (as defined below), a nonexclusive, non-assignable right to sublicense the Technology to third parties only for the purpose of using the Licensed Products, and only pursuant to the terms and conditions of this Agreement.

2. **Term.** This Agreement shall be effective as of the Effective Date and shall extend until [____, 20_] (the “**Term**”) and thereafter shall be automatically renewed for successive [NUMBER (____)] year periods unless, [NUMBER (____)] days prior to the date on which this Agreement would otherwise terminate, either party hereto gives written notice to the other party of its election not to renew.

3. Fees and Royalties.

[In consideration for the license rights granted herein, Licensee shall pay to Licensor the license fees or other consideration set forth in Schedule D attached hereto.]

[In consideration for the license rights granted herein, Licensee agrees to pay to Licensor the royalties according to the schedule set forth in Schedule D attached hereto (the “**Royalties**”) based on Licensee’s Net Sales (as defined below) of Licensed Products.

3.1 Calculation of Royalties. The Royalties owed Licensor shall be calculated on a [monthly] [quarterly] calendar basis (the “**Royalty Period**”) and shall be payable no later than [NUMBER (___)]days after the last day of the Royalty Period covered by such payment, except that the first and last Royalty Periods may be “short” depending on the Effective Date.

3.2 Royalty Statement. For each Royalty Period, Licensee shall provide Licensor, contemporaneously with the applicable Royalty payment, with a written royalty statement in a form acceptable to Licensor. Such royalty statement shall be certified as accurate by a duly authorized officer of Licensee reciting, on a country-by-country basis, the stock number, item, units sold, description, quantity shipped, gross invoice amount, and amount billed customers less discounts, allowances and returns for each Licensed Product. Such royalty statements shall be furnished to Licensor regardless of whether any Licensed Products were sold during the Royalty Period or whether any actual Royalty was owed.]

[3.3 Advance Royalty Payment. Licensee agrees to pay to Licensor on the Effective Date an advance against Royalties in the amount recited in Schedule C which shall be credited against Licensee’s actual royalty obligation to Licensor.]

[3.3 Guaranteed Minimum Royalty. Licensee agrees to pay to Licensor a minimum of \$[___] per Royalty Period regardless of Licensee’s actual Net Sales during such Royalty Period.]

[3.4 Definition of Net Sales. “**Net Sales**” shall mean Licensee’s gross sales (the gross invoice amount billed customers) of Licensed Products, less taxes, shipping charges, quantity trade discounts actually shown on the invoice and, further, less any bona fide returns as supported by credit memoranda actually issued to end users. [In no event may the total credit taken by Licensee for all discounts and returns taken during any Royalty Period exceed [___]% of Licensee’s gross sales of Licensed Products for such Royalty Period.] No credit will be permitted for cash or early payment discounts or allowances. No other costs incurred in the manufacturing, selling, advertising, and distribution of the Licensed Products shall be deducted, nor shall any deduction be allowed for any uncollectible accounts or allowances.

3.5 Accrual of Royalty Obligation. A Royalty obligation shall accrue upon the sale of a Licensed Product regardless of the time of collection by Licensee and whether or not payment for such Licensed Product has been actually received by Licensee. A Licensed Product shall be considered sold when such Licensed Product is billed, invoiced, shipped, or paid for, whichever occurs first.

3.6 Related Party Discounts. If Licensee sells any Licensed Product to any affiliated or related party at a price less than the regular price charged to other parties, the Royalty applicable to such sale shall be computed based upon the regular price.

3.7 Right to Challenge. The receipt or acceptance by Licensor of any royalty statement or payment shall not prevent Licensor from subsequently challenging the validity or accuracy of such statement or payment.]

3.8 Currency. All payments due to Licensor shall be made in United States currency by check drawn on a United States bank unless otherwise specified by Licensor.

3.9 Late Payments. Late payments shall incur interest at the rate of [__]% per month from the date such payments were originally due.

