LICENSE AGREEMENT –

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NON-EXCLUSIVE licence TO MANUFACTURE

This licence Agreement – Non-Exclusive licence to Manufacture (the "Agreement") is effective [DATE],

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

[YOUR COMPLETE ADDRESS]

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

[COMPLETE ADDRESS]

**WHEREAS**, [YOUR COMPANY NAME] has conceived, developed and owns a [DESCRIPTION OF THE INVENTION] ("Invention") generally being a new product used as [SPECIFY] *in re*spect of different fields of use of the Invention;

**WHEREAS**, [YOUR COMPANY NAME] has filed a [COUNTRY] patent application under Serial No [NUMBER] to protect the Invention and has therein designated the countries identified in Schedule "A" hereto;

**WHEREAS**, [YOUR COMPANY NAME] has also filed corresponding foreign patent applications in the countries identified in Schedule "B" hereto;

**WHEREAS**, the Developer declares that it desires to obtain and [YOUR COMPANY NAME] declares that it is willing to grant the Developer the exclusive right to manufacture, use and sell the licenced Products and to use the licenced Process throughout the Territory with respect to the Field of use (as those terms are hereinafter defined);

**NOW THEREFORE**, in consideration of the premises and of the mutual covenants and undertakings hereinafter set forth, the parties hereto have agreed and do hereby agree as follows:

**1. DEFINITIONS**

When used in this Agreement, each of the following terms shall have the following respective meanings unless the context otherwise requires:

1.1 "Applications" shall mean the [COUNTRY] patent application Serial No. [NUMBER] *in re*spect of the Invention as well as any supplementary disclosures and divisional applications that may arise therefrom, and applications on improvements under this Agreement]

1.2 "Authorised Sub-Contractors" shall have the meaning given in Section 3.1;

1.3 "Authorised Sub-Developers" shall have the meaning given in Section 4.1;

1.4 "Contractual Year" shall mean the period commencing on [DATE] or the anniversary thereof and ending on the following anniversary thereof;

1.5 "Field of use" shall mean [SPECIFY];

1.6 "Field Test Period" shall mean the period commencing on the effective date hereof and ending on [DATE];

1.7 "Home Territory" shall mean [SPECIFY LOCATION];

1.8 "Licensed Process" shall mean any process described in the Technology;

1.9 "Licensed Products" shall mean [SPECIFY];

1.10 "Net Sales Value" shall mean, the gross price actually invoiced by the Developer or the Authorised Sub-Developers to its customers at arm's length less any sales, excise and use taxes, custom duties, insurance, freight charges, credit given for returned product and normally occurring trade, cash or quantity discounts and rebates;

1.11 "Non-Home Territory" shall mean [SPECIFY LOCATION];

1.12 "Patents" shall mean any patent or patents that may issue in the Territory from any of the Applications or reissue thereafter;

1.13 "prior patent grounds" shall mean grounds for refusal to grant the Patents on the basis that a claim or claims under the Applications are identical or substantially similar to the claim or claims of a valid, existing patent;

1.14 "Technical Information" shall include but not be limited to all knowledge, information, formulas, drawings, plans, processes, specifications and know-how now possessed by [YOUR COMPANY NAME] [or subsequently obtained or developed by [YOUR COMPANY NAME] during the Term] relating to the Invention;

1.15 "Technology" shall mean the Invention, the Applications, the Patents and the Technical Information;

1.16 "Term" shall have the meaning given in Article 19;

1.17 "Territory" shall mean collectively the Home Territory and the Non-Home Territory; and

1.18 "Year" shall mean a period of twelve months.

**2. LICENSE GRANT**

2.1 Subject to the terms and conditions hereof, [YOUR COMPANY NAME] hereby grants the Developer the non-exclusive licence to manufacture, use and sell the licenced Products and to use the licenced Process in the Territory and only *in re*lation to the Field of use.

2.2 (a) Should no Patents issue in [COUNTRY] on or before [DATE] as a result of the refusal of the Applications on prior patent grounds, and [YOUR COMPANY NAME] has not as of such date commenced with reasonable likelihood of success proceedings to appeal such refusal, the Developer may within a reasonable period after failure of the appeal proceedings, at its option terminate this Agreement and [YOUR COMPANY NAME] shall, pursuant to such termination and upon request in writing by the Developer,

reimburse the Developer all out-of-pocket costs and expenses of development work (itemised *in re*asonable detail) incurred by the Developer to introduce the Technology into the Territory, less any revenues earned by the Developer during the period prior to such refusal, subject to the condition that [YOUR COMPANY NAME]'s total liability under this Section 2.3 (a) shall not exceed [AMOUNT].

(b) Should no Patents issue in either [COUNTRY] on or before [DATE] as a result of the refusal of the Applications on any grounds other than prior patent grounds, and [YOUR COMPANY NAME] has not as of such date commenced with reasonable likelihood of success proceedings to appeal such refusal, the Developer may within a reasonable period after failure of the appeal proceedings, at its option terminate this Agreement and [YOUR COMPANY NAME] shall, pursuant to such termination and upon request in writing by the Developer, reimburse the Developer all out-of-pocket costs and expenses of development work (itemised *in re*asonable detail) incurred by the Developer to introduce the Technology into the Territory, less any revenues earned by the Developer during the period prior to such refusal, subject to the condition that [YOUR COMPANY NAME]'s total liability under this Section 2.3(b) shall not exceed [AMOUNT].

