

EXHIBIT
SCO 12
7-10-98

OEM DISTRIBUTION AGREEMENT

ORIGINAL

This Agreement is made and entered into on the date last executed by and between The Santa Cruz Operation, Inc. (hereinafter "SCO"), a corporation of the State of California with its principal place of business at 400 Encinal Street, Santa Cruz, California 95060, and Unisys Corporation, including its subsidiaries, (hereinafter collectively "Unisys"), a corporation of Delaware with its principal place of business at Township Lane and Jolly, Bluebell, Pennsylvania, 19424.

WHEREAS, SCO is a licensor, manufacturer and distributor of SCO software and related products and materials ("Licensed Product"),

WHEREAS, Unisys is a reseller of computer products manufactured by or on behalf of Unisys, and possesses expertise in broad-based horizontal markets, and

WHEREAS, the parties are desirous of Unisys marketing of Licensed Products in conjunction with substantial added value in the form of hardware and/or software to its customers;

NOW, THEREFORE, the parties agree as follows:

1. APPOINTMENT OF OEM

SCO hereby appoints Unisys as a non-exclusive "SCO Original Equipment Manufacturer". Unisys shall have the right, during the term of and subject to the provisions of this Agreement, to market to its customers on a worldwide basis, limited licenses for the use of Licensed Product set forth on Exhibit A attached hereto, which includes software and its documentation and related materials supplied by SCO.

Unisys marketing of such licenses shall be generally in accordance with a plan discussed with and agreed to by SCO on a regular basis (the "Business Plan"). Such Business Plan(s) shall be hereby incorporated into this Agreement by reference.

2. RELATIONSHIP WITH SCO AND/OR SCO RESELLER

Unisys understands that it may acquire the Licensed Product to be marketed hereunder by Unisys from either SCO or from an authorized SCO distributor or other SCO authorized source. Notwithstanding its source of Licensed Product, Unisys shall comply with all applicable provisions of this Agreement at all times.

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3. END USER LICENSES

- A. Unisys shall distribute with each Licensed Product the end user "break-the-seal" license agreement included by SCO in the Licensed Product package or shall, prior to installation, require the end user to execute an enforceable license agreement containing provisions substantially similar to those of Exhibit B1 attached hereto.
- B. In the event Unisys is reproducing or pre-installing the Licensed Product, or in the event Unisys is acquiring component Licensed Product, Unisys may utilize a break-

Plaintiff's Exhibit

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the-seal license agreement substantially similar to Exhibit B2 or may require the end user to execute a license agreement as set forth above. Unisys shall retain any such executed license agreements and shall provide them to SCO upon SCO's request or upon expiration or termination of this Agreement. Unisys grants to SCO the right to enforce such agreements on Unisys behalf should Unisys fail to enforce said agreement.

4. BUSINESS PLAN

- A. Within thirty days of the execution of this Agreement, and thereafter at yearly intervals, Unisys will deliver to SCO a Business Plan. SCO shall monitor Unisys performance against the Plan and shall review it with Unisys at the intervals set out in Exhibit A (the "Review Period"), at which times the Business Plan may be updated by mutual consent.
- B. The Business and Marketing Plan will, at a minimum, provide:
- i) A description of Unisys positioning of SCO products in relation to its hardware and other operating software, in terms of, inter alia, distribution and delivery, marketing campaigns and material, market focus, salesperson compensation, sales training, technical support and product design/development activities.
 - ii) Specific actions in these areas anticipated in the Business Plan or Review Period, with anticipated co-op funding.
 - iii) Projected volumes of Licensed Product delivered to customers and procured from SCO on a rolling four-quarter forward basis.

5. OBLIGATIONS OF UNISYS

- A. Unisys shall use only those resellers or types of resellers as set forth in the Business Plan set forth above. Unisys shall enter into a written agreement with each reseller which shall, at a minimum, contain the provisions set forth in Exhibit C hereto.
- B. Unisys and/or its resellers shall at all times remarket the Licensed Product only in conjunction with substantial added value as set forth on Exhibit A.
- C. Unisys shall at all times employ trained sales and technical support personnel, in accordance with reasonable training requirements and policies as may be issued by SCO from time to time. SCO's training and support requirements and policies in effect upon the execution of this Agreement are as set forth on Exhibit E attached hereto.
- D. Unisys shall be responsible for any support and/or training required for its resellers. Unisys shall remain responsible for the level of support and training provided to the end user customers, however, and in the event such customers shall fail to be adequately supported and/or trained, SCO shall notify Unisys of its violations of this Section in accordance with section 13.B below.

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- E. Unisys shall maintain a support facility and employ trained support personnel in order to support each geographical territory in which Unisys markets Licensed Product. In the event Unisys fails to meet the required level of support in any particular country, SCO shall notify Unisys in accordance with section 13.B below.
- F. Unisys and/or its resellers shall market the Licensed Product to end user customers in a face-to-face manner and not utilize mail order or telemarketing methods as the primary method of marketing Licensed Product. SCO shall notify Unisys of its violations of this Section in accordance with section 13.B below.
- G. Unisys shall not distribute to any third party any Licensed Product provided to Unisys solely for demonstration or other promotional purposes without the prior written consent of SCO.
- H. Unisys shall make no representations to customers regarding Licensed Product other than those made by SCO product literature or as otherwise provided by SCO in writing.
- I. If Unisys is to acquire the Licensed Product in component form, Unisys shall, in any given calendar quarter, acquire the Licensed Product serial number and activation keys in quantities greater than or equal to the quantities of media and/or documentation components acquired.
- J. Unisys shall, no later than the forty-fifth (45th) day of each quarter, provide SCO with a report indicating the number of copies of Licensed Product shipped by Unisys and indicating all Licensed Product acquired by Unisys from sources other than SCO in the previous quarter and the source(s) from which Unisys acquired such Licensed Product. Such report(s) shall indicate for each SCO product the date of shipment and ship-to point (by state and zip code within the United States and by country outside the United States), Licensed Product model number, quantity and Licensed Product net cost per unit. All such reports shall be in a format reasonably requested by SCO. SCO agrees that said reports will be used solely for crediting Unisys against its marketing milestones and for remuneration of SCO's sales force.

