



Intercompany License Agreement

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INTERCOMPANY LICENSE AGREEMENT

This INTERCOMPANY LICENSE AGREEMENT (the "**Agreement**"), effective _____, 200_ (the "**Effective Date**") is between [COMPANY NAME], a _____ corporation with offices at [PRINCIPAL OFFICE] (the "**Company**") and [FOREIGN COMPANY], a company organized and existing under the laws of _____, with offices at [PRINCIPAL OFFICE] ("**Distributor**").

WHEREAS, the Company has developed and owns certain [DESCRIBE EQUIPMENT/PRODUCTS]; and

WHEREAS, Distributor desires to obtain, and the Company is willing to grant to the Distributor the right to use, market, sell licenses to and distribute such products in the Territory (as defined below) and to provide related services, subject to the terms and conditions contained herein.

NOW, THEREFORE, in consideration of the mutual promises, terms and conditions hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties do hereby agree as follows:

1. Definitions. As used herein, the following terms shall have the following definitions:

"**Affiliate**" of a party shall mean any person, company or other business entity controlling, controlled by or under common control with such party.

"**Business Day**" shall mean days on which banks are open for business in [city/state].

"**Intellectual Property Rights**" shall mean: (a) all patents, patent applications, copyrights, trademarks, service marks, trade names, mask work rights, trade secrets, copyrightable works (including without limitation [DESCRIBE PRODUCTS] other proprietary rights in the United States and any other jurisdictions which as of the Effective Date or thereafter the Company owns or has the right to use (with the right to sublicense such right to Distributor); and (b) any and all continuous, divisions, reissues, extensions and other filings that the Company may file with any governmental agency which issues patents in the United States or any other country with respect to such patent application or patents described in Section 1.3(a).

1.4 "**Payment Period**" shall mean the period commencing on the Effective Date and ending on the next calendar year end (December 31) and then each twelve (12) month period thereafter.

1.5 "**Products**" shall mean any present or future products incorporating, and services using, any portion of the Intellectual Property Rights, where such products and services are created or performed by or on behalf of the Company.

1.6 "**Territory**" shall mean the geographic area(s) listed on Exhibit A.

2. Grant of Rights and Licenses.

2.1 License. The Company hereby grants to Distributor a non-exclusive and non-transferable license under the Intellectual Property Rights during the term of this Agreement to market, sell licenses to, and distribute the Products to end-user customers in the Territory pursuant to the then current [COMPANY NAME] Agreement, the current version of which is attached hereto as Exhibit B (the "**End User License Agreement**"), and the use of the Products to provide installation, maintenance and support services to end-user customers in the Territory in connection with such licenses. Distributor shall not disclose, furnish, transfer or otherwise make available the Products or any portion thereof or related documentation provided by the Company in any form to any third party, except to such end-user customers subject to an End User License Agreement.

2.2 Quality Controls. Distributor shall take all steps necessary to ensure that the Products shall at all times comply with those quality control standards which the Company may from time to time communicate to Distributor during the term of this Agreement. Distributor shall provide the Company with access to its facilities so that the Company can confirm that the Products are in compliance with those standards.

2.3 Rights of the Company. Subject to the limited rights and license granted herein, the Company shall retain all right, title and interest in and to the Intellectual Property Rights. This Agreement and the End User License Agreements shall not be construed as a sale or transfer of any rights in the Intellectual Property Rights.

3. Purchases of Products; Prices and Payments.

3.1 Purchases. The Company shall sell, the Distributor shall purchase, the Products in such quantities as may be agreed upon by the parties during the term of this Agreement. Distributor shall order Products from the Company by submitting a written purchase order identifying the Products ordered, requested delivery dates and any export/import information required to enable the Company to fill each order. All orders for Products shall be subject to acceptance by the Company, which acceptance may be effected by (i) giving Distributor notice of acknowledgement, or (ii) by shipping by the Products ordered, or any part thereof. The terms of shipment of the Products shall be as mutually agreed upon by the parties from time to time. The Products shall be purchased and sold hereunder on the terms and conditions set forth in the Company's standard terms and conditions of sale, as in effect at the time of acceptance of the purchase order for such Products, except that in the event of any discrepancy between such terms and conditions and this Agreement, the terms of this Agreement shall govern.

3.2 Fees. For each Product ordered by Distributor (excluding any returns), Distributor shall pay to the Company an amount as set forth in Exhibit C attached hereto.

3.3 Payment Procedures.

(a) All payments of fees under Section 3.2 (Fees) above shall be made within thirty (30) days of the end of the Payment Period in which such Product was sold to Distributor. All payments by Distributor shall be made by wire transfer to such bank and account as the Company may from time to time designate in writing.

(b) Whenever any payment hereunder shall be due on a day which is not a Business Day, such payment shall be made on the immediately succeeding Business Day.

(c) Payments hereunder shall be considered to be made as of the day on which they are received at the Company's designated bank.

