LEAPLAW

Source Code License Agreement

Document 4054A   **www.leaplaw.com**

SOURCE CODE LICENSE AGREEMENT

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

RECITALS

WHEREAS, Licensor is the owner of, or has acquired rights to, the Software and Documentation (defined below); and

WHEREAS, Licensee wishes to obtain [an exclusive] [a non-exclusive] license from Licensor to use the Software and such documentation solely in accordance with the terms and on the conditions set forth in this Agreement;

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

1.   Definitions.

As used in this Agreement, the following terms shall have the following meanings:

1.1   "**Derivative Products**" means computer programs in machine readable object code or source code form developed or otherwise acquired by Licensee which are a modification of, enhancement to and derived from or based upon the Software.

1.2   "**Documentation**" means all manuals, user documentation, and related materials pertaining to the Software which are furnished to Licensee by Licensor in connection with the Software.

1.3   "**End Users**" means the customers of the Licensee.

1.4   "**License Fee**" means license fee and other considerations as set forth in Schedule D attached hereto.

1.5   "**Licensed Field**" means _____.

1.6   "**Licensed Products**" means the Derivative Products and the Software sublicensed by Licensee hereunder.

1.7   "**Software**" computer programs and software in machine readable object code and source code form listed in Schedule A and any subsequent error corrections or updates supplied to Licensee by Licensor pursuant to this Agreement.

2.   Grant of Rights.

2.1   License Grant. Licensor hereby grants, and Licensee hereby accepts, subject to the terms and conditions of this Agreement, [an exclusive] [a non-exclusive], nontransferable and nonassignable license, beginning on the Effective Date, (a) to use and modify the Software to create Derivative Products; and (b) to use, manufacture, reproduce, have reproduced, sublicense, market and distribute the Software, Documentation and any Derivative Products in object code form, in each case solely in the territory described on Schedule B hereto (the "**Licensed Territory**") and solely for use with the recommended hardware set forth in Schedule C hereto (the "**Recommended Equipment**").

2.2   Distribution. Licensee shall have the right to copy or reproduce the Software and Documentation, in whole or in part, as necessary to license to its End Users the object code version of the Software for use on designated systems[, either as a stand-alone product or] as part of a Derivative Product.

[2.3   Exclusivity.   Beginning on the [__] anniversary of this Agreement, Licensor shall have the right, at any time, to terminate by written notice the exclusivity of the license granted herein in any jurisdiction within the Licensed Territory if Licensee, within [NUMBER (__)] days after receiving such notice, fails to provide reasonably satisfactory written evidence that it has licensed Derivative Products [with an aggregate sale price of at least $[__]] to End Users or is actively attempting to solicit End Users within such jurisdiction. Evidence provided by Licensee that it has an active development, manufacturing or marketing program directed toward production and licensing of the Software or any Derivative Product shall be deemed reasonably satisfactory evidence. In the event Licensor terminates Licensee's exclusivity within a jurisdiction, Licensor agrees to negotiate in good faith with Licensee for revised license terms under a non-exclusive arrangement. Upon Licensor's written request, but not more than once per calendar year, Licensee agrees to inform Licensor of its efforts to commercialize the Software or any Derivative Product.]

3.   **Delivery.** On or before [____, 20_], Licensor shall deliver to Licensee a master copy of the Software in object code form suitable for reproduction, together with a copy of the Software in source code form and a copy of the Documentation. Licensor shall deliver the foregoing in the form of electronic files only.

4.   **Modifications by Licensor.**

4.1   Error Corrections and Updates. For a period of [NUMBER (__)] years from the Effective Date, Licensor will provide Licensee with (a) error corrections, bug fixes, patches or other updates to the Software in object code form to the extent available in the ordinary course of business in accordance with Licensor's release schedule and (b) updated source code and Documentation for each new release of the Software and, if available, reflecting any error corrections, bug fixes or other updates to the Software.