Any report regarding Licensed Product acquired from other SCO authorized sources received by SCO later than the twentieth (20th) business day of the quarter shall not be credited against Unisys volume commitment.

SCO shall have the right to audit Unisys records to ensure compliance with this Agreement. Such audit shall be conducted utilizing a third party independent auditor, at SCO's expense, as reasonably requested by SCO, provided however, that Unisys shall reimburse SCO for said expenses in the event the audit discloses an underpayment of royalties by Unisys of five percent (5%) or \$5,000, whichever shall be greater. Any Unisys information disclosed to SCO pursuant to such audit shall be deemed Unisys confidential information shall not be disclosed to any other party without the prior written consent of Unisys. Notwithstanding the above, UNIX Systems Laboratories, Inc. shall have the right to audit Unisys records with regard to the use and reproduction of any UNIX operating system product.

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6. REPRODUCTION LICENSE

- A. Unisys shall have the right to reproduce the Licensed Product as expressly specified on Exhibit A. Except as provided in separate agreements between the parties, the Licensed Product may not be modified or revised in any way, nor may it be translated or localized in any way without the prior written consent of SCO. All copies of the Licensed Product reproduced by Unisys shall include the copyright notice of SCO and/or its suppliers and all other applicable proprietary markings. Except as expressly set forth herein, Unisys shall have no right, title, or interest in the Licensed Product, which shall at all times remain the property of SCO and/or its suppliers.
- B. Prior to delivery to an end user, Unisys shall incorporate a unique serial number and activation key from SCO with each Licensed Product. Unisys may replace an end user's defective hard disk containing Licensed Product with another hard disk containing Licensed Product which uses the same serial number and activation key as the defective disk.
- C. Unisys shall ensure that installed Licensed Product is distributed with no more than one copy of reference manuals and related materials, provided, however, if the Licensed Product is installed so as to be embedded in Unisys total system offered the end user such that the Licensed Product is imperceptible to the end user, then Unisys shall not be required to distribute said manuals and materials.

7. INSTALLATION

Unisys or its reseller shall have the right to install, utilizing either packaged product or a master copy provided by SCO subject to the following:

- A. Unisys or its reseller shall install Licensed Product prior to delivery to its end user customers. For packaged Licensed Product only, Unisys or its reseller will also offer installation services for the Licensed Product to its end user customers.
- B. Prior to delivery to an end user, Unisys or its reseller shall incorporate a unique serial number and activation key from SCO with each Licensed Product. Unisys or its reseller may replace an end user's defective hard disk containing Licensed Product with another hard disk containing Licensed Product which uses the same serial number and activation key as the defective disk.
- C. Unisys shall ensure that installed Licensed Product is distributed with reference manuals and related materials, provided, however, if the Licensed Product is installed so as to be embedded in Unisys total system offered the end user such that the Licensed Product is imperceptible to the end user, then Unisys shall not be required to distribute said manuals and materials.

8. MARKETING MILESTONES FOR LICENSED PRODUCT: PRICE; PAYMENT

- A. If, during the term of this Agreement Unisys acquire Licensed Product in excess of previous year's purchases, Unisys may be entitled to additional discount as set forth in Exhibit A.

NOTICE OF CONFIDENTIALITY

- B. Regarding Licensed Product acquired from SCO, Unisys license fees for Licensed Product acquired by Unisys authorized purchasing locations listed in Exhibit E, shall be SCO's then current applicable list price, less the then current applicable Unisys discount as set forth in Exhibit A. Unisys license fees for purchase orders received from other Unisys subsidiaries or offices not listed in Exhibit E, shall be 45% off of the applicable list price. SCO shall have the right to increase any price on thirty (30) days prior written notice.
- C. Regarding Licensed Product acquired from SCO, Unisys shall order Licensed Product from SCO by a written purchase order submitted by Unisys central purchasing location listed in Exhibit E, which shall be subject to acceptance by SCO. Each purchase order shall be for no less than either twenty-five thousand dollars (\$25,000) for packaged Licensed Product and or serial numbers and activation keys. Orders for serial numbers and activation keys shall also be for a minimum of twenty-five (25) per line item. Unisys shall order Licensed Product components via a minimum purchase order value of five thousand dollars (\$5,000) and in quantities no less than twenty (25) units per line item. In the event Unisys does not meet these minimum purchase order requirements, SCO reserves the right to impose a setup fee of five hundred dollars (\$500) per purchase order and for purchase orders exceeding five line items, one hundred dollars (\$100) per each additional line item. Unisys shall be required to pay additional fees for "rush orders".
- D. Regarding Licensed Product acquired from SCO, Unisys shall pay SCO the applicable license fees, freight, insurance, and any required sales taxes. With approved credit, payments shall be due and payable thirty (30) days from date of invoice; which shall be directed to Unisys central bill to address, otherwise, payment shall accompany Unisys order.
- E. Regarding Licensed Product acquired from SCO, Licensed Product shall be shipped F.O.B. SCO's facility to Unisys central "Ship To" address specified by Unisys.
- F. Unisys shall pay the fees stated in this Agreement which are exclusive of shipping, handling, and any federal, state, municipal or other governmental taxes, duties, licenses, fees, excises or tariffs now or hereinafter imposed on the production, storage, licensing, sale, transportation, import, export or use of Licensed Product. Unisys agrees to pay such taxes and the like or, in lieu thereof, Unisys shall provide an exemption certificate acceptable to SCO and the applicable taxing authority.
- G. Regarding Licensed Product acquired from SCO, Unisys shall make payments in United States dollars or, for Licensed Product acquired from SCO's Watford, UK office, in Pounds Sterling according to the currency specified in SCO's invoices, unless otherwise agreed upon by the parties.

