

InterWorking Labs License Agreement

Network Impairment and Protocol Testing Products

InterWorking Labs, Inc., Licensor, ("InterWorking") is willing to license the software contained herein ("Licensed Software") to your company or organization only on the condition that you accept all of the terms in this Agreement.

PLEASE READ THE TERMS CAREFULLY. BY TURNING ON THE SYSTEM, OPENING THE SHRINK-WRAPPED PACKAGING, OR OTHERWISE USING THE LICENSED SOFTWARE, YOU AGREE TO BE BOUND BY THIS LICENSE AGREEMENT.

If you do not agree to these terms, InterWorking is unwilling to license the software to you. In such event, you may not use the licensed software, and you should promptly contact InterWorking Labs for instructions on returning it.

NOTE:

- THE LICENSED SOFTWARE IS LIMITED TO USE ON SPECIFIC CPU(s). SEE EXHIBIT B.
- THE LICENSED SOFTWARE IS FOR INTERNAL USE ONLY.
- THE LICENSED SOFTWARE CANNOT BE DISTRIBUTED TO OTHERS.
- THE TEST RESULTS FROM USE OF THE LICENSED SOFTWARE TESTS CANNOT BE USED OUTSIDE THE COMPANY OR ORGANIZATION.
- THE SOFTWARE AND ACCOMPANYING USER DOCUMENTATION ARE PROTECTED BY UNITED STATES COPYRIGHT LAW AND INTERNATIONAL TREATY. UNAUTHORIZED REPRODUCTION OR DISTRIBUTION IS SUBJECT TO CIVIL AND CRIMINAL PENALTIES.

This License Agreement (the "Agreement") is made as of the purchase date (the "Effective Date"), by and between InterWorking Labs, Inc., a California corporation that may be contacted at PO Box 66190, Scotts Valley, CA 95067 ("InterWorking") and your company ("Licensee").

RECITALS

A. InterWorking owns the rights to grant licenses to certain computer software modules used to test products and networks implementing certain networking protocols described in Exhibit A ("Networking Protocols").

B. InterWorking desires to grant and Licensee desires to receive a non-exclusive license to such InterWorking computer software modules in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties agree as follows:

1. DEFINITIONS

1.1 **Licensed Software** means InterWorking's computer software modules and documentation thereof, as specified in Exhibit A, including bug fixes and updates thereto provided to Licensee in connection with this Agreement.

1.2 **Intellectual Property Rights** means patent rights, copyright rights, trade secret rights, and any other

intellectual property rights.

1.3 **Binary Code** means the portion of the Licensed Software which is licensed to Licensee in machine executable binary form, as specified in Exhibit A.

1.4 **Source Code** means the portion of the Licensed Software which is licensed to Licensee in human-readable form, as specified in Exhibit A.

2. LICENSE GRANTS

2.1 **Source Code Use License.** Subject to the terms and conditions of this Agreement, and upon payment by Licensee to InterWorking of the license fees set forth in Section 6.1, InterWorking grants Licensee a non-exclusive, non-transferable license to use, modify, or have modified by a third party contractor subject to a confidentiality agreement no less restrictive than this agreement, the Source Code for internal use only, for the sole purpose of testing and verifying computer network products for compliance with the Networking Protocols. Licensee may use the Source Code as specified in Exhibit B. Licensee agrees to comply with all reasonable monitoring requirements imposed by InterWorking to ensure compliance with the license restrictions.

2.2 **Binary Code Use License.** Subject to the terms and conditions of this Agreement, and upon payment by Licensee to InterWorking of the license fees set forth in Section 6.1, InterWorking grants Licensee a non-exclusive, non-transferable license to use the Binary Code for internal use only, for the sole purpose of testing and verifying computer network products for compliance with the Networking Protocols. Licensee may use the Binary Code as specified in Exhibit B. Licensee agrees to comply with all reasonable monitoring requirements imposed by InterWorking to ensure compliance with the license restrictions.

2.3 **No Sublicense Right.** Licensee has no right to transfer, sublicense or otherwise distribute the Licensed Software to any third party.

2.4 **Other Restrictions in License Grants.** Licensee may not: (i) disassemble, decompile or reverse engineer the Binary Code nor permit any third party to do so; (ii) copy the Licensed Software, except as necessary to use the Licensed Software in accordance with the license granted under Sections 2.1 and 2.2, and except for a reasonable number of backup copies; or (iii) use the Licensed Software in any manner to provide testing or other computer services to third parties.

