

CACE Technologies

OEM WinPcap Software License Agreement

ORIGINAL EQUIPMENT MANUFACTURER AGREEMENT

THIS ORIGINAL EQUIPMENT MANUFACTURER AGREEMENT ("Agreement") is made as of [REDACTED] ("Effective Date") by and between CACE Technologies LLC with offices located at 1949 5th Street, Suite 103, Davis, California, USA, ("CACE") and Distributor as defined hereunder

WITNESSETH:

WHEREAS, Licensor has developed, owns and manufacturers that certain product know as OEM WinPCap ("CACE Product"); and

WHEREAS, Distributor is in the business of distributing hardware and software, product development and enhancement and providing support services; and

WHEREAS, Distributor has inspected the CACE Product, has had an opportunity to review the CACE Product, is familiar with the CACE Product, and desires to receive a license from Licensor for purposes of including the CACE Product within a Distributor Product as defined herein; and

NOW, THEREFORE, in consideration of the mutual benefits of the covenants set forth below, CACE and Distributor hereby agree as follows:

ARTICLE I: RECITALS AND DEFINITIONS

Section 1.01 -- Recitals: The above identification of parties and recitals are true and correct.

Section 1.02 -- Definitions: The following definitions shall apply:

- (1) Access: The term "Access" and variants thereof shall mean to store data in, retrieve data from or otherwise approach or make use of (directly or indirectly) through electronic means or otherwise.
- (2) Authorized Facility: The term "Authorized Facility" shall mean the office facility of Distributor located at the address specified on the signature page of this Agreement.
- (3) Authorized Person: The term "Authorized Person" means employees of Receiving Party with a need to know Confidential Information who agrees to maintain the confidentiality of such Confidential Information, legal counsel for the Receiving Party and individuals or entities who are authorized in writing by Disclosing Party to receive Confidential Information and who agree to abide by the restrictions of this Agreement concerning such Confidential

Information.

- (4) Cancellation Notice: The term "Cancellation Notice" shall mean that written notice sent by one party to this Agreement to the other party to this Agreement seeking to cancel this Agreement because of breach by such other party.
- (5) Confidential Information: The term "Confidential Information" shall mean all information disclosed by Disclosing Party to Receiving Party which should reasonably be known to Receiving Party to be proprietary or confidential to Disclosing Party at the time such information comes into the possession or knowledge of Receiving Party and which is not: (i) already known to Receiving Party (ii) in the public domain; (iii) conveyed to Receiving Party by a third party without restriction; (iv) released by Disclosing Party without restriction; (v) independently developed by Receiving Party; and (vi) required by court order to be released by Receiving Party. This Agreement, the CACE Product, and all information in connection therewith shall be deemed Confidential Information of CACE.
- (6) Delivery Date: The term "Delivery Date" shall mean the date Distributor (i) downloads the CACE Product from a CACE FTP or Web site, (ii) receives the CACE Product from CACE as an email attachment, etc., or (iii) receives the CACE Product from CACE on electronic media such as a CD or DVD.
- (7) Defects: The term "Defects" shall mean programming or design errors that substantially impair the performance, utility and functionality of the CACE Product as represented in the Documentation.
- (8) Defect Notice: The term "Defect Notice" shall mean that certain written notice from Distributor to CACE identifying Defects.
- (9) Distributor: The term "Distributor" shall mean the individual or entity identified as Distributor on the signature page of this Agreement.
- (10) Distributor Product: The term "Distributor Product" shall mean the following Distributor hardware and/or software product that includes OEM WinPcap and is marketed (or intended to be marketed) by the Distributor to End-Users: [REDACTED].
- (11) Disclosing Party: The term "Disclosing Party" shall mean a party to this Agreement who reveals Confidential Information to the other party to this Agreement.