9. PRICES, LICENSE FEES AND DISCOUNTS

- A. Regarding Licensed Product acquired from SCO, Unisys license fees for Licensed Product, whether packaged product or reproduced product, shall be:

- i. with respect to Licensed Product distributed in the United States and Canada and shipped from SCO's Santa Cruz, California, facilities, the then current U.S. list price, less the then current Unisys discount.
- ii. with respect to Licensed Product distributed outside the United States and Canada and shipped from SCO's Santa Cruz, California, facilities, the then current U.S. list price multiplied by 1.10, less the then current Unisys discount.
- iii. with respect to Licensed Product distributed in any country other than the United States and Canada and shipped from SCO's Watford, UK facilities, the then current European list price, less the then current European Unisys discount.

B. SCO shall have the right at any time to change any prices set forth or referenced herein. Any increases in such prices shall be effective thirty (30) days following written notice thereof.

C. The additional discounts, above the base discount, available to Unisys and the qualification criteria for those discounts are set forth in Exhibit A to this Agreement. Provided that Unisys meets those criteria, SCO shall grant to Unisys additional discounts (off list price). The specific activities or targets and the value of the additional discount available for each target shall be established as part of those Business Plans, but shall be subject to the limits stated in Exhibit A.

Unisys performance shall be reviewed at Review Periods during the first month following the end of each Review Period, and the additional discount(s) for the next Review Periods shall be set on the basis of that review.

With respect to the Services Discount and Activity Discount, any increases to these discount(s) from quarter to quarter will be applied as above. Any decreases which result from Unisys failure to fulfill a commitment during any quarter, will come into effect (i) one quarter later than provided for above, and (ii) only if corrective action has not been completed as agreed. Any corrective action will be agreed within thirty (30) days of the relevant quarterly review and will require completion within the then current quarter.

D. The percentage stated in Exhibit A of monies paid SCO for Licensed Product will be credited to a SCO-Op Cooperative Marketing Fund Account for Unisys. A portion of the cost of approved advertising or promotion by Unisys will be reimbursed by SCO by issuing credits, up to the unused amount in this account. Details of the SCO-Op Cooperative Marketing Fund Program are specified in the SCO-Op guide-lines published from time to time. SCO may stop paying into this fund at any time by giving notice if Unisys is in breach of any term of this Agreement. SCO may alter the percentage paid into the fund at any anniversary of this Agreement by giving thirty (30) days notice.

E. Any bonus, as described in the first part of this Agreement shall be paid as an additional discount to be applied to orders placed for immediate delivery during the three (3) month period starting one month after the period in which it is earned.

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10. INTERNATIONAL PRODUCT VERSIONS

With respect to Licensed Product which is produced in both domestic and international versions, Unisys may market either version in the U.S. and Canada, but shall market only the international version outside the United States and Canada.

11. EXPORT REGULATIONS

Unisys shall follow all laws and regulations of the United States with respect to the exporting of Licensed Product. Unisys hereby agrees not to re-export, nor will it permit any of its sublicensees, at any tier (including customers) to re-export, any Licensed Product, or any product incorporating the Licensed Product without first obtaining the required U.S. or other foreign Government export licenses. Unisys further acknowledges and represents that it is knowledgeable about U.S. Government or other applicable government export licensing requirements or that it will become so prior to engaging, directly or indirectly, in any export transaction involving the Licensed Product. Unisys agrees that its obligations under this provision shall survive and continue after any termination of the Agreement.

12. DISCONTINUANCE OR MODIFICATIONS OF LICENSED PRODUCT

- A. SCO may discontinue or modify a Licensed Product with sixty (60) days prior written notice.
- B. Additional Licensed Product may be added to Exhibit A by mutual written agreement of the parties.

13. TERM OF AGREEMENT; OBLIGATIONS UPON TERMINATION

- A. This Agreement shall be in effect for an initial term of one (1) year and shall continue thereafter until terminated by either party, for any reason whatsoever and with no liability arising therefrom, upon at least sixty (60) days prior written notice.
- B. However, should either party breach any provision of this Agreement and fail to remedy such breach within thirty (30) days of written notice thereof, the injured party may terminate this Agreement immediately and rescind any purchase orders submitted by Unisys and accepted by SCO, as well as pursue any other rights and remedies provided by law or equity or this Agreement.
- C. Further, either party may terminate this Agreement immediately if the other party becomes insolvent, admits in writing its inability to pay its debts as they mature, makes an assignment for the benefit of creditors, files or has filed against it by a third party any petition under any Bankruptcy Act, or an application for a receiver of the other party is made by any One and such petition or application is not resolved favorably to the other party within sixty (60) days.

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- D. In the event SCO terminates this Agreement pursuant to Subparagraph A above, Unisys may, at its option, return to SCO any Licensed Product acquired directly from SCO within ninety (90) days of the effective date of termination at the price paid for such Licensed Product less a restocking fee of twenty percent (20%), provided such Licensed Product is in unopened, shrink-wrapped, complete packaging.
- E. In the event SCO terminates this Agreement pursuant to either Subparagraph B or C above, SCO may, at its option, take return of any or all Licensed Product in Unisys possession and credit or refund to Unisys the price paid for such Licensed Product.
- F. Upon termination, Unisys shall immediately cease using any SCO logos, trademarks, trade names and the like and shall return to SCO any SCO property, including, but not limited to, marketing materials. Further, Unisys shall return or destroy, at SCO's option, all master media and camera ready documentation to SCO.