4. Record Inspection and Audit.

4.1 Inspection. Licensor shall have the right, upon reasonable notice, to inspect Licensee's books and records and all other documents and material in Licensee's possession or control with respect to the subject matter of this Agreement. Licensor shall have free and full access thereto for such purposes and may make copies thereof.

4.2 Underpayment Procedure. In the event that such inspection reveals an underpayment by Licensee of the actual Royalty owed Licensor, Licensee shall promptly pay the amount of such underpayment, plus interest calculated at the rate of [__]% per month. If such underpayment is in excess of \$[___] for any Royalty Period, Licensee shall also reimburse Licensor for the cost of such inspection.

4.3 Inspection After Termination. All books and records relating to Licensee's obligations hereunder shall be maintained and made accessible to Licensor for inspection at a location in the United States for at least [NUMBER (___)] years after termination of this Agreement.

5. Licensor's Obligations.

5.1 Delivery of Technology. Beginning upon the Effective Date, Licensor shall meet with Licensee and promptly provide Licensee with the Technology [which Licensor believes Licensee may require in order to manufacture and sell Licensed Products in the Territory].

5.2 Licensor's Warranties. Licensor represents and warrants that (a) it has the right and power to grant the licenses granted herein, (b) there are no other agreements with any other party in conflict with such grant and (c) it has no actual knowledge that the Technology infringes any valid rights of any third party.

[5.3 Technical Assistance. Licensor shall also provide Licensee, at its place of manufacture, such technical and other qualified experts for developing the Licensed Products and for assisting Licensee on any problems or matters which require on-the-spot assistance, for such periods and in such number as identified in Schedule E hereto. In such event, Licensee shall pay all salaries, travel and out-of-pocket expenses incurred by any such Licensor personnel. Licensor covenants that such technical information and assistance shall be provided with reasonable care and will, where applicable, be of the same types as currently practiced by Licensor.

[5.4 Training. At the request of Licensee, Licensor shall train at least [__] employees of Licensee at Licensor's facility. Expenses and salaries of Licensee personnel sent to Licensor by Licensee for training shall be borne by Licensee. Expenses and salaries of Licensor personnel providing such training shall be borne by [Licensor] [Licensee]].

[5.5 Equipment. Where applicable, at the request of Licensee, Licensor shall supply or cause to be supplied to Licensee, by either sale or lease, on a “most favored nation” basis, such necessary machinery, equipment and other materials as are available to Licensor and are necessary or desirable in order for Licensee to produce the Licensed Products.]

6. Improvements and Inventions. During the Term of this Agreement, each party shall advise the other party of any technical improvements or inventions relating to the Technology or the Licensed Products. All such improvements or inventions shall become the property of Licensor, and Licensee agrees to execute any and all documents requested by Licensor in order to perfect Licensor’s right in the same.

7. Licensee’s Obligations.

7.1 Ability and Willingness to Perform. Licensee represents that it has sufficient financial resources and business operations to manufacture, distribute, sell and otherwise reasonably commercialize the Licensed Products throughout the Territory, and Licensee agrees that it shall, during the Term of this Agreement and any renewal thereof, use its best efforts to promote and market the distribution and sale of such Licensed Products in the Territory. Licensee further agrees that it shall, in good faith and with reasonable diligence, conduct all operations including manufacturing, marketing, distribution and sale of Licensed Products, in accordance with the highest standards of business customs of the industry and that it will endeavor to sell Licensed Products throughout the Territory, utilizing its skill and resources in such effort to the extent that high standards of business practice and judgment dictate.

7.2 Legal Compliance. Licensee shall fully comply with the marking provisions of the intellectual property laws of the applicable jurisdictions in the Territory.

[7.3 Restrictions. Licensee shall not market, promote, or distribute the Licensed Products on any remote networks, including without limitation the world wide web, wide area networks, online and on electronic bulletin boards.]