4.2   Modifications at Licensee's Request. Licensee may, from time to time, request that Licensor incorporate certain features, enhancements or modifications into the Software. Licensor may, in its sole discretion, undertake to incorporate such changes and distribute the Software so modified to all or any licensees of the Software, including related Documentation.

4.3   Title to Modifications. All error corrections, bug fixes, patches, updates or other modifications made by Licensor, as well as related Documentation, shall be the sole property of Licensor.

5.   Derivative Products.

5.1   Title to Incorporated Software. Title to and ownership of any portion of the Software or Documentation incorporated into a Derivative Product without material modification by Licensee shall at all times remain with Licensor or its supplier, and Licensee shall not have any title or ownership interest therein.

5.2   Title to Derivative Products. Title to and ownership of any portion of a Derivative Product created by Licensee and not owned by Licensor or its supplier pursuant to this Section 5 (Derivative Products) shall be held by Licensee.

5.3   Incorporation into Other Software. Licensee may, in its sole discretion, incorporate the Software, Derivative Products or any part thereof, into other of its products, provided that Licensee complies with the terms and conditions of this Agreement.

5.4   Maintenance of Derivative Products. Licensor shall not be required to maintain or otherwise repair any Derivative Products. Any assistance in repairing errors or defects in the Derivative Products which may be provided by Licensor, in its sole discretion, shall be subject to the terms of a separate agreement.

5.5   Products Developed by Licensor. Nothing contained in this Agreement shall be construed to limit Licensor's rights to modify the Software or to develop other products which are similar to or offer the same or similar improvements as any Derivative Products developed by Licensee.

6.   License Fees, Royalties and Payment.

6.1   License Fees. In consideration of the license rights granted herein, Licensee shall pay the License Fees and other consideration for the Software, Documentation and any Derivative Products.]

6.2   Royalties. In consideration for the license rights granted herein, Licensee agrees to pay to Licensor the royalties recited in Schedule D attached hereto (the "**Royalties**") based on Licensee's Net Sales (as defined below) of Licensed Products.

6.3   Calculation of Royalties. The Royalties owed Licensor shall be calculated on a quarterly calendar basis (the "**Royalty Period**") and shall be payable no later than [__] days after the last day of the Royalty Period covered by such payment.

6.4   Royalty Statement. For each Royalty Period, Licensee shall provide Licensor, contemporaneously with the applicable Royalty payment, with a written royalty statement in a form reasonably 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 such Royalty Period or whether any actual Royalty was owed.

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

[6.6   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.]

6.7   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 (net of all returns actually made or allowed 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.

6.8   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 Licensee has actually received payment for such Licensed Product. A Licensed Product shall be considered sold when such Licensed Product is billed, invoiced, shipped, or paid for, whichever occurs first.

6.9   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.

6.10   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.

6.11   Currency. All payments due to Licensor shall be made in United States currency by check drawn on a United States bank, made payable to Licensor unless otherwise specified by Licensor. Checks shall be forwarded to [ADDRESS].

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

7.   Record Inspection and Audit.

(a)   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 [during normal business hours and with reasonable advance notice] and may make copies thereof.

(b)   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.

(c)   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.

8.   Protection of Licensor's Intellectual Property; Limitation of Licensor's Liability to End Users.

8.1   <u>Proprietary Notices</u>. Licensee shall maintain and place on any copy of the Software which it reproduces, whether for internal use or for distribution to End Users, all such notices as are authorized or required hereunder. Licensee shall use the following notices, or such other reasonable notice as Licensor shall from time to time require, on each copy of the Software. Such notices shall be loaded in the computer memory for use, display, or reproduction and shall be embedded in program source code and object code, in the video screen display, on the physical medium embodying the Software copy, and on any Documentation and reference manuals:

(a)   *Copyright © [NAME OF LICENSOR], 2___. All rights reserved. This software and documentation constitute an unpublished work and contains valuable trade secrets and proprietary information belonging to Licensor. None of the foregoing material may be copied, duplicated or disclosed without the express written permission of Licensor.*