14. WARRANTY AND DISCLAIMER OF WARRANTY

- A. SCO does not warrant that the function contained in Licensed Product will meet Unisys or any user's requirements or that its operation will be uninterrupted or error free. SCO warrants that Licensed Product substantially conforms to the specifications and functional descriptions contained in the pertinent documentation; and that the reproduction of the software on the media material provided by SCO is correct; and that the documentation is correctly printed to SCO's standard at the time of execution of the Agreement. Provided Unisys notifies SCO of any non-conformance within ninety (90) days of Unisys receipt of Licensed Product, SCO shall at its sole discretion either 1) repair nonconforming Licensed Product, 2) replace the non-conforming Licensed Product, or 3) accept return of same and refund or credit any fees paid by Unisys for such returned Licensed Product.
- B. Further, SCO warrants the SCO supplied media on which the SCO software component of the Licensed Product resides to be free from defects in material and workmanship under normal use for a period of ninety (90) days from date of delivery by Unisys to Unisys customer, not to exceed one hundred and twenty (120) days from SCO's shipment to Unisys, and shall at its sole discretion either 1) repair the defective media, 2) replace the defective media, or 3) accept return of same and refund or credit any fees paid by Unisys for such returned Licensed Product.
- C. SCO warrants that it has sufficient right, title and interest in and to the Licensed Product to enter into this Agreement and grant the licenses granted herein.
- D. EXCEPT AS PROVIDED HEREIN, LICENSED PRODUCT IS PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
- E. SCO MAKES NO WARRANTY DIRECTLY TO END USER CUSTOMERS.

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15. LIMITATION OF LIABILITY

EXCEPT FOR CLAIMS ARISING FROM SECTION 18 BELOW, NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND HOWEVER CAUSED, WHETHER FOR BREACH OF WARRANTY, BREACH OR REPUDIATION OF CONTRACT, TORT, NEGLIGENCE, OR OTHERWISE, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY LOSS OF PROFITS, LOSS OF BUSINESS OR GOODWILL, OR FOR LOSS OF DATA OR USE OF DATA. IN NO EVENT SHALL EITHER PARTIES' SUPPLIERS BE LIABLE FOR ANY DAMAGES WHATSOEVER ARISING HEREUNDER.

EXCEPT FOR CLAIMS ARISING FROM SECTION 18 BELOW, IN NO EVENT SHALL SCO'S LIABILITY UNDER OR ARISING OUT OF THIS AGREEMENT EXCEED THE SUM OF MONIES RECEIVED BY SCO FROM UNISYS DURING THE ONE (1) YEAR PERIOD IMMEDIATELY PRECEDING THE DISPUTE OR CLAIM GIVING RISE TO SUCH LIABILITY.

16. ACTS BEYOND PARTIES' CONTROL

Neither party shall be liable for any delay or failure in its performance hereunder due to any cause beyond its control provided, however, that this provision shall not be construed to relieve Unisys of its obligation to make any payments pursuant to this Agreement.

17. INDEMNIFICATION

Each party shall indemnify and hold the other harmless against any and all claims and expenses, including reasonable attorney's fees, arising out of its performance hereunder and due solely to its negligent acts or omissions or its willful misconduct.

18. NON-INFRINGEMENT

- A. SCO shall indemnify and hold Unisys harmless from and against and defend any claim, suit or proceeding, and pay any settlement amounts or damages awarded by a court of final jurisdiction, arising out of claims filed by third parties in a court within the United States, Canada, European Union, Sweden, Norway, Austria, Switzerland, Denmark, Finland, Australia, New Zealand, or Japan that a Licensed Product infringes any copyright or other intellectual property right existing under the laws of the above countries provided Unisys promptly notifies SCO in writing of any such claim, suit or proceeding and permits SCO to control the settlement or defense thereof. Unisys shall have the option to be represented by counsel at its own expense.
- B. If, pursuant to any such claim, a United States, Canada, European Union, Sweden, Norway, Austria, Switzerland, Denmark, Finland, Australia, New Zealand, or Japan court restricts Unisys right to distribute Licensed Product, SCO shall, at its

sole option (i) procure for Unisys the right to continue to distribute Licensed Product; or (ii) modify Licensed Product, provided the functionality thereof is not substantially affected, so as to make it non-infringing; or (iii) require Unisys, immediately upon written notice, to discontinue distribution of Licensed Product, and, provided that SCO accepts return, at SCO's direction and expense, of Unisys inventory of Licensed Product and credits Unisys the net amount received therefor. In addition, SCO shall have the right to exercise any of options (i) to (iii) at any time following receipt of notice of a claim of infringement of copyright or other proprietary right. Provided, however, that SCO's election of any option (i) through (iii) shall not relieve SCO of its obligations to indemnify, defend and hold Unisys harmless.

- C. SCO shall have no obligation under this section with respect to any claim of infringement of copyright or other proprietary right based upon any modification of Licensed Product by Unisys or the combination, operation or use of Licensed Product with materials not supplied by SCO, provided such claim of infringement is based upon the combined use only and not if the Licensed Product is used as a standalone product.
- D. The section 18 sets out SCO's sole liability and Unisys exclusive remedy for any infringement or alleged infringement of copyright or other proprietary right by a Licensed Product.

19. OWNERSHIP OF LICENSED PRODUCT, TRADEMARKS, ETC.

- A. Unisys acknowledges that, subject only to the rights specifically granted herein, all rights, title, and interest in the Licensed Product provided to Unisys are and shall remain at all times the property of SCO and/or SCO's suppliers.
- B. Unisys further acknowledges that the Licensed Product is copyrighted and that Unisys is not authorized to modify any copies of the Licensed Product nor authorize any other party to do so. In no event shall Unisys reverse engineer or decompile the Licensed Product.
- C. Unisys shall not alter or remove any copyright notices or other proprietary notices on or in the Licensed Product. Except as required to install Licensed Product for the end user's convenience, Unisys shall not alter, tamper with, or otherwise open Licensed Product packaging prior to delivery of the Licensed Product to the end user customer.
- D. Unisys shall cause to appear in any of its advertising, publications, packaging, external communications, and the like the appropriate proprietary designations for the Licensed Products (e.g. copyright notices, trademark notices, service marks).
- E. Notwithstanding the foregoing, Unisys shall include on all Licensed Product, manuals, and related materials its own trademarks such that said items are identified by customers as SCO product distributed by Unisys.