[7.4 Expenses. Licensee shall incur all costs and expenses related to the distribution and sale of the Licensed Products, including but not limited to, promotion, marketing, advertising, shipping, storage and other transportation costs.]

8. Ownership of Intellectual Property; Conflicts.

8.1. Ownership of Intellectual Property. Licensee acknowledges and agrees that Licensor shall retain and own all right, title and interest and all Intellectual Property Rights (including copyrights, trade secrets, trademarks and patent rights) in and to all of the Products (collectively, the “**Licensor Materials**”) and all copies thereof, and that nothing herein transfers or conveys to Licensee any ownership right, title or interest in or to the Licensor Materials or to any copy thereof or any license right with respect to same not expressly granted herein. Licensee agrees that it will not, either during or after the termination of this Agreement, contest or challenge the ownership of the intellectual property rights in the Licensor Materials by Licensor.

8.2 Proprietary Notices. Licensee will provide place all appropriate notices of copyright, trademark or other proprietary rights notices in such manner as Licensor will direct. In no event shall Licensee alter, remove, obscure, erase or deface or otherwise hide from view,

any copyright, trademark or other proprietary rights notice of Licensor contained or incorporated in the Licensed Products.

8.3 Modification and Reverse Engineering. Licensee shall not modify, disassemble or reverse engineer the Technology or License Products in any manner. Except as otherwise permitted under this Agreement, Licensee shall not use the Technology or Licensed Product or any materials incidental thereto to develop computer software, hardware or firmware that is competitive with the Technology or Licensed Products. Any such modifications shall immediately become the sole and exclusive property of the Licensor and Licensor shall own all right, title and interests to such modified products and any and all copyrights, patents and trade secrets related thereto.

[8.4 No Private Labeling. Licensee shall not private label or brand [NAME] with Licensee's name or logo or that of a third party but may use Licensee's logo or brand together with the Licensor's branding and other identification provided that such use is not confusing to customers or other third parties.]

9. Export Control. Notwithstanding anything contained in this Agreement to the contrary, the obligations of the parties hereto and of the subsidiaries of the parties shall be subject to all laws, present and future and including export control laws and regulations, of any government having jurisdiction over the parties hereto or the subsidiaries of the parties, and to orders, regulations, directions or requests of any such government. Each party shall undertake to comply with and be solely responsible for complying with such laws applicable to such party.

10. Taxes and Governmental Approvals.

10.1 Taxes. Licensee shall be solely responsible for the payment of any and all taxes, fees, duties and other payments incurred in relation to the manufacture, use and sale of the systems and methods of the Technology or Licensed Products.

10.2 Government Approvals. Licensee shall be solely responsible for applying for and obtaining any approvals, authorizations, or validations necessary to effectuate the terms of this Agreement under the laws of the appropriate national laws of each of the jurisdictions in the Territory.

11. Termination. The following termination rights are in addition to the termination rights which may be provided elsewhere in the Agreement:

11.1 Immediate Right of Termination. Licensor shall have the right, at its sole option, to immediately terminate this Agreement by giving written notice to Licensee in the event that Licensee:

(a) fails to obtain or maintain product liability insurance in the amount and of the type provided for in Section 14 (Insurance) of this Agreement;

(b) files a petition in bankruptcy or is adjudicated a bankrupt or insolvent, or makes an assignment for the benefit of creditors or an arrangement pursuant to any bankruptcy law, or

discontinues or dissolves its business or if a receiver is appointed for Licensee or for Licensee's business and such receiver is not discharged within [NUMBER (___)] days;

(c) fails to commence the shipment of Licensed Products within [NUMBER (___)] months from the Effective Date;

(d) upon the commencement of sale of Licensed Products, fails to sell any Licensed Products for [NUMBER (___)] or more consecutive Royalty Periods; or

(e) fails to pay any Royalties or other amounts due to Licensor.