2.5 **No Trademark License.** Licensee has no right or license to use any trademark of InterWorking or its suppliers during or after the term of this Agreement. In particular, and without limiting the foregoing, Licensee may not use any trademark of InterWorking or the name "InterWorking", without consent of InterWorking, in making any statement or representation concerning results of testing and verification performed using the Licensed Software.

2.6 **Proprietary Notices.** The Licensed Software is copyrighted. All proprietary notices incorporated in, marked on, or affixed to the Licensed Software by InterWorking or its suppliers shall be duplicated by Licensee on all copies, in whole or in part, in any form and not altered, removed, or obliterated.

2.7 **Reservation.** InterWorking and its suppliers reserve all rights and licenses to the Licensed Software not expressly granted to Licensee under this Agreement.

2.8 **Cable Modem Customers.** Notwithstanding any of the limitations contained in this agreement, customer may use the licensed product for the limited purpose of providing results to CableLabs and/or to tComLabs for

the purpose of certifying a cable modem product. Results shall only include the test number and the InterWorking test result code. Customer shall provide written notice to InterWorking at the time of execution of this Agreement if it is a Cable Modem Developer and will be using the product for these purposes.

3. DELIVERY OF LICENSED SOFTWARE

Licensee may access the Licensed Software upon acceptance of this agreement.

4. WARRANTIES

4.1 Limited Warranty. InterWorking warrants that during the thirty day period following delivery of the Licensed Software to Licensee, the Licensed Software will operate substantially in accordance with its specifications set forth in users' documentation in all material respects. In the event the Licensed Software fails to conform to such warranty during the warranty period, as Licensee's sole and exclusive remedy, InterWorking will make diligent, reasonable efforts to provide Licensee with work-around solutions, error corrections and bug fixes upon receipt of written notice of non-compliance.

4.2 Warranty Exclusion and Disclaimer. THE WARRANTY WITH RESPECT TO THE LICENSED SOFTWARE WILL BE VOID AND OF NO EFFECT IF LICENSEE MODIFIES THE SOURCE CODE. THE WARRANTIES SET FORTH IN SECTION 4.1 ARE IN LIEU OF, AND INTERWORKING EXPRESSLY DISCLAIMS, ALL OTHER WARRANTIES, EXPRESS AND IMPLIED, WRITTEN AND ORAL, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. INTERWORKING DOES NOT WARRANT THAT OPERATION OF THE LICENSED SOFTWARE WILL BE ERROR FREE. SOME MODULES OF THE LICENSED SOFTWARE ARE DERIVED FROM THIRD PARTY SOFTWARE AND NO SUCH THIRD PARTY WARRANTS THE MODULES, ASSUMES ANY LIABILITY REGARDING USE OF THE MODULES, OR UNDERTAKES TO FURNISH ANY SUPPORT OR INFORMATION RELATING TO THE MODULES.

5. MAINTENANCE AND UPDATES

5.1 Maintenance. Subject to InterWorking's limited resources, InterWorking will, at no additional charge to Licensee, provide Licensee with reasonable technical support for the warranty period as specified in Section 4.1 via e-mail during InterWorking's normal business hours.

5.2 Updates. If and when InterWorking develops updates to the Licensed Software from time to time, InterWorking, at its sole discretion, may, but has no obligation to, provide Licensee with separately priced updates for the Licensed Software at the request of Licensee. All such updates will be considered "Licensed Software" and subject to all terms and conditions of this Agreement.

6. LICENSE FEE

6.1 License Fee. In consideration of the licenses granted in Section 2, above, Licensee shall pay InterWorking a non-refundable license fee in accordance with InterWorking's then current price list within thirty (30) days after the Effective Date.

6.2 Update Fee. In the event InterWorking provides Licensee with an update to the Licensed Software in accordance with Section 5.2, Licensee shall pay InterWorking the then-current InterWorking standard update fee within thirty (30) days after receipt of such update.

6.3 Taxes and Duties. In addition to the license and update fees set forth above, Licensee shall pay all sales, use, or other taxes and fees imposed as a result of payment of the fees set forth above, if any, other than taxes measured by InterWorking 's net income.

7. INTELLECTUAL PROPERTY RIGHTS

7.1 Title. All right, title and interest in and to the Licensed Software, and all Intellectual Property Rights embodied therein shall at all times remain with InterWorking or its suppliers, as applicable.