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20. RESTRICTED RIGHTS LEGEND

Unisys agrees that Licensed Product is commercial computer software and, together with any related documentation, is subject to the restrictions on U.S. Government use, duplication or disclosure as set forth in subparagraph (c) (1) (ii) of Department of Defense Federal Acquisition Regulations Supplement (DFARS) 52.227-7013 or in subparagraph (g) (3) (i) of Federal Acquisition Regulations (FAR) 52.227-14, Alternate III, as applicable. Unisys shall ensure that said software media and documentation are marked with the appropriate Restricted Rights Legend in accordance with said DFARS and FAR provisions prior to delivery to any U.S. Government agency.

21. CONFIDENTIALITY

Each party shall at all times, retain in confidence all confidential and/or proprietary information and know-how disclosed or made available by the other party. Neither party shall make use of such information and know-how except under the terms of and for the duration of the Agreement. The parties hereby agree that all the terms and conditions of this Agreement and exhibits hereto, shall be treated as confidential material and shall not be disclosed without the prior written consent of the other party. However, neither party shall be obligated to protect confidential information of the other party which: (i) is rightfully received by the receiving party from another party without restriction, or (ii) is known to or developed by the receiving party independently without use of the confidential information, or (iii) is or becomes generally known to the public by other than breach of duty hereunder by the receiving party, or (iv) has been or is hereafter furnished to others without restriction on disclosure.

22. PROHIBITION AGAINST ASSIGNMENT OF RIGHTS

This Agreement may not be assigned in whole or in part by either party without the prior written consent of the other party, which may not be unreasonably withheld. However, nothing in this section shall prohibit SCO from assigning this Agreement to an affiliate in which SCO has a majority interest.

23. NOTICES

Any notice required by this Agreement shall be given in writing, sent to the addresses set forth above, or to such other addresses as the parties may from time to time specify, via United States Mail, first class postage prepaid, via courier, or via hand-delivery.

24. GOVERNING LAW; VENUE AND JURISDICTION

This Agreement shall be construed in accordance with and governed by the laws of the State of California, excluding that State's laws regarding conflict of laws.

The state courts of Santa Clara County, California, or if there is exclusive federal jurisdiction, the U.S. District Court for the Northern District of California, shall have exclusive jurisdiction and venue over any dispute or claim arising out of this Agreement;

both parties hereby consent to the jurisdiction of said courts.

25. WAIVER

The waiver of any breach or default hereunder by either party shall not constitute the waiver of any subsequent breach or default.

26. INDEPENDENT CONTRACTORS

Each party shall at all times be an independent contractor and shall not be or represent itself to be an agent, partner, employee or the like of the other party.

27. SEVERABILITY

If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The parties will seek in good faith to agree on replacing an invalid, illegal, or unenforceable provision with a valid, legal, and enforceable provision which, in effect, will, from an economic viewpoint, most nearly and fairly approach the effect of the invalid, illegal, or unenforceable provision.

28. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between Unisys and SCO regarding the subject matter hereof and supersedes all previous negotiations, proposals, commitments, writings, advertisements, and understandings of any nature whatsoever. This Agreement may be modified only in a writing executed by an authorized representative of the party to be charged. Any terms set forth on any purchase order or other document submitted to SCO which are in conflict with or in addition to the terms of this Agreement shall be null and void.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives.

The Santa Cruz Operation, Inc.

By: Jeffrey F. Ait

Name: Jeffrey F. Ait

Title: Vice President - Channel Sales

Date: January 15, 1995

Unisys Corporation

By: David G. Schultz

Name: David G. Schultz

Title: Manager OEM Contracts

Date: January 13, 1995

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EXHIBIT A

LICENSED PRODUCT, DISCOUNT AND DESCRIPTION OF ADDED VALUE

1. Licensed Product to be marketed by Unisys:

- A. Packaged Licensed Product: All English-language Licensed Product listed in SCO's then current price list.
- B. Serial Numbers and Activation Keys ("SNAKs"): All English-language Licensed Product listed in SCO's then current SNAK price list.
- C. Component Licensed Product:

Licensed Product components shall be acquired in quantities no greater than Unisys acquires SNAKs in any given quarter at the following fees:

<i>Product</i>	<i>Full Doc</i>	<i>Ltd. Doc</i>	<i>Media</i>
SCO UNIX Release 3.2 Version 4.2 2 User			
CD-ROM	\$40	\$10	\$25
Tape	40	10	50
3.5" Diskette	40	10	40
SCO UNIX Release 3.2 Version 4.2 16 User			
CD-ROM	\$40	\$10	\$25
Tape	40	10	50
3.5" Diskette	40	10	40
SCO UNIX Release 3.2 Version 4.2 512 User			
CD-ROM	\$40	\$10	\$25
Tape	40	10	50
3.5" Diskette	40	10	40
SCO Open Server Network System Release 3.0 16 User			
CD-ROM	\$75	\$10	\$25
Tape	75	10	50
3.5" Diskette	75	10	80
SCO Open Server Network System Release 3.0 512 User			
CD-ROM	\$75	\$10	\$25
Tape	75	10	50
3.5" Diskette	75	10	80
SCO Open Server Enterprise System Release 3.0 16 User			
CD-ROM	\$90	\$10	\$25
Tape	90	10	50
3.5" Diskette	90	10	100

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SCO Open Server Enterprise System Release 3.0 512 User			
CD-ROM	\$90	\$10	\$25
Tape	90	10	50
3.5" Diskette	90	10	100
SCO Open Desktop Release 3.0			
CD-ROM	\$30	\$10	\$25
Tape	30	10	50
3.5" Diskette	30	10	100
SCO Open Desktop Lite Release 3.0			
CD-ROM	\$30	\$10	\$25
Tape	30	10	50
3.5" Diskette	30	10	80
SCO TCP/IP Single User	\$30	\$10	\$40
SCO TCP/IP Unlimited Users		30	10
	40		
SCO MPX Release 3.0			
+1 processor	\$30	n/a	\$40
+3 processors	30	n/a	40
SCO Merge			
Single User	\$30	\$10	\$30
Unlimited Users	30	10	30
SCO IPX/SPX	\$30	\$10	\$30
SCO NFS	\$30	\$10	\$40
Microsoft LAN Manager for SCO Systems			
5 Users	\$40	\$10	\$100
15 Users	40	10	100
10 Users Upgrade	10	n/a	n/a
Unlimited Users Upgrade	10	n/a	n/a

2. Discounts, Rebates, and Cooperative Funding:

The following discounts, rebates and bonuses shall be applied towards Licensed Products and SNAKs acquired by Unisys from SCO under this Agreement.

