**``OEM DISTRIBUTION AND LICENCE AGREEMENT**

This OEM Distribution and Licence Agreement (the “Agreement”) is effective [DATE],

**BETWEEN: [YOUR COMPANY NAME]** (the "First Party"), a company organised and existing under the laws of the [PROVINCE/STATE] of the [COUNTRY], with its head office located at:

[YOUR COMPLETE ADDRESS]

**AND: [COMPANY NAME]** (the "Second Party"), a company organised and existing under the laws of the [PROVINCE/STATE] of the [COUNTRY], with its head office located at:

[COMPLETE ADDRESS]

WHEREAS, [YOUR COMPANY NAME], (the “First Party” hereinafter) manufactures certain [DESCRIBE];

WHEREAS, [COMPANY NAME], (the “Second Party” hereinafter) manufactures, integrates, markets and distributes [DESCRIBE].

WHEREAS, the parties wish to form a strategic alliance whereby Second Party will have the following rights on the terms and under the conditions set forth in this Agreement: (i) to purchase and distribute on an OEM basis certain First Party [SPECIFY] products (pursuant to which OEM arrangement Second Party would add to First Party's [SPECIFY] products an exterior casing of Second Party's design, Second Party brand markings, disc drives (mass storage), memory (other than base memory) and NIC cards; (ii) to have First Party port First Party's [SPECIFY] operating system and related software for operation on Second Party manufactured platforms and to distribute such Second Party platforms with such ported First Party's [SPECIFY] operating system and related software; and (iii) to manufacture [SPECIFY] products based on First Party's hardware designs and incorporating existing (*i.e.*, non-ported) First Party [SPECIFY] operating system and related software.

WHEREAS, the parties intend that First Party's [PRODUCT NAME] will be made available to Second Party under similar terms and conditions to this Agreement, provided that all exclusivity provisions under Attachment D, Section b shall not apply to [PRODUCT NAME].

NOW, THEREFORE, in consideration of the foregoing and of the terms and conditions set forth below, the parties agree as follows:

1. **DEFINITIONS**

"Days" means calendar days unless specifically set forth as business days.

"End User" means the ultimate end-user customer of products sold under or distributed pursuant to this Agreement.

"[SPECIFY]" or "[SPECIFY]" means a Network Attached Storage file server appliance that runs First Party's proprietary or third-party operating system, software, hardware, and firmware; for the avoidance of doubt, a file server based on NT, Unix or NetWare (or successor technologies) is not a [SPECIFY].

"Licensed Materials" means the First Party proprietary [SPECIFY] hardware design ("Licensed Hardware Materials"); the First Party proprietary [SPECIFY] operating system and related software or firmware as ported by First Party to operate on Second Party manufactured platforms pursuant to Section 5.a and licenced to Second Party pursuant to the licence in Section 5.b ("Licensed Ported Software Materials").

"Licensed Ported Products" means Second Party products incorporating the licenced Ported Software Materials.

"Licensed Manufactured Products" means Second Party products incorporating the licenced Non-Ported Software Materials and licenced Hardware Materials.

"Licensed Products" means licenced Ported Products and/or licenced Manufactured Products.

"Network Attached Storage" or "NAS" means a "higher-level" special purpose / single focus storage device utilising hard disc drives, running a special purpose real-time operating system (not NT-, NetWare-, Unix- or successor technology-based) that connects directly to a LAN and/or WAN IP-based communication network and supports remote file system access protocols to provide access to data (e.g., CIFS, NFS). A key design point is that a NAS device is not designated to support general purpose computing applications.

"NFS Software" means the First Party Software that enables serving files via the NFS (Network File System) protocol.

"OEM Products" means the RAID [SPECIFY] hardware products, including the object code version of the OEM Software.

"OEM Software" means First Party proprietary [SPECIFY] operating system and related software or firmware used in the OEM Products.

"Quarter" means Second Party's fiscal quarter.

"RAID" means Redundant Array of Independent disc data protection and storage technology.

"RAID [SPECIFY]" has the meaning specified in Section 3.

"Software" means the licenced Ported Software Materials, the licenced Non-Ported Software Materials, and/or the OEM Software, as applicable.

1. **OEM TERMS**
   1. Appointment and License. Subject to all the terms and conditions of this Agreement, (i) First Party hereby appoints Second Party for the term of this Agreement as a non-exclusive, worldwide distributor of the OEM Products directly to End Users and through Second Party's affiliated systems integrators, distributors, value-added resellers and resellers, and (ii) as part of such appointment, First Party hereby grants Second Party a non-exclusive, worldwide, nontransferable licence to market and distribute the OEM Software only in object code form and for use only with the OEM Products for use by End Users. Packaging specifications for OEM Products are contained in Attachment E. Except as provided in Section 14 (Escrow), neither Dell nor any of its End Users is/are entitled to receive any source code, source information or documentation, or similar materials relating to the OEM Products. The licenced and related rights granted in this Agreement are non-exclusive, subject to Attachment D, Section b.

First Party has the right, upon [NUMBER] months prior written notice to Second Party, to make significant changes or modifications to, or to discontinue, any OEM Products and/or any portion of the licenced Materials; provided, however, that the parties may exercise their rights under the engineering change order provisions in Attachment [SPECIFY]. Additionally, First Party agrees to continue to sell or licence the discontinued OEM Product and/or portion of the licenced Materials to Second Party under this Agreement for a period of not less than [NUMBER] days following such discontinuance.