(c) Should no Patents issue in any other country or countries of the Territory on or before [DATE] as a result of the refusal of the Applications on prior patent grounds, and [YOUR COMPANY NAME] has not as of such date commenced with reasonable likelihood of success proceedings to appeal such refusal, the Developer may within a reasonable period after failure of the appeal proceedings, at its option limit this Agreement to the territorial extent of the country so affected and [YOUR COMPANY NAME] shall, upon request in writing by the Developer, reimburse the Developer all royalties received *in re*spect of such country or countries within the immediately preceding three years.

(d) To the extent that everyone may become entitled to manufacture, use or sell the Technology, the licenced Products or licenced Process *in re*lation to the Field of use pursuant to the local law of any country or countries of the Territory as a result of the refusal of the Applications therein for any reason, the Developer shall not be bound by this Agreement with respect to such country or countries, except for Article [NUMBER].

**3. SUB-CONTRACTING**

3.1 [YOUR COMPANY NAME] hereby acknowledges that the Developer may sub-contract the manufacture and use of the licenced Products and the licenced Process in the Territory to any person, firm or Company, subject to the condition that any such authorised sub-contractor who is so employed, will undertake in writing to keep confidential pursuant to this Agreement the Technical Information which may be disclosed to it by the Developer for sub-contracting purposes hereunder (the "Authorised Sub-Contractors").

**4. SUB-LICENSING**

4.1 the Developer is hereby authorised to sub-license the manufacture, use and sale of the licenced Products and the use of the licenced Process in the Territory to any person, firm or Company, subject to the condition that prior to entering into any such sub-license, the Developer shall consult with [YOUR COMPANY NAME] on its choice of such authorised sub-Developer, and shall provide [YOUR COMPANY NAME] with such material information as deems reasonably necessary for the purpose of such consultation (the "Authorised Sub-Developers").

4.2 If the Developer, using its reasonable best efforts, fails to enter into sublicense agreements in accordance with the provisions hereof in any country or countries of the Non-Home Territory within [NUMBER] years following the execution hereof and provided that no advanced negotiations are underway between the Developer and prospective sub-Developers at the end of such [NUMBER] years period, then [YOUR COMPANY NAME] may at its option terminate the licence with respect to such country or countries of the Non-Home Territory at the end of such [NUMBER] year period, subject to the condition that [YOUR COMPANY NAME] shall not be entitled to so terminate if the Developer directly or through its Authorised Sub-Contractors is utilising the Technology in accordance with the provisions of this Agreement in any such country or countries.

4.3 Each sub-license hereunder shall be on such terms as deems appropriate, but in no event shall any such sub-license include the right to sub-license.

4.4 the Developer shall be responsible to [YOUR COMPANY NAME] for payments due *in re*spect of purchases and sales by the Authorised Sub-Developers as though they were purchases and sales by the Developer. It is understood and agreed that the Developer shall not be a guarantor for any Authorised Sub-Developer and where the Developer is unable to obtain from an Authorised Sub-Developer the information required to comply with this Agreement, failure by the Developer to supply same to [YOUR COMPANY NAME] shall not entitle [YOUR COMPANY NAME] to terminate this Agreement or the licence with respect to the relevant country or countries of the Territory. Where an Authorised Sub-Developer fails to make payments due under its sub-license to the Developer, the Developer shall promptly notify [YOUR COMPANY NAME] of the default and the Developer shall take such action as may be reasonably required by [YOUR COMPANY NAME].

4.5 The duration of each sub-license hereunder shall be the number of years remaining in the Term as at the effective date of the sub-license minus one day. Every sub-license hereunder shall contain a term granting to the Authorised Sub-Developer the right to apply for a direct licence from [YOUR COMPANY NAME] in the event of termination of this Agreement or the licence with respect to the relevant country or countries of the Territory.

4.6 the Developer shall be responsible to [YOUR COMPANY NAME] for the enforcement of the terms of each sub-license hereunder and for inspecting the accounts and records kept by each Authorised Sub-Developer for the purpose of enforcing the sub-license only. The Developer shall at the request of [YOUR COMPANY NAME] appoint a qualified person jointly with to inspect the records of an Authorised Sub-Developer for the purpose of enforcing the sub-license only on behalf of both parties and both parties shall be entitled to a full report thereon.

**5. TRANSFER OF TECHNICAL INFORMATION**

5.1 Pursuant to the Non-Disclosure Agreement dated l between [YOUR COMPANY NAME] and the Developer (the "Non-Disclosure Agreement"), [YOUR COMPANY NAME] has already transferred the Technical Information to the Developer. [YOUR COMPANY NAME] shall from time to time, but no less than twice per year, during the Term continue to make available to the Developer all additional Technical Information as may become available to [YOUR COMPANY NAME].