7.2 Confidential Information. Licensee acknowledges and agrees that the Licensed Software contains confidential, proprietary information and trade secrets of InterWorking. For the longer of: (i) a period of five (5) years after the date of disclosure or (ii) the expiration or termination of this Agreement, Licensee shall not disclose or make available any portion of the Licensed Software or any information derived from the Licensed Software to any person or entity except to those of Licensee's employees for whom access is necessary in order to perform their jobs in accordance with this Agreement. The standard of care Licensee must exercise to meet these obligations is the standard it exercises with respect to its own confidential information of a similar nature, but in no event less than due care. This obligation does not apply to information: (a) known by Licensee prior to its receipt from InterWorking and not subject to restriction on disclosure; (b) rightfully received by Licensee from a third party without restriction on disclosure; or (c) publicly available other than as a result of any act or omission of Licensee.

7.3 Contractors. In the event that Licensee elects to have a third party contractor modify the Source Code pursuant to Section 2.1 above, Licensee will require such contractor to enter into a written confidentiality agreement with Licensee which (i) is no less restrictive than this Section 7, and (ii) requires such contractor to promptly deliver to Licensee all of InterWorking Labs's confidential information and the Source Code upon completion of such modifications and certify in writing to Licensee that it has delivered all such materials.

8. LIMITATION OF LIABILITY

IN NO EVENT SHALL THE TOTAL CUMULATIVE LIABILITY OF INTERWORKING IN CONNECTION WITH THIS AGREEMENT FOR ALL CAUSES OF ACTION OF ANY KIND, INCLUDING THOSE BASED UPON CONTRACT AND TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), EXCEED THE LICENSE FEES RECEIVED BY INTERWORKING FROM LICENSEE. IN NO EVENT WILL INTERWORKING OR ITS SUPPLIERS BE LIABLE FOR LOSS OF USE, DATA, OR PROFITS, BUSINESS INTERRUPTION OR ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, OR EXEMPLARY DAMAGES, HOWEVER CAUSED, AND ON ANY THEORY OF LIABILITY, WHETHER CONTRACT OR TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), ARISING IN ANY WAY OUT OF THIS AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGE AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY.

9. TERM AND TERMINATION

9.1 Term. The term of this Agreement shall be for an initial period of two (2) years from its Effective Date of the Agreement, unless earlier terminated or cancelled in accordance with the provisions of this Agreement. Thereafter, this Agreement shall automatically renew for consecutive one (1) year periods on the anniversary of the Effective Date unless either party shall have given the other no less than ninety (90) days written notice of termination.

9.2 Termination.

9.2.1 Material Breach. Either party may terminate this Agreement if the other party breaches any material term or condition of this Agreement and fails to cure that breach within thirty (30) days after receiving written notice of the breach. Notwithstanding the foregoing, InterWorking may terminate this Agreement effective immediately upon written notice to Licensee without any cure period in the event of breach of confidentiality obligation herein.

9.2.2 Financial Difficulties. Either party may terminate this Agreement effective immediately upon written notice to the other party if the other party files a voluntary petition in bankruptcy or otherwise seeks protection under any law for the protection of debtors; has a proceeding instituted against it under any provision of the bankruptcy laws which is not dismissed within sixty (60) days; is adjudged to be bankrupt; has a court assume jurisdiction of its assets under a reorganization act; has a trustee or receiver appointed by a court for all or a substantial portion of its assets; becomes insolvent, suspends or ceases to do business; makes an assignment of all or a substantial portion of its assets for the benefit of its creditors; or admits in writing its inability to pay its debts as they become due.

9.3 Effect of Termination/Expiration. Upon termination or expiration of this Agreement: (i) the rights and licenses granted to Licensee pursuant to this Agreement automatically terminate; (ii) Licensee shall, within thirty (30) days, ship to InterWorking or destroy (including the purging from any system or storage media) all items and information in Licensee's possession that are confidential or proprietary to InterWorking or its suppliers, including but not limited to all Licensed Software and all copies thereof, if any, and an officer of Licensee shall certify in writing to InterWorking that all such confidential or proprietary items and information have been returned to InterWorking or destroyed; and (iii) all outstanding invoices for amounts owed to InterWorking by Licensee shall automatically accelerate and become due and payable on the effective date of termination.

9.4 Survival. The provisions of Sections 2.5, 4.2, 7, 8, 9.3, 10.1, 10.6, and 10.9 shall survive the expiration, cancellation, or termination of this Agreement.

10. GENERAL PROVISIONS

10.1 Governing Law. This Agreement shall be governed by the internal laws of the State of California, excluding its conflict of laws rules. The parties consent to the personal and exclusive jurisdiction and venue of the northern district of California federal and state courts, as applicable.