A. Discounts fixed for the term of the Agreement, including any renewals:

- (i) Unisys base discounts for the Licensed Product listed above shall be forty-five percent (45%) off the applicable price list.
- (ii) An additional six percent (6%) discount from SCO's EMEA model number list shall be made available to Unisys for purchases of Licensed Product placed with SCO's Watford, UK facilities. Therefore, Unisys base discount for Licensed Product shipped from SCO's Watford, UK facilities shall be fifty-one percent (51%).

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- (iii) Where Unisys orders SNAK products which are also available in packaged form, Unisys shall pay SCO the then-current list price for SNAKs (currently equivalent to the CD-ROM packaged product price), less its earned discount set forth below, less a fee equivalent to the then-current price for CD-ROM media and full documentation. For example, based upon an earned discount of 64%, Unisys per copy fees for SNAKs of 16 user SCO UNIX Release 3.2 Version 4.2 would be as follows:

List Price:	\$1295.00
Less a discount of 64%:	<u>- \$828.80</u>
Subtotal:	\$466.20
Less component fees (CD media and full documentation):	<u>- \$65.00</u>
Total per copy SNAK License Fee:	\$401.20

B. Additional Discounts - reviewed at Review Period.

- (i) Unisys shall be entitled to additional discounts as set forth below for obtaining the mutually-agreed upon objectives as may be further set forth in Unisys Business Plan, which shall be reviewed quarterly ("Review Period").
- (ii) Unless otherwise agreed in writing, discounts for Sales and Support Activities and Product Focus, as described below, shall be based on objectives set and reviewed separately for the geographies i) North America, South America, ii) ASEAN countries and iii) Europe, Middle East and Africa, including the Indian subcontinent. Unisys may thus qualify for additional discounts in one geography, but not in another.
- (iii) Unisys performance shall be reviewed quarterly, during the first month of each calendar quarter, and the additional discount(s) for the next period (second and third month of the current quarter and the first month of the subsequent quarter) shall be set on the basis of that review. Any decreases which result from Unisys failure to fulfill a commitment during any quarter, will come into effect (i) one quarter later than provided for above, and (ii) only if corrective action has not been completed as agreed. Any corrective action will be agreed within 30 days of the relevant quarterly review and will require completion within the then current quarter.
- (iv) Sales and Support Activity: Maximum 3%

Additional discount is available to Unisys for activities related to the marketing and support of Licensed Product. Qualifying activities, subject to SCO's approval, which shall not be unreasonably withheld, shall include, but shall not be limited to, creating and maintaining (i) a direct sales compensation plan which compensates Unisys sales personnel in a manner equal to or greater than Unisys other product lines; (ii) an Unisys-focused reseller program which encourages joint SCO authorized and Unisys authorized reseller participation; and (iii) Unisys support subscriptions focused on SCO product through Unisys primary support and service organizations.

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(v) Product Focus: Maximum 3%

Additional discount is available to Unisys for activities related to strategic sales and marketing focus or programs promoting SCO products in conjunction with Unisys hardware. Qualifying programs, subject to SCO's approval, which shall not be unreasonably withheld, shall include, but shall not be limited to, (i) SCO operating systems promoted internally and externally at a level equal to or higher than other 32-bit operating systems and/or (ii) long-term sales and marketing campaigns targeted at agreed specific markets, for example Finance or Retail.

C. Additional Discounts - Determined Per Order.

Provided that Unisys regularly informs SCO of all Major Account prospects for which an SCO-based solution might be bid and (i) regularly updates SCO with progress of such prospects and (ii) invites SCO wherever possible to participate in the evaluation and bid process, SCO shall grant an additional five percent (5%) discount to Unisys for specific end user bids in targeted markets (as further defined in Unisys quarterly business plan), provided that SCO is notified prior to sixty (60) days of the estimated award of such bid. This discount is only applicable to purchases of Licensed Product Serial Numbers and Activation keys.

D. Rebates.

(i) Reporting Rebate.

Provided Unisys supplies SCO on a timely basis with the reports set forth in Section 5.J of the Agreement, SCO shall issue Unisys a rebate equivalent to two percent (2%) of the value of Licensed Product acquired by the relevant Unisys Affiliate or Subsidiary during the relevant period.

(ii) Volume Milestone Rebate.

If, on the geographical basis described in Section 3.B(ii) above, Unisys net purchases of Licensed Product during the applicable quarter, exceeds the average of Unisys net purchases in the previous four quarters by more than thirty percent (30%), then Unisys will be entitled to a rebate equivalent to one percent (1%) of the value of Licensed Product acquired by Unisys in that geography during that quarter.

E. Engineering Investment - Annual Review.

A maximum of nine percent (9%) of the list price of all Licensed Product procured from SCO during the relevant period by Unisys shall be made available by SCO to help fund engineering investment agreed to by both parties, as follows:

(i) Internal Product Releases:

Unisys shall be entitled to an additional two percent (2%) discount if Unisys releases new Licensed Product to its internal development and

support organizations within thirty (30) days of SCO's commercial release of such product.

(ii) SCO-specific Design: 3%

Unisys shall be entitled to an additional three percent (3%) discount if Unisys designs/develops a computer system/configuration specifically to run an SCO operating environment to best advantage.

(iii) Ease of Use Design: 2%

Additional discount is available for Unisys creating an ease-of-use, ease-of-installation Licensed Product package aimed at simplifying the use and installation of Licensed Product for end user customers.

(iv) Integrated Software Solution: 2%

Additional discount is available if Unisys undertakes engineering effort to ensure that a vertical software application which is key to Unisys marketing success in the relevant market operates effectively on Unisys hardware. This qualification will be dependent on Unisys Business Plan providing for sales and marketing efforts on behalf of the SCO-Unisys solution in these markets.