11.2 Right to Terminate on Notice. Either party may terminate this Agreement on [NUMBER (___)] days' written notice to the other party in the event of a breach of any provision of this Agreement by the other party, provided that during such notice period the breaching party fails to cure such breach.

11.3 Licensee's Right to Terminate. The Licensee shall have the right to terminate this Agreement at any time on [___] months' written notice to Licensor for any reason.

12. Effects of Termination.

12.1 Payment Upon Termination. Upon expiration or termination of this Agreement, all outstanding Royalty obligations and any other fees shall be accelerated and shall immediately become due and payable.

12.2 Termination of License. Upon the expiration or termination of this Agreement for any reason, all rights granted to Licensee under this Agreement shall forthwith (a) terminate and immediately revert to Licensor and Licensee shall immediately discontinue all use of the Technology, Licensed Products and the like, (b) discontinue all representations or statements from which it might be inferred that any relationship exists between the parties; (c) discontinue any use of the Licensor's name, logo, trademarks, service marks and slogans; (d) cease to promote, solicit, distribute or otherwise procure orders for any Licensed Products; and (e) promptly return all Confidential Information and related materials in accordance with Section 16 (Intellectual Property Rights; Confidential Information.). .

12.3 Survival. The following provisions shall survive the termination or expiration of this Agreement for any reason and shall remain in effect after any such termination or expiration: Sections 3 (Royalties and License Fees), 17 (Noncompetition), 11 (Termination), 12 (Effects of Termination), 13 (Indemnification), 16 (Intellectual Property Rights; Confidential Information) and 22 (Miscellaneous Provisions).

13. Indemnification.

13.1 Indemnification of Licensors. Licensee agrees to defend, indemnify and hold Licensors and its officers, directors, agents and employees harmless against all costs, expenses and losses (including reasonable attorneys' fees and costs) incurred through claims of third parties against Licensors based on the manufacture or sale of the Licensed Products including, but not limited to, actions founded on product liability.

13.2 Indemnification of Licensee. Licensors agree to defend, indemnify and hold Licensee and its officers, directors, agents and employees harmless against all costs, expenses and losses (including reasonable attorneys' fees and costs) incurred through claims of third parties against Licensee based on a breach by Licensors of any representation or warranty made in this Agreement.

[14. **Insurance.** Licensee shall, throughout the Term, obtain and maintain at its own cost and expense from a qualified insurance company licensed to do business in [STATE] and having a Best rating of B+ or better, standard product liability insurance naming Licensors and its officers, directors, employees, agents, and shareholders as additional insured parties. Such policy shall provide protection against all claims, demands, and causes of action arising out of any defects or failure to perform, alleged or otherwise, of the Licensed Products or any material used in connection therewith or any use thereof. The amount of coverage shall be as specified in Schedule F attached hereto. The policy shall provide for [NUMBER (___)] days' notice to Licensors from the insurer by registered or certified mail, return receipt requested, in the event of any modification, cancellation, or termination thereof. Licensee agrees to furnish Licensors a certificate of insurance evidencing same within [NUMBER (___)] days after the Effective Date, and in no event shall Licensee manufacture, distribute or sell any Licensed Products prior to receipt by Licensors of such evidence of insurance.]

15. Independent Contractor.

15.1 No Employer-Employee Relationship. It is expressly understood and agreed that during the Term of this Agreement, Licensee's relationship to the Licensors will be that of an independent contractor and that neither this Agreement nor the Services to be rendered hereunder shall for any purpose whatsoever or in any way or manner create any employer-employee relationship.

15.2 Taxes. Licensee shall have sole and exclusive responsibility for the payment of all federal, state and local income taxes, for all employment and disability insurance and for social security and other similar taxes, in each case with respect to any compensation or benefits provided by the Licensors hereunder.

