

InterWorking Labs License Agreement

Network Impairment and Protocol Testing Products

Version 2

Please read the following legally binding License Agreement between InterWorking Labs Inc. (IWL) and you ("Licensee") carefully. By using any of the products, technology, or software described herein, you acknowledge and agree that you, as Licensee, have read, understood, and agree to be bound by the terms and conditions of this License Agreement.

If you neither agree to, nor accept, these terms, you are not licensed or authorized to use the Licensed System. In such event, you may not use the Licensed System, and you shall promptly contact InterWorking Labs for return instructions. IWL will license the "Licensed System" to you (as "Licensee") only on the condition that you accept and agree to be bound by all of the terms in this Agreement.

PLEASE READ THE TERMS CAREFULLY. BY USING THE LICENSED SYSTEM, YOU ACCEPT AND AGREE TO BE BOUND BY THIS LICENSE AGREEMENT.

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

This License Agreement (the "Agreement") is made as of the "Effective Date" by and between InterWorking Labs, Inc., a California corporation, and Licensee.

1. Licensee

1.1 Licensee name and address: As specified on the Purchase Order.

2. Effective Date:

2.1 Effective Date as specified on the Purchase Order

3. Note

- THE LICENSED SYSTEM HAS SOFTWARE AND MAY ALSO HAVE HARDWARE; THAT SOFTWARE AND HARDWARE, IF ANY, ARE TO BE USED TOGETHER, NEITHER MAY BE USED SEPARATELY FROM THE OTHER.
- THE LICENSED SYSTEM IS FOR LICENSEE INTERNAL USE ONLY.
- THE LICENSED SYSTEM MAY NOT BE DISTRIBUTED TO OTHERS.
- THE TEST RESULTS FROM USE OF THE LICENSED SYSTEM MAY NOT BE DISSEMINATED OR PUBLISHED OUTSIDE LICENSEE'S COMPANY.
- PORTIONS OF THE LICENSED SYSTEM ARE PROTECTED BY UNITED STATES COPYRIGHT LAW AND INTERNATIONAL TREATY. UNAUTHORIZED REPRODUCTION OR DISTRIBUTION IS SUBJECT TO CIVIL AND CRIMINAL PENALTIES.

4. Definitions

4.1 Licensed System means that combination of software, hardware (if any), data, and documentation specified in Exhibit A including bug fixes and updates thereto provided to Licensee in connection with this Agreement or any support or maintenance agreement.

4.2 Intellectual Property Rights means patent rights, copyright rights, trade secret rights, and any other intellectual property rights.

5. License Grants

5.1 Subject to the terms and conditions of this Agreement, and upon payment by Licensee to IWL of the license fees set forth in Section 8.1, IWL grants Licensee a non-exclusive, non-transferable license to use the Licensed System for internal use only, for the sole purpose of testing and verifying computer network related products. Licensee agrees to comply with all reasonable monitoring and reporting requirements imposed by IWL to ensure compliance with the license restrictions.

5.2 Licensee has no right to transfer, sub-license or otherwise distribute the Licensed System to any third party.

5.3 Licensee may neither: (i) disassemble, decompile or reverse engineer the Licensed System, or permit any third party to do so; (ii) copy the Licensed System, except as necessary to use the Licensed System in accordance with the license granted under Section 5.1; nor (iii) use the Licensed System in any manner to provide testing or other computer services to third parties.

5.4 Licensee has no right or license to use any trademark of IWL 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 IWL or the name "InterWorking", without consent of IWL, in making any statement or representation concerning results of testing and verification performed using the Licensed System.

5.5 Portions of the Licensed System are copyrighted, some portions may be patented. All proprietary notices incorporated in, marked on, or affixed to the Licensed System, or any of its components, by IWL or its suppliers shall not be altered, removed, or obliterated by Licensee and shall be duplicated by Licensee on all copies, in whole or in part.

5.6 IWL and its suppliers reserve all rights and licenses to the Licensed System not expressly granted to Licensee under this Agreement.