* 1. End User Documentation. First Party agrees to provide Second Party with First Party's standard or localised end-user documentation for the OEM Products and the licenced Materials ("Documentation") in mutually agreeable electronic form. Subject to all the terms and conditions of this Agreement, First Party hereby grants Second Party a non-exclusive, worldwide, nontransferable licence to reproduce, modify and create derivative works of the Documentation (or to have third parties do so on Second Party's behalf) and to market and distribute to End Users such derivative works of the Documentation solely with the OEM Products or licenced Products. Second Party may reproduce and distribute the Documentation in hard copy or softcopy form as well as in electronic form. Second Party will provide to First Party copies of all Documentation derivative works created by or for Second Party. The parties agree to discuss the sharing of costs for Documentation localization on a case-by-case basis.
  2. End User licence Terms. Software portions of OEM Products and licenced Products may be distributed only by Second Party to End Users, each of which has agreed to be bound by an agreement in electronic or printed format substantially in the form, and shall be subject to the terms and conditions set forth in First Party's End User Software licence Agreement substantially in the form of Attachment [SPECIFY] as well as any additional terms of such relationship; provided that any such additional terms shall be consistent in all material respects with Attachment [SPECIFY].
  3. Restrictions. Copies of Software are licenced for distribution only and not sold. Except as expressly authorised in this Agreement, Second Party shall not: (i) disassemble, decompile or otherwise attempt to reverse engineer any portion or component of the OEM Products or the licenced Materials or otherwise attempt to derive or obtain any source code, structure, algorithms, process, technique, technology, know-how or ideas underlying or contained in the OEM Products or the licenced Materials, (ii) rent, lease or otherwise provide temporary access to the OEM Products or the licenced Materials or portion or components thereof, (iii) copy, alter, use, modify or create derivative works of any portion or component of the OEM Products or licenced Materials, or (iv) allow, assist or permit others to do any of the foregoing.
  4. Packaging; Product Quality and Testing. First Party shall supply OEM Products and licenced Materials (as applicable) to Second Party in accordance with the packaging requirements, quality assurance standards and testing procedures specified in Attachment [SPECIFY].
  5. Additional OEM Products and/or licenced Products. First Party shall make available to Second Party, under this Agreement, all future First Party products consistent with the spirit of this Agreement for products which are extensions, additional models, enhancements, upgrades and/or replacements to [SPECIFY] and [PRODUCT NAME] products and/or options. All upgrades, new versions and maintenance releases of the Software will be provided to Second Party when commercially released.

1. **LIMITED EXCLUSIVITY**

Second Party agrees, subject to Attachment [SPECIFY], to purchase or licence all of its requirements of [SPECIFY] that include RAID capability integrated into the [SPECIFY] ("RAID [SPECIFY]") solely from First Party.

1. **PURCHASE ORDERS; FORECASTS; CHANGES**
   1. Orders and Supply. During the term of this Agreement, subject to the other terms and conditions of, this Agreement, First Party shall supply OEM Products ordered by Second Party pursuant to the order and purchase terms and conditions specified in Attachment [SPECIFY].
   2. Future Revolver Supply Arrangements. The parties shall work together as the relationship progresses to establish revolver and hubbing arrangements for each Second Party regional manufacturing facility as warranted by Second Party's volume needs for OEM Products. Additionally, specific order acceleration, rescheduling, and cancellation terms are as described in Attachment [SPECIFY]. First Party agrees that until the revolver and hubbing arrangements are implemented it shall utilise air freight, as requested by Second Party (at Second Party's expense) to deliver OEM Products to Second Party's regional manufacturing facilities.
2. **PORTING; licence TERMS; ADDITIONAL DEVELOPMENT; MANUFACTURING LICENSE**
   1. Porting to Second Party Platforms. First Party and Second Party agree to collaborate to identify appropriate Second Party manufactured platforms to which agreed upon First Party proprietary [SPECIFY] operating system and related software and firmware specified in Attachment B is intended to be ported to the extent necessary to make them compatible with and operable on the Second Party manufactured hardware platforms. Second Party and First Party shall use reasonable efforts to prepare and finalise an engineering release plan and negotiate in good faith a mutually agreed upon, written statement of work which details the terms, scope, specifications, development milestones, timeline, acceptance criteria, optimised performance criteria, re-work requirements if acceptance and performance criteria are not met, development fees and other relevant terms for such porting and related development work to be performed by First Party to create the licenced Ported Software Materials. Second Party will dedicate sufficient personnel and other development resources to timely achieve the agreed-upon development milestones, and such personnel and resources will be committed on a first priority basis to such porting and related development activities. First Party will provide to Second Party at least bi-weekly engineering reports in an agreed format showing progress toward development milestones.
   2. License to Second Party With Respect to licenced Ported Products. In no event will Second Party allow any third party to use or modify or have access to any licenced Ported Software Materials, except as same are incorporated into licenced Products, except in connection with third-party contractors who may do so in order to support or manufacture the licenced Products for Second Party. licenced Ported Software Materials are licenced hereunder solely within the scope of the above license. Neither Second Party nor any of its End Users is/are entitled to receive any source code, source code documentation or similar materials relating to the licenced Ported Software Materials. All End Users will receive licenced Ported Software Materials subject to all of the terms and conditions of the End User License.
   3. Additional First Party Development. First Party agrees to allow Second Party to fund engineering projects at First Party for specific Second Party needs with respect to improvements and enhancements to OEM Products and licenced Materials. On a project-by-project basis, both parties must agree in advance to separate written statements of work as to the specifications and scope of such development and to the ownership of, or exclusive or non-exclusive rights to (as appropriate), the resulting work product and related intellectual property rights; provided, however, that in each case in which projects are funded by Second Party but First Party retains intellectual property rights, Second Party shall (unless First Party reasonably objects) obtain marketing rights to such resulting work product that are exclusive for a mutually agreed upon time period sufficient to give Second Party a meaningful competitive advantage. First Party and Second Party agree to share product roadmaps on a regular basis and First Party agrees to consider Second Party's suggestions for additions to First Party's product line.
   4. Manufacturing licence to Second Party With Respect to licenced Manufactured Products. Subject to all the terms and conditions of this Agreement, Second Party shall have the right and First Party hereby grants to Second Party a [SPECIFY] license: (i) to reproduce, market and distribute (in object code form) the licenced Non-Ported Software Materials as incorporated into the licenced Manufactured Products, and (ii) to use the licenced Hardware Materials in the design, manufacture, marketing, distribution and support of licenced Manufactured Products (including use of contractors to manufacture and/or support). In no event will Second Party allow any third party to use or modify or have access to any licenced Hardware Materials or licenced Non-Ported Software Materials, except as same are incorporated into licenced Products, except in connection with third-party contractors who may do so in order to manufacture and/or support the licenced Products for Second Party. licenced Hardware Materials and licenced Non-Ported Software Materials are licenced hereunder solely [SPECIFY]. Within the scope of the above license. Neither Second Party, nor any of its End Users is/are entitled to receive any source code, source code documentation or similar materials relating to the licenced Non-Ported Software Materials. All End Users will receive licenced Non-Ported Software Materials subject to all of the terms and conditions of the End User License.
3. **PRICES; PAYMENT TERMS**
   1. Prices for OEM Products. First Party agrees to sell OEM Products, related options and software, protocols, software subscriptions and upgrades at the prices and discounts specified in Attachment [SPECIFY].
   2. Cost Reduction Assistance. Second Party agrees to exercise commercially reasonable efforts to assist First Party in lowering its commodity costs for OEM Products as provided in Attachment [SPECIFY].
   3. Favourable Pricing. First Party shall provide to Second Party favourable pricing for OEM Products as provided in Attachment [SPECIFY].
   4. License Fees for licenced Products. licence fees in conjunction with the licenced Products ("License Fees") shall be payable to First Party in conjunction with the licenced Products as set forth in Attachment [SPECIFY].
   5. Payments. Second Party's payments to First Party shall be made in [CURRENCY] as follows:
      * + For OEM Product orders with Second Party's [SPECIFY] ([SPECIFY]), Second Party will make [NUMBER] monthly telegraphic payment to First Party on the first working day after Second Party's fiscal month close. This payment will be for valid invoices received and dated during the fiscal month prior to the month just closed. (Example: Payments for the fiscal month of August will be made on the first working day in fiscal [SPECIFY].)
        + For OEM Product orders with Second Party's [COUNTRY] Customer Center), [COUNTRY] Manufacturing Facility), and all other affiliates, Second Party will make telegraphic payment to First Party [NUMBER] calendar days after the date of a valid invoice from First Party.
        + License Fees and Hardware licence Fees with respect to licenced Products shall be paid pursuant to Section 6(g) below.