3.4 Distributor's Books and Records; Right to Audit. Distributor agrees to make and keep full and accurate books and records in sufficient detail relating to contracts, invoices, accounts, complaints and other transactions which relate to the Products for a period of three (3) years from the date of completion of the transaction from which such records arise. Distributor shall make all such records and documents available to the Company upon the Company's request. On twenty (20) days prior written notice to Distributor, the Company and its certified public accountants and other auditors shall have full access to the books and records of Distributor pertaining to activities under this Agreement and shall have the right to make copies therefrom at the Company's expense. The Company, its certified public accountants and other auditors shall have such access at all reasonable times and from time to time during normal business hours.

4. Indemnification.

4.1 Indemnity by Distributor.

(a) Distributor shall defend, indemnify and hold the Company harmless from and against any damages, liabilities, costs and expenses (including reasonable attorneys' fees and court costs) arising out of the marketing, sale, distribution or use of the Products in the Territory.

(b) The Company shall give Distributor written notice of any suit or action described in this Section 4.1 wherein the Company is named as a party. Such notice shall be given within thirty (30) days after acquiring such knowledge or prior to the expiration of time in which a response must be filed with a court or other judicial body, whichever is first to occur.

4.2 Detect and Report Infringements. Each party agrees to keep watch to detect any actual or suspected unauthorized use of any part of the Intellectual Property Rights and shall notify the other party of such unauthorized use within thirty (30) days after receiving knowledge of such unauthorized use.

5. Representations, Warranties and Covenants. Each party hereby represents, warrants and covenants to the other as follows:

5.1 Right, Power and Authority. It has full right, power and authority to enter into this Agreement and there is nothing which would prevent it from performing its obligations under the terms and conditions imposed on it by this Agreement.

5.2 Binding Obligation. This Agreement has been duly authorized by all necessary corporate, stockholder and/or other action of the Company and Distributor, respectively, and constitutes a valid and binding obligation on the Company and Distributor, respectively, enforceable in accordance with the terms hereof.

5.3 Good Standing. It is a corporation that is, respectively, duly organized and validly existing and in good standing under the laws of its jurisdiction of incorporation or organization, as the case may be, and is duly qualified and authorized to do business wherever the nature of its activities or properties requires such qualification or authorization.

5.4 No Government Approvals Needed. No registration with or approval of any government agency or commission of any jurisdiction is necessary for the execution, delivery or performance by it of any of the terms of this Agreement, or for the validity and enforceability hereof or with respect to its obligations hereunder.

5.5 No Provisions Contravened. There is no provision in its certificate or articles of incorporation, bylaws or equivalent governing documents, and no provision in any existing mortgage, indenture, contract or agreement binding on it, which would be contravened by the execution, delivery or performance by it of this Agreement.

5.6 No Consent of Third Parties Needed. No consent of any trustees or holder of any of its indebtedness or any other third party is or shall be required as a condition to the validity of this Agreement.

5.7 No Contravene Any Law. Neither its execution nor its delivery of this Agreement nor its fulfillment of or compliance with the terms and provisions hereof shall contravene any provision of the laws of any jurisdiction, including without limitation, any statute, rule, regulation, judgment, decree, order, franchise or permit applicable to it.

5.8 Disclaimer of Liability. EXCEPT AS IS EXPRESSLY STATED IN THIS AGREEMENT, THE COMPANY MAKES NO EXPRESS OR IMPLIED WARRANTY OR CONDITION, STATUTORY OR OTHERWISE, CONCERNING THE INTELLECTUAL PROPERTY RIGHTS, THE PRODUCTS OR ANY OTHER INFORMATION COMMUNICATED TO DISTRIBUTOR, INCLUDING WITHOUT LIMITATION NO WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, NO WARRANTY OF MERCHANTABILITY, TITLE OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS, AND NO WARRANTIES AS TO QUALITY OR THE USEFULNESS OF THE PRODUCTS FOR THEIR INTENDED PURPOSE.

6. Term and Termination of Agreement.

6.1 Term. This Agreement shall have an initial term of ____ (__) year from the Effective Date and shall be renewed automatically thereafter for successive one-year periods, unless either party elects not to renew this Agreement upon not less than thirty (30) days written notice prior to the end of any such term or otherwise terminates this Agreement pursuant to Section 6.2 (Termination).

6.2 Termination. Any party may terminate this Agreement at any time by sending written notice to the other party at least sixty (60) days in advance of the intended date of termination.

7. General.

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

7.2 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.

7.3 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 the Company:

fax: _____
e-mail: _____
Attention: _____

with a copy to:

fax: _____
e-mail: _____
Attention: _____

if to Distributor:

fax: _____
e-mail: _____
Attention: _____

with a copy to:

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 7.3 (Notices). 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.

7.4 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.

7.5 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.

7.6 Entire Agreement. This Agreement 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 understanding other than this Agreement relating to the subject matter hereof.

7.7 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.

7.8 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 Intercompany License Agreement as of the date first written above.

COMPANY

[NAME OF COMPANY]

By: _____
Name: _____
Title: _____

DISTRIBUTOR

[NAME OF DISTRIBUTOR]

By: _____
Name: _____
Title: _____

TERRITORY

END USER LICENSE AGREEMENT

FEES