(b)   *[NAME OF LICENSOR] EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES CONCERNING [NAME OF LICENSED PRODUCT] AND RELATED DOCUMENTATION, INCLUDING ANY WARRANTIES OF MERCHANTABILITY AND/OR FITNESS FOR ANY PARTICULAR PURPOSE, AND WARRANTIES OF PERFORMANCE, AND ANY WARRANTY THAT MIGHT OTHERWISE ARISE FROM COURSE OF DEALING OR USAGE OF TRADE. NO WARRANTY IS EITHER EXPRESS OR IMPLIED WITH RESPECT TO THE USE OF [DESCRIBE SOFTWARE AND DOCUMENTATION]. [Under no circumstances shall Licensor be liable for incidental, special, indirect, direct or consequential damages or loss of profits, interruption of business, or related expenses which may arise from the use of the software and documentation, including but not limited to those resulting from defects in software and/or documentation, or loss or inaccuracy of data of any kind.]*

8.2   <u>Limitation of Liability to End Users</u>. Under no circumstances shall Licensor be liable for incidental, special, indirect, direct or consequential damages or loss of profits,

interruption of business, or related expenses which may arise from use of the Software or the Documentation by Licensee or any of Licensee's customers, including those resulting from defects therein, or loss or inaccuracy of data of any kind.

8.3   Ownership. Licensee acknowledges that all copies of the Software in any form provided by Licensor or made by Licensee are the sole property of Licensor or its suppliers. Licensee shall not have any right, title, or interest in or to any such Software or copies thereof except as provided in this Agreement, and further shall secure and protect all Software, Derivative Products and Documentation consistent with the maintenance of Licensor's proprietary rights therein.

8.4   Sublicenses. No license to sublicense the source code of the Software or any portion thereof used in creating any Derivative Products is granted hereunder. In addition, Licensee will not sublicense the object code of the Software or any portion thereof included in any Derivative Product to any End User without requiring such End User to enter into a sublicense agreement the terms of which are approved in advance by Licensor. [Such sublicense agreement shall be written in the principal language used for the conduct of business in the country where the sublicense agreement is being used.] Licensee will provide Licensor with a copy of each sublicense agreement promptly following execution. Licensee agrees to use its best efforts to enforce the obligations of its sublicense agreements and to inform Licensor of any known breach of such obligations. Licensor shall be a third-party beneficiary of each sublicense agreement and shall have the right to enforce the terms of each sublicense agreement.

8.5   Copies. Licensee shall not copy the source code of the Software except that Licensee may make one (1) copy solely for archival or backup purposes, and may make such copies as necessary for the creation of Derivative Products.

9.   Confidentiality.

9.1   Acknowledgment. Licensee hereby acknowledges and agrees that the Software, Derivative Products and Documentation constitute and contain valuable proprietary products and trade secrets of Licensor or its suppliers, embodying substantial creative efforts and confidential information, ideas, and expressions. Accordingly, Licensee agrees to treat (and take precautions to ensure that its employees treat) the Software, Derivative Products, and Documentation as confidential in accordance with the confidentiality requirements and conditions set forth below.

9.2   Maintenance of Confidential Information. Each party agrees to keep confidential all confidential information disclosed to it by the other party in accordance herewith, and to protect the confidentiality thereof in the same manner it protects the confidentiality of similar information and data of its own (at all times exercising at least a reasonable degree of care in the protection of confidential information); provided, however, that neither party shall have any such obligation with respect to use or disclosure to others not parties to this Agreement of such confidential information as can be established to: (a) have been known publicly without fault on the part of the recipient; (b) have been known generally in the industry before communication by the disclosing party to the recipient; (c) have been known otherwise by the recipient before communication by the disclosing party; (d) have been received by the recipient without any obligation of confidentiality from a source (other than the disclosing party) lawfully having

possession of such information, or (e) have been received by recipient without any obligation of confidentiality from a source (other than disclosing party) lawfully having possession of such information..