- (12) Distribution Term: The term "Distribution Term" shall mean a period of time starting on the Effective Date and continuing in perpetuity.
- (13) Documentation: The term "Documentation" shall mean the user manuals and technical reference manuals, if any, provided by CACE to Distributor in connection with the CACE Product as amended from time to time.
- (14) End-User: The term "End-User" shall mean any person or entity that licenses or purchases a Distributor Product.
- (15) Fee: The term "Fee" shall mean the following sum charged by CACE to Distributor to license the CACE Product as provided under Section 3.01: [REDACTED].
- (16) Receiving Party: The term "Receiving Party" shall mean a party to this Agreement who receives Confidential Information from the other party to this Agreement.
- (17) Restatements: The term "Restatements" shall mean Section 757 of the Restatement of Torts, Section 39 of the Restatement (Third) of Unfair Competition, and Section 1 of the Uniform Trade Secrets Act.
- (18) Support Services: The term "Support Services" shall mean installation services for the CACE Product, telephone consultations concerning use of the CACE Product, and training services for the CACE Product.
- (19) Territory: The term "Territory" shall mean world-wide.
- (20) Unauthorized Access: The term "Unauthorized Access" shall mean any access to the CACE Product except for the exclusive purposes of using and implementing CACE Product in accordance with the Documentation as part of the Distributor Product; promoting, demonstrating and distributing the CACE Product exclusively as part of or in conjunction with the Distributor Product to End-Users, interfacing the CACE Product with the Distributor Product; all subject to the terms and conditions of this Agreement.
- (21) Unauthorized User: The term "Unauthorized User" shall mean any individual who accesses the CACE Product and the Documentation except for (1) employees of Distributor authorized by Distributor to access the product for the exclusive purpose of using and implementing the CACE Product in accordance with the Documentation as part of the Distributor Product; promoting,

demonstrating and distributing the CACE Product exclusively as part of or in conjunction with the Distributor Product; (2) employees of Distributor authorized by Distributor to interface the CACE Product with the Distributor Product, subject to the terms and conditions of this Agreement; and (3) Authorized Persons.

- (22) Warranty Period: The term "Warranty Period" shall mean the period of time beginning on the day the CACE Product is delivered by Distributor to an End-User and continuing for thirty days thereafter.

ARTICLE II: MARKETING AND DISTRIBUTION

Section 2.01 – Marketing Rights: CACE shall not openly market and/or disclose that Distributor uses the CACE Product as a component of Distributor Product unless permission to do so is granted to CACE by the Distributor.

Section 2.02 -- Efforts: Distributor may promote and market the Distributor Product at its own sole discretion.

Section 2.03 -- Costs: Distributor shall pay all costs of promotion, advertising, marketing, shipping and handling of the Distributor Product.

Section 2.04 -- Noncompetition: Distributor agrees that Distributor shall not license, sublicense, market or distribute any software, hardware, or firmware similar to or competitive with the CACE Product.

Section 2.05 -- Proprietary Legends: Distributor shall not remove or alter any copyright notices, trademark notices, or proprietary legends affixed or displayed by CACE in connection with the CACE Product.

Section 2.06 – Non-exclusive: Distributor hereby acknowledges that the rights and licenses granted under the Agreement are non-exclusive and do not constitute a transfer of ownership. CACE may advertise, promote, market, and distribute the CACE Product to any and all individuals and entities within and outside the Territory in the exclusive discretion of CACE. CACE may also authorize third parties to advertise, promote, market and distribute the CACE Product to any and all individuals and entities within and outside the Territory in the exclusive discretion of CACE.

ARTICLE III: LICENSE RIGHTS

Section 3.01 -- Grant of License: Subject to the terms and conditions of this Agreement, CACE hereby grants to Distributor a non-exclusive and non-transferable license for the Distribution Term to (i) acquire the CACE Product and Documentation exclusively for purposes of installing and implementing the CACE Product as part of or in conjunction with the Distributor Product; (ii) to interface the Distributor Product with the CACE Product as may be intended; and (iii)

to include the CACE Product as part of or in conjunction with the Distributor Product when the Distributor Product is sold or licensed to End-Users in the Territory. Distributor shall not distribute the CACE Product alone.