**6. FIELD TESTING**

6.1 During the Field Test Period, field tests shall be carried out to demonstrate the effectiveness of the Technology in actual conditions. Such field-testing will consist of:

6.1.1 periodical follow-up measurements of the [SPECIFY]; and

6.1.2 evaluation of results and recommendations.

6.2 In order to assist the Developer in the implementation of such field testing, [YOUR COMPANY NAME] agrees to instruct the Developer's employees during the Field Test Period *in re*spect of the various aspects of the Invention to ensure the transfer of know-how required for the successful completion of the test program. Such assistance shall include the introduction to the licenced Products and the licenced Process and on-site participation in field-testing in [SPECIFY LOCATION].

6.3 The services to be rendered by [YOUR COMPANY NAME] during such Field Test Period shall be free of charge, provided that local transport and accommodation in [LOCATION] will be arranged for and paid by the Developer. [YOUR COMPANY NAME]'s on-site participation for field testing in [LOCATION] will be limited to [NUMBER] ([NUMBER]) periods of about one week each.

**7. TECHNICAL ASSISTANCE**

7.1 Commencing with the first Contractual Year and ending on the expiration of the second Contractual Years, [YOUR COMPANY NAME] shall provide the Developer with such additional technical assistance as the Developer may from time to time request, by providing the services of technical personnel skilled in the application of the Technology. In the event that the Developer requests that such services be provided at the premises of the Developer, the Authorised Sub-Contractors, the Authorised Sub-Developers or the customers thereof, the Developer agrees to pay [YOUR COMPANY NAME] the reasonable travel and living expenses of the technical personnel as well as a per diem fee of [AMOUNT].

7.2 The services rendered by [YOUR COMPANY NAME] technical personnel hereunder will be in the form of counsel and advice as to the utilisation of the Technology, but shall be without any responsibility on [YOUR COMPANY NAME]'s part for the ultimate performance resulting from the use of the Technology.

**8. CONFIDENTIAL TREATMENT OF TECHNICAL INFORMATION**

8.1 The Developer acknowledges the confidential character of the Technical Information included in the Technology and disclosed by [YOUR COMPANY NAME] to the Developer pursuant to the Non-Disclosure Agreement and this Agreement, and the Developer undertakes to treat as strictly confidential all Technical Information so furnished by [YOUR COMPANY NAME] to the Developer.

8.2 The Developer further undertakes to disclose the Technical Information only to its employees or to the employees of an Authorised Sub-Contractor or Authorised Sub-Developer on a need to know basis and on the condition that prior to such disclosure, each such employee agrees in writing not to use same other than for the purpose of manufacturing, using and selling the licenced Products and for using the licenced Process as stipulated herein.

8.3 The above treatment of Technical Information shall not apply to the extent such information

8.3.1 was known to the Developer at the time of disclosure by [YOUR COMPANY NAME];

8.3.2 is or becomes publicly available without the fault of the Developer; or

8.3.3 is subsequently disclosed to the Developer by a third party having the right to disclose the same.

8.4 the Developer may communicate limited Technical Information to its customers in connection with its normal marketing, sales and service activities, provided that any such disclosure is made *bona fide* and to no greater degree than is necessary in the circumstances and with a view to promoting the sale or use of the licenced Products and the licenced Process.

8.5 All Technical Information shall remain the exclusive property of [YOUR COMPANY NAME].

8.6 The obligations of confidentiality set forth in this Article 8 shall continue in effect during the Term and for a period of [NUMBER] ([NUMBER]) years following the expiration or termination hereof.

8.7 In the event that the Developer discloses any confidential information to a sub-Developer during the Term, sub-license shall treat as strictly confidential all such information so furnished in accordance with the provisions of this Article 8.

**9. SOURCING**

9.1 [YOUR COMPANY NAME] hereby acknowledges that the Developer and the Authorised Sub-Developers may purchase for use in connection with the manufacture and use of the licenced Products and the licenced Process hereunder from any person, firm or Company, subject to the condition that any such manufacturer who is so employed, will undertake in writing to keep confidential pursuant to this Agreement the Technical Information which may be disclosed to it by the Developer or the Authorised Sub-Developers for manufacturing purposes.

9.2 At the request of the Developer, [YOUR COMPANY NAME] shall provide the Developer such information on sourcing as [YOUR COMPANY NAME] may possess to assist the Developer in its choice of a Manufacturer, provided that the provision of such information by [YOUR COMPANY NAME] shall be without responsibility on [YOUR COMPANY NAME]'s part for the ultimate performance resulting from the use of any such information in connection with the Technology.

**10. COMMERCIALISATION**

10.1 the Developer shall use its reasonable best efforts to promote the use and sale of the licenced Products and licenced Process in the Territory directly or through its Authorised Sub-Developers, and the Developer shall provide [YOUR COMPANY NAME] quarterly reports on its commercialisation efforts hereunder.