9.3   Injunctive Relief. Licensee acknowledges that the unauthorized use, transfer or disclosure of the Software, Derivative Products, Documentation or copies thereof will: (a) substantially diminish the value to Licensor of the trade secrets and other proprietary interests that are the subject of this Agreement; (b) render Licensor's remedy at law for such unauthorized use, disclosure or transfer inadequate; and (c) cause irreparable injury in a short period of time. If Licensee breaches any of its obligations with respect to the use or confidentiality of the Software, Derivative Products or Documentation, Licensor shall be entitled to equitable relief to protect its interests therein, including preliminary and permanent injunctive relief.

10.   Warranties; Superior Rights.

10.1   Ownership. [Except for the rights, if any, of the Government of the United States of America, as set forth below,] Licensor represents that it is the owner of the entire right, title, and interest in and to Software and the Documentation, that it has the sole right to grant licenses thereunder, and that it has not knowingly granted licenses thereunder to any other entity that would restrict rights granted hereunder except as stated herein.

[10.2   Government Rights. Licensee understands that the Software may have been developed under a funding agreement with the Government of the United States of America and, if so, that the US Government may have certain rights relative thereto. This Agreement is explicitly made subject to the Government's rights under any such agreement and any applicable law or regulation, if any. To the extent that there is a conflict between any such agreement, applicable law or regulation and this Agreement, the terms of such US Government agreement, applicable law or regulation shall prevail. Distribution of the Licensed Products to any government agency by Licensee shall not be subject to the [License Fee] [Royalties] set forth herein.]

10.3   Limited Warranty.   Licensor represents and warrants to Licensee that the Software, when properly installed by Licensee and generated from the Source Code and used with the Recommended Equipment, will perform substantially as described in the Documentation [for a period of [__] days following the Effective Date] [throughout the term of this Agreement] (the "**Warranty Period**").

10.4   Limitations. Notwithstanding the warranty set forth in Section 10.3 (Limited Warranty), all of Licensor's obligations with respect to such warranty shall be contingent upon Licensee's use of the Software in accordance with this Agreement and in accordance with the instructions set forth in the Documentation, as such instructions may be amended, supplemented, or modified by Licensor from time to time. Licensor shall have no warranty obligations with respect to any failures of the Software which are the result of accident, abuse, misapplication, extreme power surge or extreme electromagnetic field.

10.5   Licensee's Sole Remedy. Licensor's entire liability and Licensee's exclusive remedy for a breach of the warranty set forth in Section 10.3 (Limited Warranty) shall be, at

Licensor's option, either: (a) return of the [License Fee] [Royalties paid to date]; or (b) repair or replacement of the Software; provided, however, that such remedies shall only be available to Licensee if Licensor receives written notice of such breach from Licensee during the Warranty Period. Any replacement Software will be warranted for the remainder of the original Warranty Period or [NUMBER (__)] days following delivery of the replacement Software, whichever is longer.

10.6   Disclaimer of Warranties. *Licensor does not represent or warrant that all errors in the Software and Documentation will be corrected. The warranties stated hereinabove are the sole and the exclusive warranties offered by Licensor. There are no other warranties respecting the Software, Documentation or services provided hereunder, either express or implied, including but not limited to any warranty of design, merchantability, or fitness for a particular purpose, even if Licensor has been informed of such purpose. No agent of Licensor is authorized to alter or exceed the warranty obligations of Licensor as set forth herein.*

10.7   Limitation of Liability. *Licensee acknowledges and agrees that the consideration which Licensor is charging hereunder does not include any consideration for assumption by Licensor of the risk of Licensee's consequential or incidental damages which may arise in connection with Licensee's use of the Software, Derivative Products and Documentation. Accordingly, Licensee agrees that Licensor shall not be responsible to Licensee for any loss of profit or indirect, incidental, special, or consequential damages arising out of the licensing or use of the Software, Derivative Products or Documentation.* Notwithstanding any provision herein to the contrary, the maximum liability of Licensor to any person, firm or corporation whatsoever arising out of or in the connection with any license, use or other employment of any Software delivered to Licensee hereunder, whether such liability arises from any claim based on breach or repudiation of contract, warranty, tort or otherwise, shall in no case exceed the actual [License Fee] [Royalties] paid to Licensor by Licensee for the Software whose license, use, or other employment gives rise to the liability. The essential purpose of this provision is to limit the potential liability of Licensor rising out of this Agreement. The parties acknowledge that the limitations set forth in this Section 10.7 (Limitation of Liability) are integral to the amount of consideration levied in connection with the license of the Software and Documentation and any services rendered hereunder and that, were Licensor to assume any further liability other than as set forth herein, such consideration would of necessity be set substantially higher.