No payment by Second Party or receipt by First Party of a lesser amount than the amount of invoice shall be deemed to be other than on account of the earliest due amount, nor shall any endorsement or statement on any check or letter accompanying any check or payment be deemed an accord and satisfaction, and First Party may accept such check or payment without prejudice to First Party's right to recover the balance of any amount due or pursue any other remedy provided for in these terms and conditions.

Should Second Party fail to pay within the specified time frame, then First Party shall provide written notice to Second Party of such failure. If the failure to pay is not cured within [NUMBER] days of such notice, First Party may stop shipments to Second Party hereunder until payment is made or seek damages at law. Second Party's receipt of First Party's invoice is a condition precedent to any exercise by First Party of its rights with respect to non-payment by Second Party. Additionally, First Party agrees that it shall not exercise such rights if failure to pay any uncontested obligation is due to mistake or inadvertent error by Second Party.

Either party may, without liability to the other, deduct (from any amounts due to the other), any amounts owed to the first party or its affiliates by the other or any of the other's affiliates, and may without penalty to itself withhold any payment to the extent that the amount that the other party owes any money to the first party or its affiliates but only with prior written approval of the other party. Each party will promptly notify the other in writing of its intention to exercise any rights pursuant to this Section.

* 1. Taxes and Duties. Second Party shall assume all responsibility for any and all tariffs, duties, value-added, withholding and all other taxes on shipments of OEM Products and its manufacture, use and distribution of licenced Products (except taxes based on the gross or net income of First Party) or provide First Party with a tax exemption certificate acceptable to the taxing authorities. On orders for shipment outside the [COUNTRY], all required import duties, licences and fees shall be payable by Second Party in addition to the stated prices. First Party acknowledges and agrees that, notwithstanding the foregoing, Second Party has the right to withhold any applicable taxes based on the payment of royalties or licence fees to First Party from any licence Fees due under this Agreement if required by any governmental authority. If First Party is unable to use foreign tax credits or other mechanisms to compensate for such withheld taxes, the parties agree to work together to find an appropriate solution.
  2. Reports; Payment of licence Fees. Second Party shall provide First Party with monthly written reports of actual sales of OEM Products and/or licenced Products (and components thereof) within [NUMBER] days after the end of each fiscal month. All licence Fees with respect to sales of licenced Products identified in such report shall be paid by Second Party check accompanying such report.
  3. Audit Rights. Each party shall maintain accurate and complete books and records relating to the parties' performance under this Agreement, and to keep such documentation for [NUMBER] years. Either party will have the right, no more than [NUMBER] per calendar year, to have an independent public accountant, reasonably acceptable to the other party, examine the other party's relevant books, records and accounts for the purpose of verifying such other party's compliance with this Agreement. Each audit will be conducted at the audited party's place of business, or other place agreed to by First Party and Second Party, during the audited party's normal business hours and with at least [NUMBER] business days prior written notice. The party requesting the audit will pay all fees and expenses of the auditor for the examination: provided that the audited party will bear any such expense if the review or audit shows a discrepancy in favour of the party requesting the audit of more than [%] per cent for the period audited. All deficiencies shown by any such audit shall be immediately paid.

1. **OWNERSHIP**

Notwithstanding anything else, First Party (and its licensors or other suppliers, as applicable) retains (i) all copyrights, patent rights, trade secret rights as well as any and all other proprietary rights in or to the OEM

Products and licenced Products, all Documentation and other related materials, and all copies and derivative works thereof (by whomever produced), (ii) all service marks, trademarks, trade names or any other designations of First Party, and (iii) all title to, and, except as expressly licenced herein, all rights to the Software components and portions of the OEM Products and licenced Products.

1. **COVENANTS AND REPRESENTATIONS**

Except as, and only to the extent, expressly otherwise provided in this Agreement, Second Party covenants, represents, and agrees as of the Effective Date and likewise throughout the entire term of this Agreement:

* 1. Second Party shall use reasonable efforts to market the OEM Products and licenced Products effectively and to ensure that all advertising and marketing materials generated by Second Party relating to or reflecting upon the OEM Products and licenced Products, Second Party or First Party are legal, proper and accurate in all material respects.
  2. In its distribution efforts in connection with the OEM Products and licenced Products and/or products containing OEM Products or licenced Products, Second Party shall be granted the right to use the then current trade names, trademarks, service marks and similar designations, whether or not registered, used by First Party in association with the OEM Products and licenced Products (collectively, "First Party Marks"), subject to and only during the term of this Agreement. In doing so, Second Party shall not represent or imply that the parties are in any way related to or controlled by one another.
  3. All advertisements and promotional materials, packaging and any other material bearing a First Party Mark (including actual OEM Products and licenced Products) shall identify First Party as the owner of each First Party Mark so used and that First Party is the manufacturer and/or licensor of any such OEM Product or licenced Product.
  4. Second Party's use of First Party Marks shall be subject to First Party's prior written approval for each substantially new use of a First Party Mark; such approval shall not be unreasonably withheld. As provided in Section 9.d below, First Party shall provide guidelines and marketing materials for use of First Party Marks. To the extent that Second Party's use of a First Party Mark is in full compliance with First Party's usage guidelines or is an accurate and complete use of product information materials provided by First Party, First Party will be deemed to have approved such use. Except as and to the extent expressly stated this Agreement, no other rights or interest to use any First Party Mark, name or designation is granted, implied or intended. Further, Second Party agrees not to use or contest, during or after the term of this Agreement, any First Party Mark or other designation used by First Party anywhere in the world (nor any name, mark or designation similar thereto). Second Party acknowledges and agrees that all use of the First Party Marks by Second Party shall inure to the benefit of First Party.
  5. Second Party shall keep First Party informed of, and communicate promptly to First Party, any technical or support problems encountered with respect to the OEM Products and licenced Products (including, without limitation, the information to be provided to First Party pursuant to Attachment F), as well as any resolutions proposed, attempted or achieved. Second Party agrees that First Party shall enjoy any and all right, title and interest in and to any such problem resolutions (which shall be deemed licenced Materials subject to the licences to Second Party herein), without the payment of any additional consideration therefore either to Second Party, its End Users, employees, agents or any other party (any right to which is hereby expressly waived by Second Party).
  6. Second Party shall notify First Party promptly as to any known or reasonably suspected infringement of any Marks or of any copyrights, patent rights other proprietary rights relating to the OEM Products and licenced Products. First Party may, in its sole discretion, decide to take or not to take whatever course of action it deems appropriate in connection therewith. If First Party elects to protect or enforce such rights (whether identified by Second Party or otherwise) by taking legal action, Second Party agrees to provide reasonable cooperation at First Party's request and expense in connection with any such action. If First Party initiates and prosecutes any legal cause of action related to such infringement, all legal expenses (including court costs and attorneys' fees) shall be for First Party's account and First Party shall be entitled to all amounts awarded by way of judgment, settlement or compromise.

1. **MARKETING AND SALES COOPERATION; PRODUCT PROMOTION**
   1. In addition to standard worldwide sales/marketing support obligations, Second Party and First Party agree to discuss and encourage cooperation between Second Party and First Party enabling First-Party technology. See Attachment H for additional sales and marketing terms.
   2. At First Party's expense, First Party will train Second Party's training personnel on how to sell First Party products. On terms to be agreed between the parties, First Party will train Second Party field personnel on how to sell First Party products. The parties will jointly agree on the appropriate level and type of sales training and support from First Party to assure success of the products.
   3. This support will include dedicated First Party personnel to help Second Party sell the products, at mutually agreeable levels and cost of support. Both companies will establish decision-making processes which can expeditiously make decisions on specific accounts where further sales cooperation is desired by both parties. First Party will also make available, on mutually agreeable terms, additional training to other Second Party sales personnel beyond just the Second Party trainers.
   4. Second Party agrees to provide visibility of the use of First Party technology in the Second Party [SPECIFY] products in such areas as product collateral (print and online), press releases and on First Party software. Second Party will consider including First Party brand visibility in Second Party advertising. Second Party shall exercise commercially reasonable efforts to use the term "[SPECIFY]" in publicly referring to the OEM Products or licenced Products.
   5. First Party shall provide usage guidelines for Second Party's use of First Party Marks pursuant to Section 8.b above. In addition, First Party shall provide product feature information, claims and other marketing materials for the OEM Products and licenced Products, all of which will in all material respects be accurate and comply with all applicable legal requirements. Second Party may rely on and use such product feature information, claims, and other materials provided by First Party in connection with Second Party's marketing and distribution of the OEM Products and licenced Products.
   6. For any modification of product feature materials or claims materials directly tied to First Party technology which Second Party desires to make, Second Party will confer with First Party for feedback. Second Party will ensure that its materials are accurate and fully consistent with the usage guidelines, product feature information, claims and other marketing materials for the OEM Products and licenced Products which have been previously provided by or approved by First Party, as updated from time to time by written notice to Second Party.
   7. Second Party shall keep, for [NUMBER] years following the sales transaction to Second Party's customer, accurate customer and product information necessary for technical support or to adequately administer a recall of any OEM Products and/or licenced Products. First Party shall keep, for [NUMBER] years following the supply or licence of each OEM Product or licenced Product to Second Party, accurate product information necessary for technical support of such OEM Product or licenced Product or to adequately administer a recall of any OEM Products and/or licenced Products.
2. **SUPPORT AND TRAINING OBLIGATIONS**

Second Party shall be responsible for providing Level I and Level II technical support to its End Users. Second Party shall provide technical support, upgrades, maintenance and other support services and assistance directly to its End Users. First Party shall provide the necessary level of support for levels above Level II. Second Party and First Party shall each identify one to three specific Level III contact persons for all requests from Second Party for technical support by First Party and all other communications between the parties with respect to technical support. Additional support terms and obligations and definitions of support levels are as specified in Attachment [SPECIFY].