5.7 Contractors. In the event that Licensee elects to have a third party contractor use the Licensed System, Licensee will require such contractor to enter into a written confidentiality agreement with Licensee which (i) is no less restrictive than this Section 5 and Section 9, and (ii) at the termination of that contractor's agreement with Licensee or termination of this agreement, whichever occurs first, requires such contractor to promptly deliver to Licensee all of InterWorking Labs's confidential information and certify in writing to Licensee that it has delivered all such materials. All such written confidentiality agreements shall explicitly designate IWL as a third party beneficiary with full authority to enforce that agreement.

6. Warranties

6.1 IWL warrants that during the thirty (30) calendar day period following delivery of the Licensed System to Licensee, the Licensed System will operate substantially in accordance with its specifications set forth in users' documentation in all material respects. In the event the Licensed System fails to conform to such warranty during the warranty period, as Licensee's sole and exclusive remedy, IWL 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.

6.2 ANY AND ALL WARRANTIES WITH RESPECT TO THE LICENSED SYSTEM SHALL BE VOID AND OF NO EFFECT IF LICENSEE MODIFIES THE LICENSED SYSTEM. THE WARRANTIES SET FORTH IN SECTION 6.1 ARE IN LIEU OF, AND IWL 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. IWL DOES NOT WARRANT THAT OPERATION OF THE LICENSED SYSTEM WILL BE ERROR FREE. SOME PORTIONS OF THE LICENSED SYSTEM ARE DERIVED FROM THIRD PARTY SOFTWARE OR HARDWARE AND NO SUCH THIRD PARTY WARRANTS THOSE PORTIONS, ASSUMES ANY LIABILITY REGARDING USE OF THOSE PORTIONS, OR UNDERTAKES TO FURNISH ANY SUPPORT OR INFORMATION RELATING TO THOSE PORTIONS.

6.3 Licensee acknowledges that the Licensed System is a test tool designed for intermittent use rather than as a component of a continuous-duty production system.

7. Maintenance and Updates

7.1 Subject to IWL's limited resources, IWL will, at no additional charge to Licensee, provide Licensee with reasonable technical support for the warranty period as specified in Section 6.1 via e-mail or the World Wide Web during IWL's normal business hours.

7.2 When IWL develops updates to the Licensed System, IWL, at its sole discretion, may, but has no obligation to, provide Licensee with separately priced updates for the Licensed System at the request of Licensee. All such updates will be considered to be parts of the "Licensed System" and subject to all terms and conditions of this Agreement.

8. License Fee

8.1 In consideration of the licenses granted in Section 5, above, Licensee shall pay IWL a non-refundable license fee in accordance with IWL's then current price list within thirty (30) calendar days after the Effective Date.

8.2 Taxes and Duties. In addition to the license fee 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 IWL's net income.

9. Intellectual Property Rights

9.1 All right, title and interest in and to the Licensed System, and all Intellectual Property Rights embodied therein shall at all times remain with IWL or its suppliers, as applicable.

9.2 Licensee acknowledges and agrees that the Licensed System contains confidential, proprietary information and trade secrets of IWL. For the longer of: (i) a period of five (5) years after the Effective Date or (ii) the expiration or termination of this Agreement, and in all cases perpetually as to IWL trade secrets, Licensee shall not disclose or make available any portion of the Licensed System or any information derived from the Licensed System 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 IWL 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.

9.3 Licensee acknowledges and agrees that the Licensed System contains copyrighted materials of IWL.

9.4 Licensee acknowledges and agrees that the Licensed System may contain materials subject to patents held by IWL.

10. Limitation of Liability

IN NO EVENT SHALL THE TOTAL CUMULATIVE LIABILITY OF IWL 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 IWL FROM LICENSEE. IN NO EVENT WILL IWL 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.