15.3 Not Authorized to Bind the Licensors. Licensee shall not hold itself out or permit itself to be described otherwise than as an independent contractor of the Licensors, and unless specifically authorized in advance in writing by the Licensors, Licensee shall not enter into, assume, or incur any obligation on the Licensors' behalf or transact any business for the Licensors' account.

16. Intellectual Property Rights; Confidential Information.

16.1 Ownership. Licensor shall retain ownership of all Licensor intellectual property rights. Intellectual property rights shall mean (a) all inventions (whether or not patentable and whether or not reduced to practice), all improvements thereto, and all patents, patent applications, and patent disclosures, together with all reissuances, divisions, continuations, continuations-in-part, revisions, renewals, extensions, and reexaminations thereof, (b) all works of authorship, including all mask work rights, database rights and copyrightable works, all copyrights, all applications, registrations and renewals in connection therewith, and all moral rights, (c) all trade secrets, (d) all registered and unregistered trademarks, service marks, trade dress, domain names, logos, trade names, and corporate names, together with all translations, adaptations, derivations, and combinations thereof and including all goodwill associated therewith, and all applications, registrations and renewals in connection therewith, (e) all derivative works of any of the foregoing; (f) any other similar rights or intangible assets recognized under any laws or international conventions, and in any country or jurisdiction in the world, as intellectual creations to which rights of ownership accrue, and all registrations, applications, disclosures, renewals, extensions, continuations or reissues of the foregoing now or hereafter in force, and (g) all copies and tangible embodiments of all of the foregoing (a) through (f) in any form or medium throughout the world (“**Intellectual Property Rights**”). Licensee shall retain ownership to all Licensee Intellectual Property Rights.

16.2 Confidential Information. “**Confidential Information**” means all confidential and proprietary information of a party (“**Disclosing Party**”) disclosed to the other party (“**Receiving Party**”), whether orally or in writing, that is either marked or designated as confidential or is identified in writing as confidential or proprietary within fifteen (15) days of disclosure to the Receiving Party; provided that the following shall be deemed to be Confidential Information even if not so marked or identified: the terms and conditions of this Agreement (including pricing and other terms reflected in all schedules hereto), Intellectual Property Rights, the Disclosing Party’s business and marketing plans, technology and technical information, product designs, and business processes, any information or materials with the name, sign, trade name or trademark of the Disclosing Party and any information that a reasonable person would deem confidential or proprietary given the nature of the information and the circumstances under which it is disclosed. “**Confidential Information**” does not include any item of information which (a) is or becomes available in the public domain without the fault of the Receiving Party; (b) is disclosed or made available to the Receiving Party by a third party without restriction and without breach of any relationship of confidentiality; (c) is independently developed by the Receiving Party without access to the disclosing party’s Confidential Information; or (d) is known to the recipient at the time of disclosure.

The Receiving Party shall not disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, except with the Disclosing Party’s prior written permission; provided that a Receiving Party may disclose any Confidential Information of the Disclosing Party to its employees, attorneys and accountants who have a need to know such Confidential Information for purposes of this Agreement and who are bound to a written agreement protecting such Confidential Information as required hereby.

16.3 Protection. The Receiving Party agrees to protect the confidentiality of the Confidential Information of the Disclosing Party in the same manner that it protects the

confidentiality of its own proprietary and confidential information of like kind, but in no event shall either party exercise less than reasonable care in protecting such Confidential Information.

16.4 Compelled Disclosure. If the Receiving Party is compelled by law to disclose Confidential Information of the Disclosing Party, it shall provide the Disclosing Party with prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure.

16.5 Remedies. If the Receiving Party discloses or uses (or threatens to disclose or use) any Confidential Information of the Disclosing Party in breach of this Section 16, the Disclosing Party shall have the right, in addition to any other remedies available to it, to seek injunctive relief to enjoin such acts, without the necessity of posting bond, it being specifically acknowledged by the parties that any other available remedies are inadequate.