F. Marketing Co-op Fund: Maximum 3%

In accordance with Section 9.D of this Agreement, Unisys shall be permitted to participate in SCO's then current Unisys Co-op Marketing Program, as set forth in SCO's program guidelines which shall be provided to Unisys. Co-Op is accrued on direct purchases from SCO only. Credits accrue and expire during a rolling six (6) month period. Unisys will have a six (6) month window in which to spend the credits they accrue during any given month. Upon audit verification and reconciliation from SCO, Marketing Fund claims will be applied to the oldest monthly accrual balance. Any accrued credits not used with the six (6) month window will be forfeited.

3. Description of Added Value:

Unisys shall install or bundle all Licensed Product with computer systems manufactured or marketing under the Unisys name by Unisys prior to delivery to customers. Unisys may bid SCO Licensed Product as a systems integrator for use in conjunction with non-Unisys computer systems by obtaining appropriate discounts and any other relevant terms and conditions from SCO.

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EXHIBIT B1

END USER LICENSE AGREEMENT
(Minimum Provisions)

1. Certain SCO Products will exhibit modified functioning if they are not registered as required.
2. SUBLICENSOR grants SUBLICENSEE (the Software User) and SUBLICENSEE accepts from SUBLICENSOR, the following non-exclusive rights. SUBLICENSEE is not granted any other right in the Software. All proprietary rights in or related to the Software are and will remain the exclusive property of SUBLICENSOR or its licensors. SUBLICENSEE further acknowledges that the Software contains confidential information owned by SUBLICENSOR or its licensors and agrees to take reasonable steps to protect the confidentiality of such information.
3. SUBLICENSEE may load, copy or transmit the Software in whole or in part, only as necessary to use the Software on a single personal computer or workstation, unless the Software is designated on the registration document as being for use on a multiuser or multiple system configuration, in which case SUBLICENSEE must take reasonable means to assure that the number of Users does not exceed the permitted number of Users. In addition, SUBLICENSEE may make back-up or archival copies of the Software.
4. SUBLICENSEE MAY NOT COPY THE PRINTED DOCUMENTATION.
5. All trademarks, service marks, patents, copyright and other proprietary notices must be reproduced when making copies in whole or in part.
6. SUBLICENSEE may not reverse compile the Software for any purpose. If SUBLICENSEE wishes to exercise any rights under Article 6.1 b of the EC Directive on the Legal Protection of Software, (Directive 91/250), SUBLICENSEE shall, in the first instance, write to SUBLICENSOR's Legal Department. SUBLICENSEE may not copy or adapt the Software for the purpose of correcting errors in it.
7. SUBLICENSEE may not export or re-export, directly or indirectly, the Product, the media, or any related technical information or materials unless SUBLICENSEE has obtained an appropriate authorization from the U.S. Commerce Department and any other relevant government authority.
8. The Software is derived from third party software and no such third party warrants the Software, assumes any liability regarding the use of the Software, or undertakes to furnish any support or information relating to the software.
9. SUBLICENSOR'S SUPPLIERS SHALL NOT BE HELD TO ANY LIABILITY FOR ANY DAMAGES SUFFERED OR INCURRED BY SUBLICENSEE, INCLUDING BUT NOT LIMITED TO GENERAL, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING FROM OR IN CONNECTION WITH THE DELIVERY, USE OR PERFORMANCE OF THE SOFTWARE.
10. This Product is commercial computer software. If SUBLICENSEE is a U.S. Government End-User, this license is granted subject to the U.S. Government End-User provisions set forth in the Documentation; and the Product together with its related documentation is subject to the

restrictions of U.S. Government use, duplication or disclosure as set forth in subparagraph (c) (1) (ii) of DFARS 252.227-7013 or subparagraph (g)(3)(i) of FAR 52.227-14, Alt. III, as applicable. Contractor/Manufacturer is The Santa Cruz Operation, Inc.

11. Upon any transfer of the Software permanently to another Software User, the original SUBLICENSEE must notify SUBLICENSOR and the new SUBLICENSEE must certify to SUBLICENSOR their agreement to be bound by the terms of the Agreement. Except for such permanent transfer, SUBLICENSEE may not assign, sublicense, rent, lend, lease, pledge or otherwise transfer or encumber the Software, this Agreement or SUBLICENSEE's rights or obligations hereunder without SUBLICENSOR's approval.

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EXHIBIT B2

UNISYS END USER LICENSE AGREEMENT

[attached hereto]

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EXHIBIT C

RESELLER AGREEMENT
(Minimum Provisions)

1. Reseller shall have a personal, non-transferable and non-exclusive right to furnish the Licensed Product solely to end user customers. Reseller's primary method of marketing Licensed Product to end user customer's must be face to face.
2. Reseller shall provide adequate support and training to its end user customers.
3. Reseller shall stock an adequate supply of Licensed Product to supply end user customers in a timely fashion.
4. Reseller may not make copies of the Licensed Product, but must furnish to end user customers copies of the Licensed Product as furnished to Reseller by its supplier. Reseller shall not open or alter in any way the Licensed Product package it received from its supplier. When Reseller distributes computer systems products on which Licensed Product has been installed, Reseller must have the end user sign an enforceable written agreement containing provisions substantially similar to those of Exhibit B. Reseller agrees to use its reasonable efforts to ensure that Resellers end user customers abide by these agreements. In addition, Reseller shall ensure that installed Licensed Product is shipped with the Licensed Product reference manuals and related materials contained in Licensed Product package, including serial numbers and activation keys.
5. If the Reseller shall fail to fulfill any obligation under this Reseller Agreement, SCO and SCO's suppliers may upon their election and in addition to any other remedies that they may have, require the termination of this Reseller Agreement. Within ten (10) days after the effective date of any termination, the Reseller shall deliver to its supplier all unpaid for copies of the Licensed Product in the Reseller's possession, and shall render unusable all portions of the Licensed Product placed in any storage apparatus under the Reseller's control.
6. Reseller shall follow all laws and regulations of the United States with respect to the exporting of Licensed Product. Reseller hereby agrees not to re-export, nor will it permit any of its sublicensees to re-export, any Licensed Product, or any product incorporating the Licensed Product without first obtaining the required U.S. Government export licenses. Reseller further acknowledges and represents that it is knowledgeable about U.S. Government export licensing requirements or that it will become so prior to engaging, directly or indirectly, in any export transaction involving the Licensed Product. Reseller agrees that its obligations under this provision shall survive and continue after any termination of the Agreement.
7. Without the prior written permission of SCO, no right is granted to use the trademark "UNIX" or any confusingly similar mark in the name of the SCO XENIX Licensed Product offered or furnished to end user customers by Reseller. However, during the term of this Reseller Agreement, for SCO XENIX System V Reseller may state in advertising, publicity, packaging, labeling or otherwise that the SCO XENIX Licensed Product is derived from UNIX System V under license.