10.2 the Developer and its Authorised Sub-Developers shall be responsible for obtaining and maintaining all necessary or advisable licenses, permits and certifications *in re*spect of commercialisation of the licenced Products and licenced Process in the Territory.

**11. ROYALTIES**

11.1 In consideration of the exclusive licence granted by [YOUR COMPANY NAME] to the Developer hereunder, the Developer hereby undertakes and agrees to pay [YOUR COMPANY NAME] the following royalties:

11.1.1 a royalty of [AMOUNT] purchased by the Developer and the Authorised Sub-Developers from the user in connection with the manufacture, use and sale of the licenced Products and the use of the licenced Process in the Home Territory, it being understood that the Authorised Sub-Contractors shall be obliged to purchase the Developer;

11.1.2 a royalty of [PERCENTAGE %] on the Net Sales Value of [SPECIFY] manufactured and sold by the Developer and the Authorised Sub-Developers in the Home Territory less any royalties paid on purchases of [SPECIFY] used in connection with the manufacture of such [SPECIFY];

11.1.3 a royalty equal to [PERCENTAGE %] of royalties received by the Developer from its Authorised Sub-Developers in the Non-Home Territory.

11.2 In the event that, pursuant to Section 4.2, the Developer is utilising the Technology directly or through its Authorised Sub-Contractors in the Non-Home Territory, the royalties to be paid by [YOUR COMPANY NAME] to the Developer shall be calculated in accordance with the provisions of sections 11.1.1 and 11.1.2.

11.3 The royalty of [AMOUNT] of [SPECIFY] purchased set forth in Section 11.1.1 shall be adjusted annually to reflect inflationary increases.

11.4 Prior to the expiration of the fifth Contractual Year, [YOUR COMPANY NAME] and the Developer undertake and agree to consider in good faith the revision of the royalty rates provided for by Section 11.1.

**12. ROYALTY REPORTS, AUDITING AND PAYMENTS**

12.1 the Developer hereby undertakes for itself and the Authorised Sub-Contractors to establish and maintain separate, adequate and complete records indicating all purchases of [SPECIFY] by the Developer and the Authorised Sub-Contractors as well as all sales of [SPECIFY] by the Developer in or for use in the Territory, and to safe keep all supporting accounting documents to assist in [YOUR COMPANY NAME]'s auditing of such records as herein provided.

12.2 the Developer shall, within [NUMBER] ([NUMBER]) days of the expiration of the last quarter, for each quarterly period of a Contractual Year make and provide to [YOUR COMPANY NAME] a written report of all [SPECIFY] purchased and all [SPECIFY] sold hereunder and shall remit with such report all royalties due to [YOUR COMPANY NAME].

12.3 The above quarterly report shall specify:

12.3.1 quantity purchased;

12.3.2 quantity per weight unit of [SPECIFY] manufactured and sold;

12.3.3 the Net Sales Value of [SPECIFY] sales; and

12.3.4 the royalties calculated thereon.

12.4 [YOUR COMPANY NAME] or its duly designated representative shall be entitled, pursuant to a five-day notice, to inspect and audit the accounts, voucher receipts, invoices and all other records and documents relating to the quarterly written reports and royalty statements provided, and all other facts or matters relating to the calculation of the amount of royalty due, and such representative shall be entitled to take copies of or extracts from any such records or documents.

12.5 In the event that any auditing report prepared by [YOUR COMPANY NAME] following inspection and audit pursuant to Section 12.4 discloses inadequate royalty payments, the Developer shall have two weeks from receipt of [YOUR COMPANY NAME]'s auditing report to pay the balance of the royalties that should otherwise have been paid.

12.6 All royalties and other payments herein provided shall be paid in [YOUR COUNTRY CURRENCY]. For the purpose of computing the amount of royalties on sales, the Net Sales Value shall be converted into [YOUR COUNTRY CURRENCY] at the rate most favourable at which it can be purchased according to the exchange rates on the last working day of the quarterly period for which the royalties are due.

12.7 All royalties and other payments due to [YOUR COMPANY NAME] hereunder and not paid including any balance disclosed by an auditing report as herein provided, will bear interest at the commercial prime lending rate of the Bank of [YOUR COUNTRY], until paid to [YOUR COMPANY NAME]. [YOUR COMPANY NAME] shall be entitled to such interest in addition to any other right or remedies available to it *in re*spect of default in payments by the Developer.

12.8 All payments made to [YOUR COMPANY NAME] under this Agreement shall be made free and clear of any and all taxes, imposts or similar charges, provided however, that income taxes imposed on amounts payable to [YOUR COMPANY NAME] and which the Developer is required to withhold shall be deductible to the extent that such taxes are usable in full as a credit against the [COUNTRY] taxes on income incurred by the Developer from income generated under this Agreement.

12.9 If at any time the conversion of any payment due hereunder and the remittance of same to [YOUR COMPANY NAME], is blocked or penalised by any governmental authority, whether by law, decree or otherwise, then such payments as the same become due and payable, shall be deposited in the local currency in a local bank or other depository designated by [YOUR COMPANY NAME] to its order. [YOUR COMPANY NAME] receipt for such deposit shall then accompany each quarterly report in lieu of the payments as required herein.