1. **WARRANTIES; WARRANTY DISCLAIMER**
   1. Hardware Products Warranty. For a period of [NUMBER] year, beginning on the date that Second Party ships the OEM Product to the End User, First Party warrants that (i) the hardware portions of any OEM Product will operate in accordance with First Party's published specifications and documentation for the product on the date it is shipped, (ii) all OEM Products will be made from entirely new parts; (iii) Second Party will acquire good and marketable title to the OEM Products and licenced Hardware Materials and that all such products and materials will be free and clear of all liens, claims, encumbrances and other restrictions; and (iv) First Party has all the necessary rights and licences to allow Second Party to distribute and resell OEM Products and licenced Hardware Materials without restriction, additional charge or liability to any third party, provided that Second Party's sole remedy and First Party's sole liability for breach of the warranties in clauses (iii) or (iv) immediately above shall be indemnification pursuant to Section 12 below. Replacement parts are warranted for [NUMBER] days or for the remainder of the warranty period in effect on the original product, whichever is greater.
   2. Limited Software Warranty. For a period of [NUMBER] days from the date that Software is shipped to the End User, First Party warrants that
2. the Software will materially conform to First Party's then-current documentation and specifications for such Software;
3. the media containing the Software (but not the software itself) is free from physical defects;
4. Second Party will acquire good and marketable title to the software and that all such software will be free and clear of all liens, claims, encumbrances and other restrictions; and
5. First Party has all the necessary rights and licences to allow Second Party to distribute and resell software without restriction or additional charge or liability to any third party; and provided, further, that in the case of breach Second Party's sole remedy and First Party's sole liability for breach of the warranties in clauses (iii) or (iv) immediately above shall be indemnification pursuant to Section 12 below; and provided further that, except as provided in Section 5.a, in the case of breach of the warranty in clause (i), First Party shall within [NUMBER] days (unless a fewer number of days is required and practical, on a mutually agreeable case by case basis) of Second Party's request supply Software that materially conforms to First Party's then-current documentation and specifications for such Software and in the case of breach of the warranty in clause (ii) First Party shall, within [NUMBER] days (unless a fewer number of days is required and practical, on a mutually agreeable case by case basis) of Second Party's request, furnish replacement media containing the Software that is free from physical defects. Notwithstanding the foregoing, for a period of [NUMBER] years after the delivery to Second Party of Software previously accepted by Second Party, First Party shall develop corrections, patches or workarounds ("Bug Fixes") to material errors in performance or operation of such Software (each a "Bug") within the "applicable Bug fix period" following (x) the discovery of the Bug by First Party, or (y) the reporting of the Bug by Second Party or End Users to First Party. The "applicable Bug fix period" shall mean [NUMBER] business day in the case of *a Priori*ty 1 Bug, [NUMBER] business days in the case of *a Priori*ty 2 Bug and an appropriate number of business days as determined on a case by case basis for other Bugs (as Priority 1 and 2 Bugs are defined in Attachment F). First Party shall provide such Bug Fixes at no cost to Second Party; provided, however, that Second Party shall be charged separately by First Party (on a mutually agreed upon time and materials basis) for Bug Fixes for licenced Ported Software Materials necessitated by an error in or a deficiency in scope of the original specifications for such licenced Ported Software Materials provided by Second Party (a " Second Party Bug"); provided, further, however, that First Party agrees to notify Second Party and correct the Second Party Bug at no additional charge as requested by Second Party if First Party has knowledge of (or should reasonably have knowledge of) a Second Party Bug during the development of the applicable licenced Ported Software Materials, to avoid such Second Party Bug from occurring. Software upgrades and enhancement/update subscriptions must be purchased separately after the [NUMBER]-day warranty period.
   1. Year [SPECIFY] (20[XX]) Compliance (1) First Party warrants that the current latest version of the Software (starting [DATE]) is Year [SPECIFY] (20[XX]) Compliant. For purposes of this Agreement, "Year [SPECIFY] (20[XX]) Compliant" shall mean that the Software will (i) accurately address, present, produce, store and calculate data involving dates beginning with [DATE] and will not produce abnormally ending or incorrect results involving such dates as used in any forward or regression date based function; and (ii) provide that all "date" related functionalities and data fields include the indication of century and millennium, and will perform calculations which involve a four-digit year field.

Notwithstanding the foregoing, Second Party acknowledges and agrees that (i) the Software does not identify or remedy Year [SPECIFY] (20[XX]) problems in third-party operating systems or other applications not supplied by First Party and (ii) the Software operates with the date information it receives; thus, if incorrect date information is provided by the user, the operating system or from any other external product or other source, this information will be used by the Software as received. The foregoing Year [SPECIFY] (20[XX]) Compliant warranty of First Party shall not apply to Year [SPECIFY] (20[XX]) problems caused by such external sources. Second Party's sole remedy and First Party's entire liability for breach of the foregoing warranty shall be repair or replacement of the Software such that it meets the foregoing warranty within [NUMBER] days (unless a fewer number of days is required and practical, on a mutually agreeable case by case basis) of Second Party's request; provided that notwithstanding any other provision hereof as to any applicable Software product the foregoing warranty shall last until and expire upon the [NUMBER] anniversary of the date of receipt of such Software product. (2) First Party shall reasonably cooperate and provide Second Party with information regarding First Party's plans and efforts to make its internal systems able to handle the transition to the year [SPECIFY] (20[XX]) and First Party shall not unreasonably refuse to participate in Second Party's Year [SPECIFY] (20[XX]) business partner program. Second Party will provide a copy of the Year [SPECIFY] (20[XX]) business partner programme to First Party prior to execution of this Agreement.

* 1. Warranty Returns. Second Party will handle and be responsible for all warranty returns from its direct and indirect End Users. OEM Products obtained from First Party which do not comply with the warranty and may (whether or not previously shipped to an End User) be returned (by Second Party only--not any End User directly) to First Party during the applicable warranty period for credit to Second Party (when received by First Party), provided that First Party shall bear all costs associated with freight and insurance to First Party's designated location. Conditions governing epidemic hardware failure are as specified in Attachment [SPECIFY]. First Party will provide each Second Party manufacturing location and Second Party's designated service provider with pre-approved return material authorization ("RMA") numbers in rolling blocks of [NUMBER] to be used *in re*turning non-conforming products to First Party. Second Party or Second Party's designated service provider will notify First Party when they have [NUMBER] pre-approved RMA numbers remaining and First Party shall promptly provide another block of [NUMBER] pre-approved RMA numbers.

First Party agrees to segregate and separately report line and field returns by Second Party manufacturing location. First Party agrees to provide failure analysis to the component level as defined in Attachment [SPECIFY].

* 1. Out of Warranty Returns. Second Party will also handle and be responsible for all out of warranty returns from its direct and indirect End Users. OEM Products obtained from First Party as to which the warranty has expired may be returned (by Second Party only--not any End User directly) to First Party for repair or replacement as requested by Second Party, at Second Party's sole cost and expense (including all costs associated with freight and insurance to First Party's designated location), on a mutually agreed reasonable time and materials basis. First Party agrees to provide current, out-of-warranty repair cost information and will notify Second Party of any modifications thereto.
  2. Limited Rights to Return Product. Except as provided in this Agreement, Second Party shall have no right to return any OEM Product or licenced Product.
  3. Software Maintenance and Upgrade Options. For a period of [NUMBER] days from the date that Second Party ships a Software product to an End User, First Party will provide to Second Party without charge for delivery to such End User upgrades and support services in accordance with First Party's standard support terms and conditions.
  4. Exclusive Warranties. THE FOREGOING WARRANTIES AND REMEDIES ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS TO THE FULLEST EXTENT PERMITTED BY LAW. NETAPP NEITHER ASSUMES NOR authorises ANY OTHER PERSON TO ASSUME FOR IT ANY OTHER LIABILITY IN CONNECTION WITH THE SALE, INSTALLATION, MAINTENANCE OR USE OR THE RESULTS OF THE USE OF THE OEM PRODUCTS AND/OR licenced PRODUCTS, DOCUMENTATION NOR ANY OTHER ITEMS OR MATERIALS PROVIDED HEREUNDER IN TERMS OF CORRECTNESS, COMPLETENESS, ACCURACY, RELIABILITY, OR OTHERWISE, AND NETAPP MAKES NO WARRANTY WHATSOEVER OF ANY NONSTANDARD PRODUCTS SUPPLIED BY IT HEREUNDER. (Neither OEM Products hardware nor Software shall be deemed "nonstandard products" for the purposes of this paragraph.)