8. Reseller shall make no representations regarding Licensed Product other than those made by SCO product descriptions, manuals, and other promotional materials, or as provided by SCO staff in writing.
9. Reseller is expressly prohibited, and shall notify its end user customers, and other transferees, that they are prohibited from reverse engineering, reverse compiling, or disassembling the Licensed Product for any purpose whatsoever.
10. Title to Licensed Product developed and/or made available by SCO shall remain with SCO and/or its suppliers.
11. Reseller will cause to appear in any advertisement, publication, public presentation and on packaging and external correspondence the appropriate designation for all Licensed Product copyrights, trademarks, and service marks.
12. Reseller must distribute Licensed Product with an enforceable end user license agreement. All license agreements (whether signed or otherwise) must contain, at a minimum, provisions substantially similar to those in Exhibit B of the Agreement. Reseller agrees to: (1) comply with all licensing provisions imposed on Reseller by this Reseller Agreement; and (2) maintain all signed end user customers' agreements in Reseller's files; and (3) permit SCO to audit and review these end user agreements as SCO deems necessary. Reseller will indemnify and hold SCO harmless against any claim, loss, liability or damage, including attorneys' fees and other costs of litigation, arising out of Reseller's distribution of Licensed Product in violation of this Section 12.
13. ALL LICENSED PRODUCT DELIVERED PURSUANT TO THIS AGREEMENT ARE DELIVERED "AS IS". SCO SPECIFICALLY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. SCO DOES NOT REPRESENT OR WARRANT THAT ANY LICENSED PRODUCT IS ERROR FREE OR THAT ITS USE WILL BE UNINTERRUPTED. NO WARRANTIES ARE MADE TO RESELLER BY ANY SUPPLIERS WHICH MAY HAVE DIRECTLY OR INDIRECTLY SUPPLIED PART OF LICENSED PRODUCT TO SCO.
14. SCO MAKES NO WARRANTY TO RESELLER OR RESELLER'S END USERS CUSTOMERS.
15. SCO SHALL NOT BE LIABLE FOR ANY LOSS OF PROFITS, LOSS OF BUSINESS OR GOODWILL, LOSS OF USE OF OR OF DATA, INTERRUPTION OF BUSINESS, NOR FOR INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND UNDER OR ARISING OUT OF THIS AGREEMENT, HOWEVER CAUSED, WHETHER FOR BREACH OF WARRANTY, BREACH OR REPUDIATION OF CONTRACT, TORT, NEGLIGENCE, OR OTHERWISE EVEN IF SCO HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS. THE ESSENTIAL PURPOSE OF THIS SECTION IS TO LIMIT SCO'S POTENTIAL LIABILITY UNDER ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT.
16. Licensed Product is commercial computer software and together with any related documentation, is subject to the restrictions on U.S. Government use, duplication or disclosure as set forth in subparagraph (c)(1)(ii) of Department of Defense Federal

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Acquisition Regulations Supplement (DFARS) 52.227-7013 or in subparagraph (g)(3)(i) of Federal Acquisition Regulations (FAR) 52.227-14, Alternate III, as applicable. Reseller shall ensure that said software media and documentation are marked with the appropriate Restricted Rights Legend in accordance with said DFARS and FAR provisions prior to delivery to any U.S. Government agency. For other than packaged products, Reseller shall obtain the correct Restricted Rights Legend Labeling instructions and verbiage, in writing, from SCO and shall not modify such Labeling without written permission from SCO.

17. Reseller shall ensure that all Licensed Product is only made available with a Unisys computer system sold or licensed by Reseller and delivered to its end user customers.
18. This Reseller Agreement shall not be assigned by Reseller nor rights under it granted to others without the prior written approval of SCO.

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EXHIBIT D

SUPPORT AND TRAINING

1. SCO Support.

For each year this Agreement is in effect, Unisys is required to purchase Engineering Services for SCO UNIX, SCO XENIX, SCO Open Desktop, SCO Open Server, SCO MPX, SCO NFS, and SCO TCP/IP. The term of the support agreement shall be contemporaneous with the term of this Agreement. The parties acknowledge and agree that Unisys has acquired and paid for such Engineering Services support through 31 March 1995.

2. SCO Training.

- A. Within thirty (30) days from the date this Agreement is last signed, at least one of Unisys support or development personnel must successfully complete SCO training classes, held at SCO training centers, in SCO Open Desktop Administration and Support, if Unisys is remarketing the SCO Open Desktop Product.

If these classes are not available during that 30-day period, then Unisys personnel shall enroll in the next available classes.

- B. If Unisys SCO-trained personnel leave Unisys employ, then within thirty (30) days of the SCO-trained personnel leaving Unisys employ, Unisys shall so notify SCO and shall have other personnel enroll in applicable training classes unless Unisys can demonstrate to SCO that its other personnel possess sufficient expertise regarding the Licensed Product(s).

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EXHIBIT E

AUTHORIZED PURCHASING LOCATIONS

1. 2700 North First Street
San Jose, California 95134-2028
2. 13250 Haggerty Road North
Plymouth, Michigan 48120

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