**13. GOVERNMENT APPROVAL**

13.1 In the event that any approval with respect to this Agreement, or the registration thereof, shall be required initially or at any time during the Term, with respect to giving legal effect to this Agreement, or with respect to compliance with exchange regulations or requirements, so as to assure the right of remittance of compensation to [YOUR COMPANY NAME] hereunder, the Developer agrees to immediately take whatever steps may be necessary in this respect, and any charges incurred in connection therewith shall be for the account of the Developer.

**14. PATENT PROSECUTION AND MAINTENANCE**

14.1 [YOUR COMPANY NAME] shall during the Term pay all fees, do all such acts, and take all such measures before the appropriate authorities as may be necessary to prosecute the Applications so that Patents may issue therefrom and, subject to Section 14.2, to maintain the Patents after issuance.

14.2 Commencing with the [NUMBER] Contractual Year, should the amount of renewal fees paid by [YOUR COMPANY NAME] to maintain the Patents during a Contractual Year exceed the amount of royalties paid or payable by the Developer to [YOUR COMPANY NAME] during such Contractual Year, the Developer shall pay [YOUR COMPANY NAME] such excess amount together with the royalties due for the last quarterly period of such Contractual Year.

**15. PATENT MARKING**

15.1 All marketing sales or technical documentation relating to the licenced Products or the licenced Process shall contain the following notices:

15.1.1 "Manufactured and sold under licence from [YOUR COMPANY NAME] " (in the case of sales of licenced Products); or

15.1.2 "Used under licence from [YOUR COMPANY NAME]" (in the case of use of the licenced Process); and

15.1.3 "Patent pending in [YOUR COUNTRY] and in other countries"; or

15.1.4 "Patented in [YOUR COUNTRY] and in other countries, other patents pending"

15.2 Every unit of the licenced Products marketed or sold hereunder shall bear on its label or packaging the following notices:

15.2.1 "Patent pending in [YOUR COUNTRY] and in other countries"; or

15.2.2 "Patented in [YOUR COUNTRY] and in other countries, other patents pending".

15.3 [YOUR COMPANY NAME] shall be entitled to limit listing of countries in which Patents are pending or have issued in its marking of licenced Products hereunder, provided always that such marking shall otherwise be in conformity with the requirements of applicable patent law.

**16. THIRD PARTY INFRINGEMENT**

16.1 The Developer undertakes to promptly notify [YOUR COMPANY NAME] of any actual or threatened infringement or any declaratory judgement  action by any person relating to the Patents giving full particulars thereof. The Developer may request in such notice or at any later time that [YOUR COMPANY NAME] acknowledge there is an infringement of one or more Patents to an extent which is significantly harmful to the marketing efforts of the Developer hereunder *in re*spect of the country or countries of the Territory concerned.

16.2 If [YOUR COMPANY NAME] does not so acknowledge within one month after having received Developer 's request pursuant to Section 16.1, the issue of whether there is an infringement of one or more Patents to an extent which is significantly harmful to the marketing efforts of the Developer hereunder, shall be submitted to an independent patent counsel well versed in the laws of the country or countries concerned, such counsel to be designated by both parties jointly. The costs of the council shall be shared equally by the parties. The council shall be requested to make his determination of significant harm within one month after both parties have made their representations to the council regarding the infringement but no later than one month after the parties has made its representations to such counsel. Neither party shall delay making its representations to the counsel unreasonably.

16.3 If significant harm is acknowledged or established pursuant to Section 16.1 or 16.2, then [YOUR COMPANY NAME] shall use all reasonable measures, whether by legal action or otherwise, to prevent or stop such infringement. All costs, disbursements and expenses (including legal fees) of such action shall be borne by [YOUR COMPANY NAME] and any damages recovered in such action shall be for the account of [YOUR COMPANY NAME]. The Developer agrees to co-operate with [YOUR COMPANY NAME] in any way necessary, but without expense to the Developer, in the prosecution of such infringement action.

16.4 If the infringement activities complained of by the Developer occur during the period within [NUMBER] years following the date of issuance of the Patents, and the period within [NUMBER] years in the case of any other country or countries of the Territory, and [YOUR COMPANY NAME] acknowledges the significant harm to the Developer or such significant harm is otherwise established pursuant to Section 16.1 or 16.2, but [YOUR COMPANY NAME] fails or neglects to take reasonable measures to prevent or stop the infringement activities complained of by the Developer within [NUMBER] months of the Developer's request pursuant to Section 16.1, then the Developer shall be entitled to prosecute a patent infringement action in the name of [YOUR COMPANY NAME] or otherwise as may be required by local law. The Developer shall bear all costs, disbursements, and expenses (including legal fees) of such action and any damages recovered in such action shall be for the account of the Developer. If such significant harm is not established pursuant to Section 16.2 at the end of such [NUMBER] month period, then the Developer may commence an infringement action at its expense, provided that the costs incurred by the Developer in so doing will be reimbursed by [YOUR COMPANY NAME] if such significant harm is established at a later time.