FIRST PARTY SHALL NOT BE LIABLE UNDER THIS WARRANTY IF THE ALLEGED DEFECT IN THE

PRODUCT DOES NOT EXIST OR WAS CAUSED BY SECOND PARTY'S OR ANY THIRD PERSON'S (FOR WHOM FIRST PARTY IS NOT RESPONSIBLE AS PROVIDED HEREIN) MISUSE, NEGLECT, IMPROPER INSTALLATION OR TESTING, unauthorised ATTEMPTS TO REPAIR, OR ANY OTHER CAUSE BEYOND THE RANGE OF THE INTENDED USE, OR BY ACCIDENT, FIRE, LIGHTNING OR OTHER HAZARD.

The OEM Products and licenced Products are not designed or intended for use in on-line control of aircraft, air traffic, aircraft navigation or aircraft communications, or in the design, construction, operation or maintenance of any nuclear facility, or in the operation or maintenance of any direct life support system. First Party disclaims any express or implied warranty of fitness for such uses. Second Party agrees that it will not use market or expressly authorise licensees to use the hardware or software for such purposes.

1. **PATENT, COPYRIGHT AND PROPRIETARY RIGHTS INDEMNITY**
   1. First Party shall, at its expense, defend and indemnify Second Party and old Second Party officers, directors, agents and employees harmless for damages and reasonable expenses (including attorneys' fees) related to any suits or claims by a third party brought against Second Party alleging that the OEM Products or licenced Materials sold or licenced pursuant to this Agreement or included into any licenced Products infringe any patent, copyright, trademark, trade secret or similar right provided that First Party is promptly notified, rendered reasonable assistance by Second Party as required, and permitted to direct the defence or settlement negotiations. The foregoing obligation of First Party does not apply with respect to any OEM Product or licenced Materials or portions or components thereof which is or was:
2. made in whole or in part in accordance with Second Party's specifications or instructions and such Second Party specifications are the source of the alleged infringement,
3. that are modified outside of the specifications or by any unauthorised party (including Second Party and any End User) (in either case other than with First Party's prior written consent), if the alleged infringement relates to such modification,
4. combined with other products, processes or materials where the alleged infringement relates to such combination, provided that the alleged infringement claim could not be made but for such combination,
5. where Second Party continues allegedly infringing activity after being notified in writing by First Party thereof or after receiving a modification delivered at First Party's expense that would have avoided the alleged infringement, or
6. where Second Party's use of the OEM Product or licenced Materials is not in accordance with this Agreement as well as any applicable Documentation. Second Party will indemnify and hold First Party and its officers, directors, agents and employees harmless from all damages, settlements, attorneys' fees and expenses related to a claim of infringement or misappropriation which is determined by a ruling of any court of competent jurisdiction or by a mutually-agreed arbitrator, or by mutual agreement of Second Party and First Party, to have been principally caused by Second Party's conduct. First Party shall have no liability for any infringing combinations arising from the integration of First Party's OEM Products or licenced Materials together with other products provided by Second Party or any third party, provided that the alleged infringement claim could not be made but for such combination.
   1. Should the use of OEM Products or licenced Materials by Second Party be enjoined, or in the event First Party wishes to minimise its potential liability hereunder, First Party may, at its option, either:
7. substitute a fully functionally equivalent non-infringing unit of the OEM Product or licenced Materials;
8. modify the infringing item so that it no longer infringes but remains fully functionally equivalent;
9. obtain for Second Party, at First Party's expense, the right to continue use of such item; or
10. if none of the foregoing is feasible, First Party may take back such infringing item or items and refund to Second Party the purchase price paid therefor, less amortised depreciation on a [NUMBER] year straight-line basis. The foregoing in this Section 12 shall be First Party's sole liability and Second Party's sole remedy for infringement or misappropriation of third party intellectual property or proprietary rights.
11. **LIMITATION OF LIABILITY**

IN NO EVENT, WHETHER BASED IN CONTRACT OR TORT (INCLUDING NEGLIGENCE) SHALL EITHER PARTY BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL OR PUNITIVE DAMAGES OF ANY KIND, OR FOR LOSS OF REVENUE, LOSS OF BUSINESS, LOST PROFITS (EXCEPT, IN THE CASE OF VIOLATION OF SECTIONS 2.d OR 15, TO THE EXTENT LOST PROFITS CONSTITUTE THE MEASURE OF DAMAGES UNDER PATENT OR COPYRIGHT LAWS OR APPLICABLE TRADE SECRET STATUTES) OR LOST OR INACCURATE DATA, OR COST OF COVER, PROCUREMENT OF SUBSTITUTE PRODUCTS, TECHNOLOGY OR SERVICES OR OTHER FINANCIAL LOSS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SALE, INSTALLATION, MAINTENANCE, USE, PERFORMANCE, FAILURE OR INTERRUPTION OF ITS PRODUCTS. THIS DISCLAIMER OF LIABILITY FOR DAMAGES WILL NOT BE AFFECTED IF ANY REMEDY PROVIDED HEREUNDER SHALL FAIL OF ITS ESSENTIAL PURPOSE.