Section 3.02 – CACE Product: Upon receipt of the Fee and final signature of this Agreement the Distributor will be entitled to acquire the CACE Product by (i) downloading the CACE Product from a CACE FTP or Web site, (ii) receiving the CACE Product from CACE as an email attachment, etc., or (iii) receiving the CACE Product from CACE on electronic media such as a CD or DVD. The CACE Product shall be deemed accepted by Distributor fifteen days after the Delivery Date unless Defect Notice is received by CACE by such fifteenth day. Upon receiving Defect Notice from Distributor, CACE shall review the asserted Defect to determine if the Defect is valid. If, in the reasonable professional judgment of CACE, the Defect is valid, CACE shall correct the Defect and resubmit the CACE Product for acceptance by Distributor. If, in the reasonable professional judgment of CACE, the Defect is not valid, CACE shall submit to Distributor a written explanation of the reasons why such asserted Defect is not valid. The written explanation of CACE set forth herein shall be deemed accepted by Distributor within five days after receipt by Distributor of the written explanation unless CACE receives from Distributor written notice rejecting such explanation and terminating this Agreement within such five day period. Upon receipt of Defect Notice from Distributor by CACE as set forth above, the CACE Product shall be deemed accepted by Distributor except as to the Defects specified in the Defect Notice.

Section 3.03 -- Authorized Use: Distributor shall prevent Unauthorized Users from accessing to the CACE Product. Distributor shall prevent Unauthorized Access to the CACE Product.

ARTICLE IV: SERVICES SUPPORT

Section 4.01 -- Consultations: CACE shall provide 15 days of Support Service to Distributor in implementing the CACE Product, unless otherwise agreed to by the parties in a separately executed support agreement.

ARTICLE V: PAYMENT AND REPORTING

Section 5.01 -- Fee: Distributor shall pay CACE the Fee on the Effective Date.

Section 5.02 -- Insurance: Distributor shall maintain at its own expense all necessary insurance, including but not limited to, workers' compensation, disability, and unemployment insurance as well as public liability, product liability, property damage, and automobile liability insurance against all losses, claims, demands, proceedings, damages, costs, charges and expenses for injuries or damage to any person or property arising out of or in connection with this

Agreement which are the result of the fault or negligence of Distributor.

Section 5.03 -- Taxes: Distributor shall be responsible for the payment of, and shall indemnify and hold CACE harmless from, any sales, excise or use tax or taxes in lieu thereof including any interest and penalties (except taxes based upon income earned by CACE) which may be imposed by any governmental authority upon any use, distribution or sublicensing of the CACE Product by or through Distributor.

Section 5.04 -- Risk of Loss: Distributor shall assume risk of loss to the CACE Product as of the Delivery Date.

ARTICLE VI: INTELLECTUAL PROPERTY

Section 6.01 -- Confidential Information: The Receiving Party shall not disclose Confidential Information except to Authorized Persons. The Receiving Party shall not duplicate, use or disclose Confidential Information except as otherwise permitted under this Agreement. In disclosing Confidential Information to Authorized Persons, the Receiving Party shall require such Authorized Person to abide by the restrictions of this Agreement concerning such Confidential Information before disclosing such Confidential Information to such Authorized Person.

Section 6.02 -- Ownership and Title: Title to the CACE Product, including ownership rights to patents, copyrights, trademarks and trade secrets in connection therewith, shall be the exclusive property of CACE. Distributor hereby assigns, transfers, and conveys to CACE any and all rights, title, and interests Distributor may have or accrue in the CACE Product, including (without limitation) any and all ownership rights to patents, copyrights, and trade secrets in connection therewith.

Section 6.03 -- Trade Secrets: Distributor hereby acknowledges and agrees that the Confidential Information of CACE derives independent economic value (actual or potential) from not being generally known to other persons who can obtain economic value from its disclosure or use and from not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; is the subject of reasonable efforts by CACE under the circumstances to maintain its secrecy; and is a trade secret of CACE as defined under California law and the Restatements.

Section 6.04 -- Employee Pirating: During the Distribution Term and for two years after termination or cancellation of this Agreement, neither party shall induce or solicit (directly or indirectly) any employee of the other party to leave the employ of such other party or engage the services of such employee (as an employee or otherwise) without the prior written consent of such other party.

Section 6.05 -- Modification: Distributor shall not modify the CACE Product. Except as otherwise permitted under this Agreement, Distributor shall not use the CACE Product or any materials incident thereto to develop computer software, hardware, or firmware without the prior written consent of CACE. Distributor shall not use the CACE Product or any materials incident thereto to develop computer software, hardware or firmware competing with the CACE Product. If the CACE Product is modified, such modifications shall be the sole and exclusive property of CACE and CACE shall own all of the rights, title and interests to such modifications and any resulting computer software, hardware and firmware, including (but not limited to) any and all copyrights, patents and trade secrets related thereto.