16.5 If a final judgement  of a court of competent jurisdiction is rendered, pursuant to litigation contemplated in Sections 16.3 and 16.4 and as a result, [YOUR COMPANY NAME] or the Developer is unable to maintain the exclusive use of the Technology in [LOCATION], or if [YOUR COMPANY NAME] or the Developer has otherwise failed to prevent or stop the infringement activities complained of by the Developer within [NUMBER] months of the Developer's request pursuant to Section 16.1, whichever comes first, then the Developer shall have the following options:

16.5.1 to terminate the Agreement; or

16.5.2 to limit the Agreement to the territorial extent of the country so affected; or

16.5.3 to reduce the royalties to be paid by the Developer *in re*spect of such country by [PERCENTAGE %].

16.6 If the final judgement  referred to in Section 16.5 is rendered or the period of [NUMBER] months has expired *in re*spect of any other country or countries of the Territory, then the Developer shall be entitled to the following options:

16.6.1 to limit this Agreement to the territorial extent of the country or countries so affected; or

16.6.2 to reduce the royalties to be paid by the Developer *in re*spect of such country or countries by [PERCENTAGE%].

16.7 In the event:

16.7.1 the Developer does not request acknowledgement of significant harm pursuant to Section 16,1; or

16.7.2 significant harm is not acknowledged or not established pursuant to Section 16.2; or

16.7.3 the period of [NUMBER] years referred to in Section 16.3 has expired,

the Developer shall be entitled to prosecute a patent infringement action in the name of [YOUR COMPANY NAME] or otherwise as may be required by local law. The Developer shall bear all costs, disbursements and expenses (including legal fees) of such action and any damages recovered in such action shall be for the account of the Developer. [YOUR COMPANY NAME] agrees to co-operate with the Developer in any way necessary but without expense to the Developer, in the prosecution of such infringement action.

16.8 In the event that a final judgement  of a court of competent jurisdiction is rendered, pursuant to litigation contemplated in Section 16.7 and as a result, is unable to maintain the exclusive use of the Technology in the country or countries concerned of the Territory, or if [YOUR COMPANY NAME] has otherwise failed to prevent or stop the infringement activities complained of by the Developer within [NUMBER] months of the Developer's notice in the case of Section 16.7 (i) or (iii) or within [NUMBER] months of is request in the case of Section 16.7 (ii), whichever comes first, [YOUR COMPANY NAME] shall be entitled to limit this Agreement to the territorial extent of the country or countries of the Territory so affected.

16.9 [YOUR COMPANY NAME] shall not be obliged to take any action after having received the Developer's notification or request pursuant to Section 16.1 during the period prior to the issuance of the Patents, except for such action that is required by local law to maintain [YOUR COMPANY NAME] 's rights and remedies with respect to such prior infringement and which may be enforceable only after issuance of the Patents. The Developer is entitled to take such action at [YOUR COMPANY NAME]'s expense if [YOUR COMPANY NAME] does not take it within a reasonable period after receipt of the Developer's notification or request pursuant to Section 16.1.

**17. INTELLECTUAL PROPERTY INDEMNIFICATION**

17.1 Except as specifically set forth herein, [YOUR COMPANY NAME] makes no representations or warranties, express or implied, arising by law or otherwise, with respect to the performance, efficacy or length of life of the Technology, licenced Products or the licenced Process in the Field of use, and [YOUR COMPANY NAME] undertakes to defend, indemnify and hold the Developer harmless from and against any liability for third-party claims against the Developer resulting from the Developer's manufacturing, use or sale of the Technology. licenced Products or licenced Process hereunder, including without limitation, any product liability claim or claims for defective licenced Products or licenced Process.

17.2 [YOUR COMPANY NAME] warrants that the Developer, in manufacturing, using or selling the licenced Products or the licenced Process in the Field of use will not infringe any valid patent, industrial design or copyright in the Territory, and [YOUR COMPANY NAME] undertakes and agrees immediately upon receipt of the Developer's request in writing, to defend, indemnify and hold the Developer harmless from and against any liability for claims of third parties that the Technology infringes any patent, industrial design and copyright of any such third parties.

17.3 Should the Developer receive a demand or a cease and desist letter to stop manufacturing, using or selling the licenced Products or licenced Process for reason of infringement or be served with an infringement action *in re*spect of any country or countries of the Territory, [YOUR COMPANY NAME] shall have the option:

17.3.1 to answer or defend at its own cost such letter or action; or

17.3.2 to limit this Agreement to the territorial extent of the country or countries covered by the infringing Technology and reimburse all royalties received *in re*spect of such country or countries within the immediately preceding three years.

17.4 Notwithstanding Section 17.3, should the Developer receive a demand or cease and desist letter or be served with an infringement action in [LOCATION], [YOUR COMPANY NAME] shall be obligated to take reasonable measures to answer or defend such letter or action, provided that [YOUR COMPANY NAME]'s total liability under this Section 17.4 shall not exceed [AMOUNT] *in re*spect of each of the two countries. Nothing herein shall obligate [YOUR COMPANY NAME] to defend more than one such action at a time in either of the two countries. In the event that [YOUR COMPANY NAME] has incurred costs of at least [AMOUNT] in defending such an action in either of the two countries, [YOUR COMPANY NAME] shall, subject to Section 17.5, be entitled to limit this Agreement to the territorial extent of the country so affected in accordance with Section 17.3.2.