11. Term and Termination

11.1 Without limitation to any other clause, term or condition of this Agreement, and except as otherwise specifically provided in this Agreement, the term of license granted pursuant to paragraph 5 of this Agreement shall be perpetual, unless terminated or canceled in accordance with the provisions of this Agreement.

11.2 Termination.

11.2.1 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) calendar days after receiving written notice of the breach.

11.2.2 IWL may terminate this Agreement effective immediately upon written notice to Licensee without any cure period in the event of Licensee's breach of its confidentiality obligations herein or any Licensee infringement of IWL's Intellectual Property Rights (including exceeding the scope of the license(s) granted herein).

11.2.3 Either party may terminate this Agreement effective immediately upon written notice to the other party if that 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) calendar 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.

11.2.4 Licensee may terminate this Agreement at any time by ceasing all use of the Licensed System and giving written notice to IWL.

11.3 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) calendar days, ship to IWL 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 IWL or its suppliers, including but not limited to the Licensed System and all copies thereof, if any, and an officer of Licensee shall certify in writing to IWL that all such confidential or proprietary items and information have been returned to IWL or destroyed; and (iii) all outstanding invoices for amounts owed to IWL by Licensee shall automatically accelerate and become due and payable on the effective date of termination.

11.4 The provisions of Sections 5.4, 8.2, 9, 10, 11.3, 12, and 13 shall survive the expiration, cancellation, or termination of this Agreement.

12. General Provisions

12.1 This Agreement shall be governed by the 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 Santa Cruz County state courts, as applicable.

12.2 The Licensed System 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.

12.3 Licensee shall neither assign this Agreement or any right hereunder, nor delegate any obligation created under this Agreement to any third party without prior written consent of IWL, which will not be unreasonably withheld. Any attempted assignment or delegation by Licensee without the required written consent shall be null and void. IWL, 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 IWL, and which has assumed in writing or by operation of law its obligations under this Agreement.

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

12.5 Neither IWL 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 IWL or its suppliers.

12.6 Any controversy between the parties involving the construction and application of any of the terms, covenants or conditions of this Agreement, shall be submitted to final, binding and non-appealable arbitration on the request of any party, and the arbitration shall comply with and be governed by the provisions of the California Arbitration Act, Sections 1280-1294.2 of the California Code of Civil Procedure, as amended.

12.7 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.

12.8 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 affects the parties' original intent, and the remainder of the Agreement shall remain in effect.

12.9 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. No provisions of this Agreement are intended or will be construed to confer upon or give to any person or entity other than IWL and Licensee any rights, remedies or other benefits under or by reason of this Agreement.

12.10 Licensee acknowledges that any breach of its obligations under this Agreement with respect to the Intellectual Property Rights or confidential information of IWL will cause IWL irreparable injury for which there are inadequate remedies at law, and therefore, IWL will be entitled to equitable relief in addition to all other remedies provided by this Agreement or available at law.

12.11 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 mail, 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 mail, 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 IWL:

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

Telephone: 831.460.7010

If to Licensee: Licensee name and address as specified in the Purchase Order.

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

12.12. The Licensed System may contain or be distributed with open source software or other third party software that may be covered by a different license. The obligations of IWL set forth in this Agreement do not extend to any such software. Licensee agrees that all such software shall be and shall remain subject to the terms and conditions under which it is provided.

12.13 InterWorking Labs reserves the right at any time to modify this Agreement and to impose new or additional terms and conditions on the use of the Licensed System. Such new versions will be similar in spirit to this version, but may differ in detail to address new issues or concerns. If there is a conflict between these terms and the new or additional terms, the new or additional terms will control for that conflict. The new or additional terms will become effective when InterWorking Labs gives written notice to Licensee or when Licensee begins use of any updates to the Licensed System that contain those new or additional terms, whichever occurs first.

12.14. 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.

13. 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

Product Name: KMAX, KMAX MM, KMAX PRO, KMAX V, Maxwell Pro, or Maxwell Pro V.

Product Components: As per the product description on the Quotation provided to Licensee, including Hardware (if any), Software, Data, and Documentation.