10.2 U.S. Export Controls. The Licensed Software is subject to United States export control requirements including those set forth in the Export Administration Act of 1979, as amended, and the Export Administration Regulations thereunder.

10.3 Assignment. Licensee shall not assign this Agreement or any right hereunder, or delegate any obligation created under this Agreement to any third party without prior written consent of InterWorking. InterWorking, however, may assign this Agreement to any person or entity with which it has merged or which has otherwise succeeded to all or substantially all of the business and assets of InterWorking, and which has assumed in writing or by operation of law its obligations under this Agreement. Any attempted assignment or delegation without the required written consent shall be null and void.

10.4 Modification. No modification to this Agreement nor any waiver of any rights shall be effective unless consented to in writing and the waiver of any breach or default shall not constitute a waiver of any other right or of any subsequent breach or default.

10.5 **Force Majeure.** Neither InterWorking nor any of its suppliers shall be liable for any loss, expense, or damage caused by delays or failures in performance resulting from acts of God, supplier delay, or any other cause beyond the reasonable control of InterWorking or its suppliers.

10.6 **Attorneys' Fees.** In the event of any dispute resolution proceeding between the parties, the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees. A "prevailing party" shall mean a party who receives all or substantially all of the relief sought by such party.

10.7 **Severability.** If any provision of this Agreement is ruled unenforceable, it shall be enforced to the extent permissible, the parties shall negotiate a substitute valid provision which most nearly effects the parties' original intent, and the remainder of the Agreement shall remain in effect.

10.8 **Independent Contractor.** The parties are each independent contractors and not joint venturers, partners, agents, or representatives of the other. Neither party has any right to create any obligation on the part of the other party.

10.9 **Equitable Relief.** Licensee acknowledges that any breach of its obligations under this Agreement with respect to the intellectual property rights or confidential information of InterWorking will cause InterWorking irreparable injury for which there are inadequate remedies at law, and therefore, InterWorking will be entitled to equitable relief in addition to all other remedies provided by this Agreement or available at law.

10.10 **Notice.** All notices and requests required or authorized hereunder, shall be given in writing either by personal delivery to the party to whom notice is given, or by registered or certified airmail, postage prepaid, return receipt requested. The date upon which any such notice is so personally delivered, or if the notice is given by registered or certified airmail, the date upon which it is received as set forth on the returned receipt, shall be deemed to be the date of such notice, irrespective of the date appearing therein.

If to InterWorking :

InterWorking Labs, Inc.
PO Box 66190
Scotts Valley, CA 95067
Attn: Legal Department

If to Licensee:

Per the information on the Purchase Order.

The address of the parties may be changed by notice given in accordance with this section.

11. **ENTIRE AGREEMENT.** This Agreement constitutes the entire and exclusive agreement between the parties with respect to the subject matter hereof. All previous and contemporaneous discussions and oral and written agreements with respect to this subject matter are superseded by this Agreement.

12. **RESTRICTED RIGHTS LEGEND.** This software is provided with RESTRICTED RIGHTS. Use, duplication, or disclosure by the U.S. Government is subject to restrictions set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 or subparagraphs (c)(1) and (2) of the Commercial Computer Software - Restricted Rights at 48 CFR 52.227-19, as applicable. The "Manufacturer" for purposes of these regulations is InterWorking Labs, PO Box 66190, Scotts Valley, CA 95067, U.S.A.

EXHIBIT A

Networking Protocols

Include, but are not limited to:

1. Simple Network Management Protocol
2. Management Information Base II
3. Remote Monitor Management Information Base
4. Printer Management Information Base
5. UPS Management Information Base
6. DOCSIS
7. Transmission Control Protocol
8. Internet Protocol
9. User Datagram Protocol
10. Internet Control Message Protocol
11. Session Initiation Protocol
12. Real Time Protocol
13. Real Time Control Protocol
14. Address Resolution Protocol
15. Transport Layer Security Protocol

Licensed Software

Binary Code- (C++ language executable) and Source Code- (implemented in the interpretive TCL/TK and/or Python language) and all documentation

EXHIBIT B

Licensed Software	Restrictions on Usage
Protocol Test Suites	Licensee may install and use on the licensed number of CPUs specified in Licensee's purchase order
Network Emulators	Licensee may install and use graphical user interface on any number of CPUs. Licensee may use network emulation software on the InterWorking Labs hardware purchased by Licensee.