17.5 Before becoming entitled to limit this Agreement pursuant to Section 17.4, [YOUR COMPANY NAME] shall notify the Developer of its intention to so limit as soon as reasonably practicable. Should the Developer wish to assume the defence of any action referred to in Section 17.4, it shall so notify [YOUR COMPANY NAME] no later than one month after [YOUR COMPANY NAME]'s notice, failing which [YOUR COMPANY NAME] shall be entitled to limit this Agreement pursuant to Section 17.3.2 and [YOUR COMPANY NAME] shall reimburse the Developer all costs incurred by the Developer in excess of [AMOUNT] in defending such action during such one-month period. In the event that the Developer assumes the defence of any action pursuant to this Section 17.5 and obtains judgement  or settlement in its favour, [YOUR COMPANY NAME]'s obligation to defend pursuant to Section 17,4 shall resume in accordance with all the terms and conditions thereof.

17.6 [YOUR COMPANY NAME] shall render all reasonable assistance to the Developer in connection with any claim to be defended by the Developer pursuant to Sections 17.3 and 17.4. The Developer shall have full control of the defence of any such claim, but shall not be free to settle the same without [YOUR COMPANY NAME]'s consent if by such settlement [YOUR COMPANY NAME] would be obliged to make payments or to modify its use of the Technology. The Developer shall advise [YOUR COMPANY NAME] of its intention to defend any such claim, and shall keep [YOUR COMPANY NAME] informed on the progress of such defence.

17.7 Should the Developer be prohibited by final judgement  of a court of competent jurisdiction or by settlement agreement from manufacturing, using or selling the licenced Products or licenced Process in the Field of use in [LOCATION], [YOUR COMPANY NAME] may at its option terminate this Agreement, and the Developer shall, pursuant to such termination and upon request in writing by [YOUR COMPANY NAME], reimburse [YOUR COMPANY NAME] all out-of-pocket costs and expenses of development work (itemised *in re*asonable detail) incurred by to introduce the Technology into the Territory, less any revenues earned by [YOUR COMPANY NAME] during the period prior to such prohibition, subject to the conditions that:

17.7.1 the Developer 's total liability under this Section 17.7 shall not exceed [AMOUNT]; and

17.7.2 the letter or action referred to in Section 17.3 is received by the Developer prior to the expiration of the [NUMBER] Contractual Year;

and the Developer shall not otherwise be liable to [YOUR COMPANY NAME] for any termination of this Agreement pursuant to this Section 17.7.

17.8 Should the Developer be prohibited by final judgement  of a court of competent jurisdiction or by settlement agreement from manufacturing, using or selling the licenced Products or licenced Process in the Field of use in [LOCATION] does not exercise its option to terminate this Agreement pursuant to Section 17.7, or should the Developer be prohibited by final judgement  of a court of competent jurisdiction or by settlement agreement from manufacturing, using or selling the licenced Products or licenced Process in the Field of use in any other country or countries of the Territory, [YOUR COMPANY NAME] shall be obliged to limit this Agreement to the territorial extent of the country or countries so affected and to reimburse the Developer all royalties received *in re*spect of such country or countries within the immediately preceding three years.

**18. IMPROVEMENTS**

18.1 Any improvement, patentable or not, to the Technology, licenced Products or licenced Process developed by [YOUR COMPANY NAME] during the Term shall automatically become part of the Technology licenced hereunder at no additional cost to the Developer.

18.2 Any improvement, patentable or not, to the Technology, licenced Products or licenced Process developed solely by the Developer during the Term shall belong to [YOUR COMPANY NAME], and [YOUR COMPANY NAME] hereby grants the Developer a non-exclusive royalty-free licence under any such improvements in the Territory. The Developer shall have the right to make available [YOUR COMPANY NAME] and the Developer’s improvements to other Developers of the Developer who agree to make available their improvements royalty-free to [YOUR COMPANY NAME].

**19. TERM**

19.1 This Agreement shall be effective upon the execution hereof and shall remain in effect for each country of the Territory until the expiry of the relevant Patent or Application existing at the effective date hereof or [NUMBER] ([NUMBER]) years, whichever comes first (the "Term").

19.2 Notwithstanding Section 19.1, if a Patent which has issued from an Application not existing at the effective date hereof and which has become part of the Technology licenced hereunder pursuant to Section 18.1, expires later than any one of the Patents issuing from Applications existing at the effective date hereof, the Term shall be extended for each country of the Territory concerned until the expiry of such Patent. However, each party shall have the right to terminate this Agreement by giving a [NUMBER] month's notice to the other party of its intention to so terminate within the extended period.