16.6 Disposition Upon Termination. Upon the termination of this Agreement for any reason whatsoever, or upon request of a Disclosing Party, the Receiving Party shall return to the Disclosing Party, or shall destroy, as the Disclosing Party shall specify, all copies of all the Disclosing Party's Confidential Information in the Receiving Party's possession. Within five (5) days thereafter, the Receiving Party shall provide the Disclosing Party with a certificate, executed by the Receiving Party or by an officer of the Receiving Party, confirming that all copies of all such Confidential Information have been returned to the Disclosing Party or destroyed, as the case may be.

17. Non-Competition.

17.1 Covenant. During the Term and for a period of [NUMBER] (___) years thereafter, Licensee shall not, directly or indirectly, either as a partner, owner, shareholder, advisor or consultant, or in any other capacity whatsoever, of any entity whatsoever conduct, or assist others in conducting, or be financially involved in any manner in, any business that is a competitor of the Licensor.

17.2 Reasonableness of Covenant. Each party specifically acknowledges that it is aware that the business of the other party is international in scope and that geographical limitations on the covenants set forth in this Section 17 are therefore not appropriate. Each party further acknowledges that the scope of each of the covenants contained in this Section 17 is reasonable as to time, persons and area, are necessary to protect the legitimate business interests of the other party, that the other party has been induced to enter into this Agreement upon such party's representation that such party will abide by and be bound by the above restrictions, and that such restrictions do not now, and will not in the future, present such party with any hardship or inconvenience. Such covenants are regarded by each party hereto as divisible and if any such covenant is found by any court of competent jurisdiction to be unenforceable because it extends for too long a period of time or over too great a range of activities or persons or in too broad a geographic area, it shall be interpreted to extend over the maximum period of time, range of activities or persons, or geographic area as to which it may be enforceable. The provisions of this Section 17 shall survive the termination of the Agreement.

17.3 Remedies. If either party breaches (or threatens to breach) this Section 17 (Non-Competition), the non-breaching party shall have the right, in addition to any other remedies available to it, to seek injunctive relief to enjoin such acts, without the necessity of posting bond, it being specifically acknowledged by the parties that any other available remedies are inadequate.

18. Disclaimer of Warranties. EXCEPT AS EXPRESSLY PROVIDED HEREIN, THE LICENSOR MAKES NO REPRESENTATION ABOUT THE SUITABILITY OR ACCURACY OF THE TECHNOLOGY OR LICENSED PRODUCTS FOR ANY PURPOSE, AND MAKES NO WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR THAT THE USE OF THE TECHNOLOGY AND LICENSED PRODUCTS WILL NOT INFRINGE ANY THIRD PARTY PATENTS, COPYRIGHTS, TRADEMARKS, OR OTHER RIGHTS. THE TECHNOLOGY OR LICENSED PRODUCTS IS PROVIDED "AS IS".

19. Indemnification. The parties agree to indemnify and hold harmless the other party, and each of them, jointly or severally, against any loss or liability whatsoever, including reasonable attorney's fees, caused by any action or proceeding before any court or government agency, commission, division or department of any state, federal or local governing body, which is brought by the other party or its successors-in-interest, if such action or proceeding arises out of or is related to any claim, demand or cause of actions released herein.

The parties will indemnify, defend and hold harmless the other party, and each of them, jointly and severally, for any taxes, assessments, penalties or interest payments that they may at any time incur by reason of any demand, proceeding, action or suit brought against them arising out of or in any manner related to local, state or federal taxes allegedly due in connection with the payment set forth above.

20. Limitation of Warranty.

20.1 Limitation. EXCEPT FOR LIABILITY ARISING FROM INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 19 (INDEMNIFICATION) OR LIABILITY ARISING FROM A BREACH BY EITHER PARTY OF SECTION 16 (INTELLECTUAL PROPERTY RIGHTS; CONFIDENTIALITY) HEREOF, IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE AMOUNTS ACTUALLY PAID BY DISTRIBUTOR HEREUNDER.