11.   Indemnification.

11.1   Indemnification of Licensee.   Licensor shall indemnify, hold harmless and defend Licensee against any action brought against Licensee to the extent that such action is based on a claim that the unmodified Software, when used in accordance with this Agreement, infringes a [United States] copyright [or patent] and Licensor shall pay all costs, settlements and damages finally awarded in connection with any such action; provided, however, that Licensee promptly notifies Licensor in writing of any claim, gives Licensor sole control of the defense and settlement thereof and provides all reasonable assistance in connection therewith.   If any Software is finally adjudged to so infringe, or in Licensor's opinion is likely to become the subject of such a claim, Licensor shall, at its option, either: (a) procure for Licensee the right to continue using the Software, (b) modify or replace the Software to make it non-infringing, or (c)

refund [the License Fee] [all Royalties] paid[, less reasonable depreciation,] upon return of the Software.

11.2   Limitation. Notwithstanding Section 11.1 (Indemnification of Licensee) of this Agreement, Licensor shall have no obligation to indemnify Licensee regarding any claim arising out of: (a) use of other than a current, unaltered release of the Software unless the infringing portion is also in the then current, unaltered release, (b) use of the Software in combination with non-Licensor software, data or equipment if the infringement was caused by such use or combination, (c) any modification or derivation of the Software not in accordance with this agreement unless specifically authorized in writing by Licensor or (d) use of third-party software by any End User. *Section 11.1 and Section 11.2 of this Agreement state the entire liability of Licensor and the exclusive remedy for Licensee relating to infringement or claims of infringement of any copyright or other proprietary right by the Software or Documentation.*

11.3   Indemnification of Licensor. Except for the claims identified in Section 11.1 of this Agreement, Licensee shall indemnify and hold harmless Licensor and its officers, agents and employees from and against any claims, demands, or causes of action whatsoever, including those arising on account of Licensee's modification or enhancement of the Software or otherwise caused by, or arising out of, or resulting from, the exercise or practice of the license granted hereunder by Licensee, its sublicensees, if any, its subsidiaries or their officers, employees, agents or representatives.

[12.   Export Requirements. The Software, Derivative Products, Documentation and all related technical information or materials are subject to export controls and are licensable under the US Government export regulations. Licensee will comply strictly with all legal requirements established under these controls and will not export, re-export, divert, transfer or disclose, directly or indirectly the Software, Derivative Products, Documentation and any related technical information or materials without the prior approval of the U.S. Department of Commerce.]

[13.   Government Contracts. If the Software, Derivative Products or Documentation to be furnished hereunder are to be used in the performance of a government contract or subcontract, such materials shall be provided on a "restricted rights" basis only and Licensee shall place a legend, in addition to applicable copyright notices, in the form provided under applicable governmental regulations. Licensor shall not be subject to any "flow down" provisions required by the governmental customer unless agreed to by Licensor in writing.]

[14.   Patents and Inventions.