**20. TERMINATION**

20.1 Subject to applicable law, in the event that a) either party is ordered or adjudged bankrupt or all or part of its assets are placed in the hands of a receiver or otherwise enters into any scheme or composition with its creditors; or b) an order or resolution is passed for the dissolution of such party, the other party may at its option terminate this Agreement immediately.

20.2 In the event that either party materially fails to perform or breaches any obligation hereunder and such material default or breach has not been corrected within [NUMBER] ([NUMBER]) days, or in the case of a default in payment of royalties within [NUMBER] ([NUMBER]) days, of the other party's notice to that effect, the other party may at its option terminate this Agreement at the expiration of such notice. For greater certainty, should the Developer be utilising the Technology in the Non-Home Territory pursuant to Section 4.2, the Developer shall be deemed not in material breach or default of this Agreement for the purpose of this Section 20.2.

20.3 Any termination hereunder by [YOUR COMPANY NAME] shall be without prejudice to the rights of the Developer in collecting the amounts due to it by the Developer and shall not release the Developer from the obligation to observe and abide by the pending termination and any obligations which survive termination hereof.

20.4 Upon termination by [YOUR COMPANY NAME] of this Agreement for the fault of the Developer pursuant to Section 20.2, the Developer shall stop using the Technology licenced hereinunder, return all originals and copies of documents containing said Technology, and inform all its relevant personnel and Authorised Sub-Contractors that the activities of the Developer hereinunder are terminated and that they are not authorised to manufacture, use or sell the licenced Products or the licenced Process.

**21. NOTICES**

21.1 Any notice required or permitted to be given hereunder shall be in writing, and hand-delivered, sent by registered or certified mail or sent by telecopier or similar telecommunications device (confirmation copy by registered or certified mail) and addressed:

21.1.1 in the case of [YOUR COMPANY NAME]

Attention: [NAME]

Telecopier No.: [YOUR FAX NUMBER]

21.1.2 in the case of the Developer

Attention: [NAME]

Telecopier No.: [FAX NUMBER]

21.2 Any notice given as aforesaid shall be deemed to have been given if sent by telecopier or similar telecommunications device on the next business day following such transmission; if sent by registered or certified mail, on the [NUMBER] business day following such mailing; or if hand-delivered, on the date of such delivery.

21.3 Any party may change its address and telecopier number for service by written notice given as aforesaid.

**22. ASSIGNMENT**

22.1 This Agreement and the rights and obligations hereinunder may not be assigned by either party without the prior written consent of the other party, which consent shall not be unreasonably withheld.

**23. SUCCESSORSHIP**

23.1 This Agreement shall enure to the benefit of and be binding upon the parties and their respective successors and permitted assigns.

**24. SEVERABILITY**

24.1 Should any part or provision of this Agreement be held illegal or unenforceable, the validity of the remaining parts or provisions shall not be affected by such holding and the parties hereto agree to negotiate in good faith to amend or replace any such part or provision that has been found to be illegal or unenforceable.

**25. ENTIRE AGREEMENT**

25.1 This Agreement contains the entire agreement and undertaking between the parties with respect to the subject matter hereof and supersedes all prior discussions, representations, understandings and agreements whether oral or in writing including, without limitation, the Non-Disclosure Agreement.

**26. AMENDMENT**

26.1 This Agreement cannot be modified otherwise than by written instrument signed by both parties.

**27. WAIVER**

27.1 Failure by either party to notify the other of any default or tolerance by either party of the non-execution of any obligation hereunder, shall not constitute abandonment of right, acknowledgement of modification of this Agreement or waiver of any recourse in damages or otherwise against the defaulting party.

**28. GOVERNING LAW**

28.1 This Agreement shall be governed by and interpreted in accordance with the laws of [YOUR COUNTRY].

**29. ARBITRATION**

29.1 All disputes arising in connection with this Agreement shall be finally settled by one or more arbitrators appointed in accordance with the said Rules. Any such arbitration shall be held in [LOCATION] and shall be conducted in the English language only.

**30. INTERPRETATION**

30.1 The headings of the Articles of this Agreement do not form part of this Agreement and shall not be referred to for its interpretation.

**31. FORCE MAJEURE**

31.1 If performance of this Agreement is delayed or prevented by act of God, actions of the elements, fire, labour disturbances, failure or lack of transportation facilities, shortage of labor, material or supplies, inability to obtain equipment or parts, breakdown of equipment, interruption of power or waters war, invasion, civil disturbance, enactment of legislation or issuance of governmental order or regulation beyond either party's reasonable control, performance by either party hereunder to the extent so delayed or prevented, shall be excused.

**IN WITNESS WHEREOF**, each party to this agreement has caused it to be executed at [PLACE OF EXECUTION] on the date indicated above.

# PROGRAMMER DEVELOPER

Authorised Signature Authorised Signature

Print Name and Title Print Name and Title

**SCHEDULE "A"**

## [YOUR COUNTRY] Patent Applications

COUNTRY SERIAL NO. FILING DATE

**SCHEDULE "B"**

## Foreign Patent Application

COUNTRY SERIAL NO. FILING DATE