20.2 Exclusion of Consequential and Related Damages. EXCEPT FOR LIABILITY ARISING FROM INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 19 (INDEMNIFICATION) OR LIABILITY ARISING FROM A BREACH BY EITHER PARTY OF SECTION 16 (INTELLECTUAL PROPERTY RIGHTS; CONFIDENTIALITY) HEREOF, IN NO EVENT SHALL EITHER PARTY OR ANY THIRD PARTY PROVIDER HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS, LOSS OF USE, COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY

OF LIABILITY, WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. SOME STATES AND JURISDICTIONS DO NOT ALLOW LIMITATIONS ON DURATION OR THE EXCLUSION OF AN IMPLIED WARRANTY, SO THE ABOVE LIMITATION MAY NOT APPLY. EACH PARTY MAY ALSO HAVE ADDITIONAL RIGHTS NOT STATED IN THIS DOCUMENT.

21. Force Majeure. It is understood and agreed that in the event that an act of the government, terrorism or war conditions, or accident, fire, flood or labor trouble in the factory of Licensee or in the factory of those manufacturing parts necessary for the manufacture of the Licensed Products, prevents the performance by Licensee of the provisions of this Agreement, then such nonperformance by Licensee shall not be considered as grounds for breach of this Agreement and such nonperformance shall be excused while such conditions prevail and for [] months thereafter.

22. Miscellaneous.

22.1 Governing Law. This Agreement will be governed exclusively by, and construed exclusively in accordance with the laws of [STATE], without giving effect to the conflict of law principles of the [STATE].

22.2 Successors and Assigns. Except as otherwise expressly provided in this Agreement, this Agreement will be binding on, and will inure to the benefit of, the successors and permitted assigns of the parties to this Agreement. Nothing in this Agreement is intended to confer upon any party other than the parties hereto or their respective successors and assigns any rights or obligations under or by reason of this Agreement, except as expressly provided in this Agreement. Licensee's rights and obligations under this Agreement may not be assigned without the prior written consent of Licensor.

22.3 Notices. All notices and other communications required or permitted hereunder will be in writing and will be delivered by hand or sent by overnight courier, fax or e-mail to:

if to Licensor:

fax: _____

e-mail: _____

Attention: _____

if to Licensee:

fax: _____

e-mail: _____

Attention: _____

Each party may furnish an address substituting for the address given above by giving notice to the other parties in the manner prescribed by this Section 22.3. All notices and other communications will be deemed to have been given upon actual receipt by (or tender to and rejection by) the intended recipient or any other person at the specified address of the intended recipient.

22.4 Severability. In the event that any provision of this Agreement is held to be unenforceable under applicable law, this Agreement will continue in full force and effect without such provision and will be enforceable in accordance with its terms.

22.5 Construction. The titles of the sections of this Agreement are for convenience of reference only and are not to be considered in construing this Agreement. Unless the context of this Agreement clearly requires otherwise: (a) references to the plural include the singular, the singular the plural, and the part the whole, (b) references to one gender include all genders, (c) “or” has the inclusive meaning frequently identified with the phrase “and/or,” (d) “including” has the inclusive meaning frequently identified with the phrase “including but not limited to” or “including without limitation,” and (e) references to “hereunder,” “herein” or “hereof” relate to this Agreement as a whole. Any reference in this Agreement to any statute, rule, regulation or agreement, including this Agreement, shall be deemed to include such statute, rule, regulation or agreement as it may be modified, varied, amended or supplemented from time to time.

22.6 Entire Agreement. This Agreement, including all schedules and exhibits attached hereto, embodies the entire agreement and understanding between the parties hereto with respect to the subject matter of this Agreement and supersedes all prior or contemporaneous agreements and understandings other than this Agreement relating to the subject matter hereof.