1. **TECHNOLOGY INFORMATION ESCROW**

During the term of this Agreement, First Party shall within [NUMBER] days of the Effective Date of this Agreement and thereafter within [NUMBER] days of any material change in source code deliver all applicable source code and source documentation for the Software and hardware designs, specifications and other information relative to the manufacture of the OEM Products and licenced Products and related Documentation and, to the extent it does not violate First Party's existing agreements with its suppliers, a costed Bill of Materials for the OEM Products and the licenced Products (if any) ("Source Materials") and any updates thereof to an independent third party to be held in escrow at Second Party's expense. Second Party shall be entitled to the release of the Source Materials only if First Party

1. dissolves, ceases to do business, makes an assignment for the benefit of creditors, seeks protection under any bankruptcy, receivership or comparable proceeding, or if any such proceeding is instituted against First Party (and not dismissed within [NUMBER] days),
2. is in material default of its support obligations hereunder or its obligations to supply the OEM Products or licenced Products to Second Party, or
3. Subject to the terms and conditions of this Agreement (including without limitation licence Fees and payment obligations), Second Party shall have and First Party hereby grants to Second Party, a limited non-exclusive, nontransferable, non-sub licensable licence to the Source Materials only to allow Second Party to maintain, correct errors, support its End Users and continue exercising the licences under Sections 2 and 5 above solely for the purpose of maintaining and continuing its then current product line and for all future products which are natural extensions, additional models, enhancements, upgrades, and/or replacements to [SPECIFY] and [PRODUCT NAME] products (but not to otherwise modify or create derivative works of the Software); provided that Second Party shall exercise this licence to the Source Materials and shall be entitled to release thereof only in the event of a Release Condition. The term of the limited licence shall be for [NUMBER] months following the first release of Source Materials. Such escrow will be subject to the terms and conditions of the Technology Escrow Agreement executed by the parties and attached hereto as Attachment [SPECIFY].
4. **CONFIDENTIALITY**
   1. Each party (the "Receiving Party") agrees that to the extent the other party (the "Disclosing Party") previously disclosed.

Receiving Party, or the Receiving Party learns from the Disclosing Party, information relating to the Disclosing Party's products, the properties, composition or structure thereof or the manufacture or processing thereof or machines therefore or as to sensitive aspects of the Disclosing Party's business (including, without limitation, computer programs, algorithms, names and expertise of employees and consultants, know-how, formulae, processes, ideas, inventions (whether patentable or not), schematics and other technical, business, financial, customer and product development plans, forecasts, strategies and information), such information shall be deemed the confidential property of the Disclosing Party ("Proprietary Information"). The Receiving Party recognises and acknowledges that the Disclosing Party's Proprietary Information (and the confidential nature thereof) is critical to the Disclosing Party's business and that the Disclosing Party would not enter into this Agreement without assurance that its Proprietary Information and the value thereof will be protected as provided in this Section 15 and elsewhere in this Agreement.

* 1. The Receiving Party agrees (i) to hold the Disclosing Party's Proprietary Information in confidence as a fiduciary and to take all reasonable precautions to protect such Proprietary Information (including, without limitation, similar precautions to those which the Receiving Party employs with respect to its confidential materials of similar nature or value), (ii) not to divulge any Proprietary Information or any derivative thereof to any third person except under nondisclosure agreement on a need to know basis, and (iii) not to use such Proprietary Information at any time during or following the term of this Agreement, except as contemplated by this Agreement. Any employee or agent given access to Proprietary Information must have a legitimate "need to know" and shall agree to similar binding obligations with respect thereto and execute a written agreement to that effect. Without granting any right or license, the Disclosing Party agrees that the foregoing clauses (i), (ii) and (iii) shall not apply (A) with respect to material is in the public domain (through no improper action or inaction by the Receiving Party or any of its agents or employees); (B) with respect to material that can be shown to have been independently developed by the Receiving Party without use of any Proprietary Information by persons who have not had access to such Proprietary Information; (C) with respect to material received from a third party without breach of any nondisclosure obligation; and (D) material as to which the Disclosing Party authorises to be disclosed to others without confidentiality restrictions.
  2. The Receiving Party may disclose material required to be disclosed by law or court order (provided that the Disclosing Party is given an opportunity to restrict the scope of required disclosure). The Receiving Party must promptly notify the Disclosing Party of any information it believes comes within the circumstance set forth in the immediately preceding sentence and will bear the burden of proving the existence of any such circumstance by clear and convincing evidence. The Receiving Party's obligations under this Section shall terminate [NUMBER] years after the effective date of any termination or expiration of this Agreement. Immediately upon termination of this Agreement or upon the Disclosing Party's request, the Receiving Party will turn over to the Disclosing Party all Proprietary Information as well as all documents or media containing any Proprietary Information as well as all copies, extracts or derivatives thereof.
  3. The Receiving Party acknowledges and agrees that due to the unique nature of the Proprietary Information, there can be no adequate remedy at law for any material breach of its obligations under Sections 2.d or 15 hereof and that any such breach may result in irreparable harm to the Disclosing Party. Therefore, upon any such breach, the Disclosing Party shall be entitled to appropriate equitable relief in addition to its other remedies and to be indemnified and held harmless by the Receiving Party from any damage, expense, loss or harm, including, without limitation, lost profits and attorneys' fees, in connection with any breach or enforcement of the Receiving Party's obligations hereunder or the unauthorised use or release of any such Proprietary Information for which the Receiving Party is directly or indirectly responsible. The Receiving Party will notify the Disclosing Party in writing immediately upon the occurrence of any such unauthorised release or other breach. Any breach of this Section will constitute a material breach of this Agreement and give rise to the Disclosing Party's immediate right to terminate this Agreement.

1. **RELATIONSHIP OF THE PARTIES**

The parties hereto expressly understand and agree that the parties are independent contractors in the performance of each and every part of this Agreement, are each solely responsible for its respective employees and agents as well as related labour costs and expenses.

1. **ASSIGNMENT**

Neither party may assign or transfer, in whole or in part, this Agreement nor any of its rights and obligations hereunder (including any assignment by merger or operation of law) without the prior written consent of the other party; which consent shall not be unreasonably withheld provided, however, that no consent shall be required if First Party is assigning to a party not listed on the Exclusivity List in Attachment [SPECIFY].