Section 6.06 -- Reverse Engineering: Distributor shall not reverse engineer the CACE Product and shall not allow the CACE Product to be reverse engineered.

Section 6.07 -- Export: Distributor shall not redistribute the CACE Product in such a manner that it infringes on US Export Administration Regulations 15.

ARTICLE VII: WARRANTY

Section 7.01 – CACE Warranty: CACE hereby represents and warrants that during the Warranty Period, the CACE Product shall perform substantially as represented in the Documentation. The express warranty made hereunder concerning the performance of the CACE Product shall be void as of the date the CACE Product is modified by Distributor, an End-User, or any third party.

SECTION 7.02 -- WARRANTY LIMITATION: THE WARRANTY SET FORTH IN SECTION 7.01 IS A LIMITED WARRANTY AND IS THE ONLY WARRANTY MADE BY CACE UNDER THIS AGREEMENT. EXCEPT FOR THE WARRANTY MADE BY CACE IN SECTION 7.01, CACE HEREBY DISCLAIMS, AND DISTRIBUTOR HEREBY WAIVES, ALL OTHER WARRANTIES EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

Section 7.03 -- Limitation of Damages: Neither party shall be liable to the other party under this Agreement for any consequential, exemplary, incidental or punitive damages, regardless of whether such party has been advised of the possibility of such damages in advance or whether such damages are reasonably foreseeable. The liability of CACE for any reason and for any cause of action whatsoever in connection with this Agreement and the CACE Product, regardless of the form of action, whether in contract or in tort, including negligence, shall be limited to the fee paid by

Distributor to CACE in the twelve (12) months prior to the date the claimed damage or injury arose.

Section 7.04 -- Force Majeure: Neither party shall be liable to the other party for failing to perform its obligations under this Agreement because of circumstances beyond the control of such party. Such circumstances shall include, but not be limited to, any acts or omissions of any government or governmental authority, natural disaster, act of a public enemy, riot, sabotage, disputes or differences with workers, power failure, delays in transportation or deliveries of supplies or materials, acts of God, terrorism, or any events reasonably beyond the control of such party. Notwithstanding any provision to the contrary, Distributor's payment and intellectual property obligations shall not be excused under this Section 7.04.

Section 7.05 – CACE Indemnification: Subject to Section 7.06, if a third party receives a judgment from a court of competent jurisdiction upholding claims that the CACE Product violates trade secrets, trademark, copyright or patent rights of such third party, CACE shall perform one or all of the following actions (as determined by CACE in its sole discretion) within one year of the date judgment in favor of such third party's claim is rendered by a court of competent jurisdiction:

- (1) Replacement: Replace the CACE Product with a non-infringing product of substantially equivalent functional and performance capability;
- (2) Modification: Modify the CACE Product to avoid the infringement without substantially eliminating the functional and performance capabilities of the CACE Product;
- (3) Obtain License: Obtain a license for use of the CACE Product from the third party claiming infringement for use of the CACE Product.

The remedies set forth herein shall be the sole and exclusive remedies of Distributor under this Section 7.05.

Section 7.06 – Distributor Indemnification: Distributor shall release, defend, indemnify and hold harmless CACE against any damages or liability (including reasonable attorney fees) arising from (i) use or performance of the CACE Product, including (without limitation) use of the CACE Product by Distributor and End-Users in an infringing manner (ii) the acts (or any failure to act) of Distributor; or (iii) any breach by Distributor of the obligations of Distributor hereunder.

Section 7.07 – Misrepresentation: Distributor shall not misrepresent the CACE Product. Distributor shall not misstate any fact in describing the capabilities and functions of the CACE Product and shall not fail to state a fact concerning the CACE Product and/or the Distributor Product

that is material to the evaluation of the Distributor Product by End-User.

Section 7.08 -- Express Warranties: Distributor is not authorized to (and shall not) create any warranty obligations on behalf of CACE. Distributor shall not make any statements inconsistent or in conflict with CACE standard terms governing the CACE Product.