14.1   Licensor's Patent Application. If after consultation it is agreed by Licensor and Licensee that a patent application or applications should be filed for the Software, Licensor will prepare and file appropriate patent applications. Licensee may, at its option, pay the cost of searching, preparing, filing, prosecuting and maintaining patent applications and patents relating to the Software. In exchange for payment of such costs and continued payment of Royalties and other consideration hereunder, Licensee shall receive an exclusive license, with the right to sublicense, for the use of Software patent rights extending for the term of any such patent or patents that may issue. If Licensee notifies Licensor that it does not intend to pay such costs, or if Licensee does not respond or make an effort to reach agreement, Licensor may file such

application at its own expense, and Licensee shall have no rights to such invention under this Agreement or otherwise. Licensor shall provide Licensee with a copy of the application filed for which Licensee has paid the cost of filing, as well as copies of any documents received or filed during prosecution thereof, all of which Licensee shall treat as Licensor's confidential information. If the parties agree to file patent application(s) for the Software, they shall cooperate to the fullest extent to maximize the patent protection available for the Software including executing all necessary documents.

14.2   Licensee's Patent Application. Licensee may prepare and file appropriate United States and foreign applications on the Software, or any portion thereof, subject to Licensor's approval of the content of the application(s) and any amendments thereto. In the event of such application(s), Licensee further agrees to:

(a)   Notify Licensor of its intent to file for patent(s) related to the Software at least [__] days prior to applying for patent(s);

(b)   Inform Licensor of Licensee's choice of patent counsel to prepare and prosecute said patent application(s). Final approval of patent counsel shall rest with Licensor, whose approval shall not be unreasonably withheld;

(c)   Subject to Licensor's approval, prepare, file and prosecute appropriate patent application(s), and maintain any patent(s) that may subsequently issue, on the Software and bear all costs associated therewith;

(d)   Assign such patent application(s) to Licensor; and

(e)   Provide Licensor with a copy (or copies) of all patent applications, as well as copies of any documents received or filed during prosecution thereof, and a reasonable opportunity to review, approve and comment thereon.]

15.   Term; Termination.

15.1   Term. This Agreement shall expire on the [__] anniversary of the Effective Date (the "**Termination Date**")[, provided that this Agreement shall automatically renew for additional one-year periods on the Termination Date and each anniversary thereof unless either party gives notice to the other at least [NUMBER (__)] days prior to the date on which this Agreement would otherwise expire.]

15.2   Termination for Cause. Either party may terminate this Agreement with [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.

15.3   Events of Default. This Agreement may be terminated by the nondefaulting party if any of the following events of default occur: (a) if a party materially fails to perform or comply with this Agreement or any provision hereof; (b) if either party fails to strictly comply with the provisions of Section 9 (Confidentiality) or makes an assignment in violation of Section

20.3 (Nonassignability); (c) if a party becomes insolvent or admits in writing its inability to pay its debts as they mature, or makes an assignment for the benefit of creditors, (d) if a petition under any foreign, state or United States bankruptcy act, receivership, statute or the like, as they now exist or as they may be amended from time to time, is filed by party; or (e) if such a petition is filed by any third party, or an application for a receiver is made by anyone and such petition or application is not resolved favorably within [NUMBER (__)] days.

15.4   Effective Date of Termination. Termination due to a material breach in Sections 3 (Grant of Rights), 5 (Derivative Products), 8 (Protection of Licensor's Intellectual Property) or 9 (Confidentiality) shall be effective upon notice. In all other cases, termination shall be effective thirty (30) days after notice of termination to the defaulting party if the defaults have not been cured within such thirty (30) day period.

16.   Post-Termination Rights.

16.1   Inventory. Not less than [__] days prior to the expiration of this Agreement or immediately upon termination thereof, Licensee shall provide Licensor with a complete schedule of all inventory of Licensed Products then on hand (the "**Inventory**").

16.2   Sell-Off Period. Upon expiration or termination of this Agreement, except for reason of a breach of Licensee's duty to comply with the legal notice marking requirements, Licensee shall be entitled, for [__] months following the date of such expiration or termination (the "**Sell-Off Period**") and on a nonexclusive basis, to continue to sell such Inventory. Such sales shall be made subject to all the provisions of this Agreement including the payment of a Royalty which shall be due within [__] days after the close of the Sell-Off Period. At the conclusion of the Sell-Off Period, Licensor may require that the Licensee destroy any Licensed Product still on hand or, alternatively, purchase it from Licensee at a price equal to [__]% of Licensee's customary retail price.