1. **TERM AND TERMINATION**
   1. Unless terminated earlier as provided herein, this Agreement shall remain in full force and effect from the Effective Date for an initial term of [NUMBER] years and shall be automatically renewed for additional [NUMBER] year terms unless terminated by either party on [NUMBER] days' prior written notice prior to the end of the initial term or any renewal term. Each party understands that at the end of the term of this Agreement or upon earlier termination hereof, neither it nor any of its agents shall have any right whatsoever in connection with the subject matter of this Agreement, regardless of any undocumented continuation of the relationship with the other party, nor be entitled to any compensation in connection with such termination. To the extent legally permissible, any such rights or possible claims are hereby expressly waived.
   2. This Agreement may be terminated by a party for cause immediately by proper written notice to the other party, upon the occurrence of any of the following events:
   3. The other ceases to do business;
   4. The other shall fail to secure or renew in a timely manner any license, permit or authorization is required in order to conduct its business activities as contemplated by this Agreement, or if such license, permit or authorization is revoked or suspended and not reinstated within [NUMBER] days;
   5. The other breaches any material obligation under this Agreement and fails to cure such breach within [NUMBER] days from receipt of proper written notice describing such breach (provided that no cure period will be permitted where cure is not possible);
   6. The other becomes insolvent or seeks protection under any bankruptcy, receivership, trust deed, creditors arrangement, composition or comparable proceeding, or if any such proceeding is instituted against the other (and not dismissed within [NUMBER] days).
   7. Each party understands that these termination rights hereunder are absolute, non-exclusive and independent of any other remedies which may be available at law or in equity. Neither party shall incur any liability for damage, loss or expenses incurred by the other incident to a party's termination of the Agreement in accordance with its terms. In addition, post-termination, End User licences shall remain in effect in accordance with their terms.
   8. Upon termination of this Agreement for any reason, to the extent First Party deems it reasonably necessary or desirable, Second Party hereby agrees at First Party's expense to assign any and all such right, title and interest in or to any OEM Product or licenced Product as well as any enhancements or improvements thereto, First Party Marks or any other proprietary material of First Party. Second Party further agrees at such time and at First Party's expense to undertake all action, which in First Party's sole judgement  is reasonably necessary, to protect, enforce and document First Party's proprietary rights in connection with any subject matter of this Agreement, including, without limitation, to execute any proper instrument or undertake any reasonable legal action in such regard.
   9. Within [NUMBER] days following the effective date of any expiration or termination this Agreement due to First Party's breach, Second Party shall submit to First Party an accurate and complete list ("Inventory") of all OEM Products and/or licenced Products in Second Party's inventory or otherwise directly or indirectly under Second Party's control.
2. **GENERAL PROVISIONS**
   1. Except as otherwise expressly provided, this Agreement may be amended and observance of any provision of this Agreement may be waived (either generally or in any instance, retroactively or prospectively) only upon written consent of the parties. Waivers and amendments shall be effective only if (i) made by non-pre-printed documents, (ii) clearly understood by both parties to be an amendment or waiver, and (iii) express reference to this Agreement is included therein.
   2. The parties intend that this Agreement be controlling over and supersede additional or different terms of any order, confirmation, invoice or similar document, unless expressly agreed upon in writing by both parties.
   3. This Agreement shall be governed by and construed under the laws of [COUNTRY] without regard to conflicts of laws provisions thereof and without regard to the [SPECIFY] United Nations Convention on Contracts for the International Sale of Goods. For any suits initiated by Second Party, the sole jurisdiction and venue for actions arising hereunder shall be the [SPECIFY] [COUNTRY] courts having within their jurisdiction the location of First Party's principal place of business. Both parties consent to the jurisdiction of such courts and agree that process may be served upon them in the manner provided herein for giving of notices or otherwise as allowed by [SPECIFY COUNTRY] law. In any action or proceeding to enforce rights under this Agreement, the prevailing party shall be entitled to recover costs and attorneys' fees. For any suits initiated by First Party, the sole jurisdiction and venue for actions arising hereunder shall be the [SPECIFY COUNTRY] courts having within their jurisdiction the location of Second Party's principal place of business.
   4. If Second Party or its End Users or other customer is an agency or instrumentality of the [COUNTRY] Government: Software is provided with Restricted Rights under [SPECIFY]; the Software has been developed at private expense; no portion of the Software has been developed with [COUNTRY] Government funds; the Software is a trade secret and proprietary information of First Party; and the ownership of the Software and any reproductions shall remain with First Party. Use, duplication or disclosure by the [COUNTRY] Government is subject to restrictions as set forth in [COUNTRY] Rights in Technical Data and Computer Software and [COUNTRY] Commercial Computer Software-Restricted Rights, as applicable.
   5. Each party shall in all material respects comply with all applicable laws and regulations which apply to any aspect of its execution, performance, non-performance and/or enforcement of this Agreement (and related agreements), the OEM Products and licenced Products, including, without limitation, those applicable to product claims, labeling, approvals, registrations and notifications pertaining to the OEM Products or licenced Products.
   6. Second Party (and, where applicable in connection with its obligations under this Agreement, First Party) shall comply with the [COUNTRY] Foreign Corrupt practises [ACT/LAW] (regarding among other things, payments to government officials) as well as all export laws, restrictions, national security controls and regulations of the [COUNTRY] or other applicable foreign agency or authority, and not to export or re-export, or allow the export or re-export of any OEM Product, licenced Product, proprietary material, technology or device or any copy, portion or derivative thereof in violation of any such restrictions, laws or regulations, except in compliance with and with all licences and approvals required under applicable export laws and regulations, including without limitation, those of the [COUNTRY] Department of Commerce.
   7. Headings and captions are for convenience only and are not to be used in the interpretation of this Agreement.
   8. Notices under this Agreement shall be sufficient only if personally delivered, delivered by a major commercial rapid delivery courier service with tracking capabilities or mailed by certified or registered mail, return receipt requested to a party at its addresses first set forth herein or as amended by notice pursuant to this subsection. If not received sooner, notice by mail shall be deemed received [NUMBER] days after deposit in the [COUNTRY] mails.
   9. This Agreement (including all Attachments and Exhibits thereto) supersedes all proposals, oral or written, all negotiations, memoranda of understanding, letters of intent, conversations, or discussions between or among parties relating to the subject matter of this Agreement and all past dealing or industry custom. Each Attachment and Exhibit is incorporated herein as if set forth in full in this agreement.
   10. If any provision of this Agreement is held by a court of competent jurisdiction to be illegal, invalid or unenforceable, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable.
   11. Force Majeure. Neither party will be liable for any delay in performing or for failing to perform obligations resulting from acts of God; inclement weather; fire; explosions; floods; or riots or civil disturbances.

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date first above written.

FIRST PARTY SECOND PARTY

Authorised Signature Authorised Signature

Print Name and Title Print Name and Title