ARTICLE IX - MISCELLANEOUS

Section 9.01 -- Relationship of the Parties: Nothing herein shall be construed as creating a partnership or employment relationship between CACE and Distributor, or as authorizing either party to act on behalf of the other except as expressly authorized under this Agreement. Each party shall maintain its separate identity.

Section 9.02 -- Public Announcements: All public announcements of the relationship of Distributor and CACE under this Agreement shall be subject to the prior written approval of Distributor and CACE.

Section 9.03 -- Arbitration: Any controversy or claim arising out of or relating to this Agreement, or breach thereof, shall be settled by arbitration in accordance with the Arbitration Rules of the American Arbitration Association ("AAA"), to be held in Yolo or Sacramento County. Judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof in Yolo or Sacramento County. Qualified Arbitrators shall be selected by the parties in accordance with AAA rules. Each party shall have the right of discovery as set forth in the Federal Rules of Civil Procedure.

Section 9.04 -- Litigation Expense: In the event of litigation or arbitration arising out of this Agreement, each party shall pay its own costs and expenses of litigation or arbitration (excluding fees and expenses of arbitrators and administrative fees and expenses of arbitration).

Section 9.05 -- Assignment: All assignments of rights under this Agreement by either party shall be made subject to the prior written consent of the other party, such consent not being unreasonably withheld. .

Section 9.06 -- Complete Agreement: This Agreement is the sole agreement between the parties relating to marketing and use of the CACE Product by Distributor and supersedes all prior proposals or prior agreements (oral or written) and all other communications between the parties relating to marketing of the CACE Product by Distributor.

Section 9.07 -- Assurances: Both parties hereby represent and warrant that all representations, warranties, recitals, statements and information provided to the other party

under this Agreement are true, correct and accurate to the best knowledge of the parties as of the Effective Date.

Section 9.08 -- Amendments and Modifications: Alterations, modifications or amendments of this Agreement shall not be binding and shall be void unless such alterations, modifications or amendments are in writing and signed by CACE and Distributor.

Section 9.09 -- Severability: If a provision of this Agreement is rendered invalid the remaining provisions shall remain in full force and effect.

Section 9.10 -- Captions: The headings and captions of this Agreement are inserted for convenience of reference and do not define, limit or describe the scope or intent of this Agreement or any particular section, paragraph, or provision.

Section 9.11 -- Counterparts: This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Section 9.12 -- Governing Law: This Agreement shall be governed by the laws of the State of California, United States of America, and the federal copyright, trademark and patent laws of the United States of America, and venue shall be in Yolo or Sacramento County only.

Section 9.13 -- Notice: All notices shall be in writing. Notices shall be deemed delivered when delivered by commercial overnight delivery service, Certified or Registered Mail – Return Receipt Requested - or by hand to the addresses set forth on the signature page of this Agreement for CACE and Distributor. Notices shall be deemed given on the date of receipt - as evidenced in the case of Certified or Registered Mail by Return Receipt.

Section 9.14 -- Pronouns/Gender: Pronouns and nouns shall refer to the masculine, feminine, singular or plural as the context shall require.

Section 9.15 -- Waiver: Waiver of a breach of this Agreement shall not constitute a waiver of any other breach. Failure to enforce any provision of this Agreement shall not constitute a waiver or create an estoppel from enforcing such provisions. Any waivers of a provision of this Agreement shall not be binding and shall be void unless such waiver is in writing and signed by the party waiving such a provision.

Section 9.16 -- Equitable Remedies: The parties hereby acknowledge and agree that damages at law may be an inadequate remedy to CACE. In addition to other rights which may be available, CACE shall have the right of specific performance, injunction or other equitable remedy (including, without limitation, the right to such equitable remedies prior to or pending arbitration) in the event of a

breach or threatened breach of this Agreement by Distributor.

Section 9.17 – Continuation: The terms of provisions of Articles I, V, VI, VII and IX shall survive termination and cancellation of this Agreement.

IN WITNESS WHEREOF, this Agreement has been executed as of the Effective Date.

LICENSOR:

CACE TECHNOLOGIES LLC

BY: _____
[Representative of Licensor]

Print Name: _____

Title: _____

Date: _____

DISTRIBUTOR:

Name: _____

BY: _____

Print Name: _____

Title: _____

Date: _____

Address: _____