22.7 Amendment and Waiver. This Agreement may be amended only by a written agreement executed by the parties hereto. No provision of this Agreement may be waived except by a written document executed by the party entitled to the benefits of the provision. No waiver of a provision will be deemed to be or will constitute a waiver of any other provision of this Agreement. A waiver will be effective only in the specific instance and for the purpose for which it was given, and will not constitute a continuing waiver.

22.8 Cumulative Remedies. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.

22.9 Assignment. Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior express written consent of the other party. Any attempt by a party to assign its rights or obligations under this Agreement in breach of this Section 22 shall be void and of no effect. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

[22.10 Disputes. Any controversy, claim or dispute arising out of or relating to this Agreement, shall be settled by binding arbitration in [CITY/STATE]. Such arbitration shall be conducted in accordance with the then prevailing commercial arbitration rules of [NAME OF ARBITRATOR], with the following exceptions if in conflict: (a) one arbitrator shall be chosen

by [ARBITRATOR]; (b) each party to the arbitration will pay its pro rata share of the expenses and fees of the arbitrator, together with other expenses of the arbitration incurred or approved by the arbitrator; and (c) arbitration may proceed in the absence of any party if written notice (pursuant to the Arbitrator's rules and regulations) of the proceeding has been given to such party. The parties agree to abide by all decisions and awards rendered in such proceedings. Such decisions and awards rendered by the arbitrator shall be final and conclusive and may be entered in any court having jurisdiction thereof as a basis of judgment and of the issuance of execution for its collection. All such controversies, claims or disputes shall be settled in this manner in lieu of any action at law or equity, provided however, that nothing in this subsection shall be construed as precluding bringing an action for injunctive relief or other equitable relief. The arbitrator shall not have the right to award punitive damages or speculative damages to either party and shall not have the power to amend this Agreement. IF FOR ANY REASON THIS ARBITRATION CLAUSE BECOMES NOT APPLICABLE, THEN EACH PARTY, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY AS TO ANY ISSUE RELATING HERETO IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER MATTER INVOLVING THE PARTIES HERETO.]

OR

[22.10 Venue. The state and federal courts located in [CITY/STATE] shall have exclusive jurisdiction to adjudicate any dispute arising out of or relating to this Agreement. Each party hereby consents to the jurisdiction of such courts and waives any right it may otherwise have to challenge the appropriateness of such forums, whether on the basis of the doctrine of *forum non conveniens* or otherwise. Each party also hereby waives any right to jury trial in connection with any action or litigation in any way arising out of or related to this Agreement.]

22.11 Compliance with Applicable Laws. Each party shall, at its own expense, comply with all applicable laws and make, obtain, and maintain in force at all times during the term of this Agreement, all filings, registrations, reports, licenses, permits and authorizations required under applicable law, regulation or order required for such party to perform its obligations under this Agreement.

22.12 No Benefit to Others. There are no intended third party beneficiaries of this Agreement. The representations, warranties, covenants, and agreements contained in this Agreement are for the sole benefit of the parties and their respective successors and permitted assigns, and they are not to be construed as conferring any rights on any other persons

22.13 Counterparts. This Agreement may be in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one instrument.

[The remainder of this page has been intentionally left blank.]

IN WITNESS WHEREOF, the undersigned have executed this OEM License Agreement as of the date first written above.

LICENSOR

[NAME OF LICENSOR]

By: _____
Name: _____
Title: _____

LICENSEE

[NAME OF LICENSEE]

By: _____
Name: _____
Title: _____

SCHEDULE A

TECHNOLOGY

SCHEDULE B

LICENSED PRODUCTS

SCHEDULE C

TERRITORY

SCHEDULE D

[LICENSE FEE] [ROYALTIES]

SCHEDULE E

TECHNICAL ASSISTANCE

SCHEDULE F

PRODUCT LIABILITY INSURANCE

\$[_____] combined single limit, with a deductible amount not to exceed \$[_____] , for each single occurrence for bodily injury and/or for property damage.