16.3   Use of Software and Documentation. Upon the expiration or termination of this Agreement, all rights granted to Licensee under this Agreement shall immediately terminate and revert to Licensor, and Licensee shall discontinue all use of the Software and Documentation except as set forth in Section 16.2 (Sell Off Period) of this Agreement.

16.4   Payment on Termination. Upon expiration or termination of this Agreement, all outstanding Royalty obligations shall be accelerated and shall immediately become due and payable.

[16.5 Transfer of Ancillary Materials. Upon expiration or termination of this Agreement, Licensor may require that the Licensee transmit to Licensor, at no cost, all material relating to the Licensed Products including all artwork, color separations, prototypes, molds, tooling and the like, and any market studies or other tests conducted by Licensee with respect to the Licensed Products.]

17.   Prosecution of Infringements.

17.1   <u>Licensor Rights</u>. Licensor shall have the right, in its sole discretion, to prosecute lawsuits against third persons for infringement of Licensor's rights in the Licensed Products. If Licensor does not institute an infringement suit within ninety (90) days after Licensee's written request that it do so, Licensee may institute and prosecute such lawsuit.

17.2   <u>Attorneys' Fees and Expenses</u>. Any such lawsuit shall be prosecuted solely at the expense of the party bringing suit and all sums recovered shall be retained by the party commencing such action.

17.3   <u>Cooperation of the Parties</u>. The parties agree to fully cooperate with the other party in the prosecution of any such lawsuit. The party bringing suit shall reimburse the other party for the expenses incurred as a result of such cooperation.

[18.   Insurance. Licensee shall, throughout the term of this Agreement, obtain and maintain at its own cost and expense from a qualified insurance company licensed to do business in [STATE] with a Best Rating of B+ or better, standard product liability insurance naming Licensor 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 reasonably required by Licensor. The policy shall provide for ten days notice to Licensor 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 Licensor a certificate of insurance evidencing same within [__] days following the Effective Date and in no event shall Licensee manufacture, distribute or sell any Licensed Products prior to receipt by Licensor of such evidence of insurance.

19.   Force Majeure. Neither party shall be liable for any loss or delay resulting from any force majeure event, including accident, fire, natural disaster, terrorism, labor stoppage, war or military hostilities, or inability of carriers to make scheduled deliveries, and any payment or delivery date shall be extended to the extent of any delay resulting from any force majeure event.

20.   General.

20.1   <u>Governing Law</u>. 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].

20.2   <u>Successors and Assigns</u>. 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.

20.3   Nonassignability. Licensee shall not assign this Agreement or its rights hereunder without prior written consent of the Licensor.

20.4   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: _____

with a copy to:

_____

_____

_____

fax: _____

e-mail:_____

Attention: _____

if to Licensee:

_____

_____

_____

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 20.4 (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.

20.5   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.

20.6   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 brining 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 RELTING TO THIS AGREEMENT OR ANY OTHER MATTER INVOLVING THE PARTIES HERETO.]

OR

[__.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.]

20.7   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.

20.8   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 understandings other than this Agreement relating to the subject matter hereof.

20.9   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.

20.10 Survival. Licensee's obligations under Sections 6 (License Fees, Royalties and Fees), 8 (Protection of Licensor's Intellectual Property), 9 (Confidentiality), 11 (Indemnification), 15 (Termination), 16 (Post Termination Rights) and 20 (Miscellaneous Provisions) will survive the termination of this Agreement or of any license granted under this Agreement for whatever reason.

20.11 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 Source Code License Agreement as of the date first written above.

LICENSOR

[NAME OF LICENSOR]

By: _____
Name: _____
Title: _____

LICENSEE

[NAME OF LICENSEE]

By: _____
Name: _____
Title: _____

SOFTWARE AND DOCUMENTATION

LICENSED TERRITORY

RECOMMENDED **E**QUIPMENT

LICENSE FEES, ROYALTIES AND OTHER FEES

[License Fee: $[＿＿＿]]

[Royalty Rate: [＿＿＿]%]