

**ARECONT VISION, LLC  
RESELLER AGREEMENT**

THIS RESELLER AGREEMENT (this "Agreement") is entered into as of \_\_\_\_\_, 2009 (the "Effective Date"), by and between Arecont Vision, LLC, a Delaware limited liability company having its principal place of business at 425 East Colorado Street, Glendale, CA 91205 ("AV"), and \_\_\_\_\_ at \_\_\_\_\_ ("DISTRIBUTOR"), with reference to the following recitals:

**RECITALS**

A. AV is in the business of developing, manufacturing, marketing and distributing innovative, high resolution, network-based remote surveillance systems.

B. Distributor desires to purchase from AV certain of its surveillance systems for purposes of selling for its own account such systems on the terms and subject to the conditions set forth below in this Agreement.

NOW, THEREFORE, in reliance on the foregoing recitals and for good and valuable consideration, including, without limitation, the mutual covenants and agreements set forth below, the receipt and sufficiency of which hereby are acknowledged, AV and DISTRIBUTOR agree as follows:

**TERMS AND CONDITIONS**

**1. Definitions**

**1.1.** "Documentation" means manuals, data sheets, specifications, drawings, catalogs, bulletins, brochures, marketing and technical documents, promotional materials, publications, photographs, and any other documents that AV makes available to DISTRIBUTOR under this Agreement, including without limitation, the manuals identified in Exhibit "A", and all copies thereof.

**1.2.** "End User" means, with respect to a Product (as defined below), the person or entity that purchases the Product from DISTRIBUTOR for such person's or entity's own use and obtains a Licensed Program (as defined below) for internal business purposes.

**1.3.** "FOB", (Free On Board), is a transportation term that indicates that the price for goods includes delivery at the seller's expense to a specified point and no further. The FOB term is used with an identified physical location to determine (i) the responsibility and basis for payment of freight charges, and (ii) the point at which title for the shipment passes from seller to buyer.

**1.4.** "Level One Support" means the support provided directly to End Users, including: (i) distributing new Documentation made available by AV, (ii) remedial maintenance (making the initial response to an End User's service request; call logging; initial information gathering), (iii) verification of End User entitlement to support, (iv) answering basic Product installation, configuration and usage questions; (v) problem isolation, identification and replication, and (vi) performance of data base searches to identify standard problem fixes and work-arounds. AV shall have no responsibility for Level One Support. Level One Support, if any, shall be the sole responsibility of DISTRIBUTOR.

**1.5.** "Level Two Support" means the support provided to an End User or End User's service representative by a technical specialist regarding installation, training and initial configuration of the Product. AV shall have no responsibility for Level Two Support. Level Two Support, if any, shall be the sole responsibility of DISTRIBUTOR.

**1.6.** "Level Three Support" means the support provided to an End User or End User's service representative by a technical specialist, including without limitation (i) preventive maintenance (running diagnostics; reviewing error logs and messages; replacing Parts (as defined below); and installing new software releases, updates or revisions), (ii) answering End

User's service representative's questions, (iii) problem research diagnosis and resolution, (iv) physical replacement of Products (including Parts), and (v) on-site assistance if such on-site service is deemed necessary by the Level Three Support provider. AV shall have no responsibility for Level Three Support. Level Three Support, if any, shall be the sole responsibility of DISTRIBUTOR.

**1.7. "Level Four Support"** means the support provided to DISTRIBUTOR (and not End Users) where Level One Support, Level Two Support and Level Three Support have failed to solve a problem, including (i) addressing Product problems and questions reported by a technical specialist, (ii) analysis and resolution of problems a technical specialist is unable to resolve (including, without limitation, devising work-around procedures), (iii) revision of Documentation where deemed necessary by AV, and (iv) on-site assistance if such on-site service is deemed necessary by the Level Four Support provider.

**1.8. "Licensed Programs"** means the software, in machine-readable form, described in Exhibit "B", all of the End User manuals for the software included in the Licensed Programs, and all copies of such manuals and the back-up copy of such software provided by AV.

**1.9. "Parts"** means the parts, components, and subassemblies listed on the then-current AV price list, as may be amended by AV from time to time in its sole discretion.

**1.10. "Party" or "Parties"** respectively refer to DISTRIBUTOR and AV individually and collectively.

**1.11. "Price" or "Prices"** means the prices that AV will charge DISTRIBUTOR for Products, support and pass-through-items, as set forth in Section 8 below and Exhibit "C".

**1.12. "Product" or "Products"** means the AV supplied product or products listed on Exhibit "C". Unless otherwise agreed by the Parties, the Product shall not be branded with the AV Trademark.

**1.13. "sell," "purchase"** and other terms of similar import, when used in this Agreement with reference to software, refer to licensing of such software in accordance with the license terms set forth in this Agreement.

**1.14. "Shipment Date"** shall mean the date upon which AV makes Product available to a common carrier FOB at AV's facilities in Altadena, CA, USA.

**1.15. "Term"** shall mean the term of this Agreement as set forth in Section 15.1 below.

**1.16. "Territory"** shall mean the territory identified in Exhibit "D".

**1.17. "Third Party Component"** means any hardware or software that AV buys or licenses from a third party and integrates into a Product.

## **2. Appointment**

**2.1. Distributor of Products in the Territory.** Subject to the terms and conditions of this Agreement, AV hereby appoints DISTRIBUTOR, and DISTRIBUTOR hereby accepts such appointment, as a non-exclusive distributor of the Products, either directly or indirectly through any of DISTRIBUTOR's associated companies, its/their distributors or dealers, to End Users in the Territory. DISTRIBUTOR understands and agrees that this is a non-exclusive agreement and that AV may enter other arrangements with other distributors for the sale of the Products in the Territory and/or provide the same or similar functions as the Products, under the AV name, or other names, to customers and/or End Users in or outside the Territory.

**2.2. Sales Effort.** DISTRIBUTOR shall use its best faith efforts to market and sell the Products to End Users in the Territory, which effort shall be similar to its efforts with other products it distributes and otherwise perform its duties under this Agreement.

## **3. Marketing.**

**3.1. Use, Translation and Modification of Documents and Marketing Material.** DISTRIBUTOR may make copies of, and print under AV's copyright notice, forms of the Documentation and other marketing materials that are provided to DISTRIBUTOR by AV hereunder. DISTRIBUTOR may not (and may not authorize a third party to) modify such materials without AV's prior written consent; provided however, that DISTRIBUTOR may add the DISTRIBUTOR Trademark to the

Documentation and make translations of such documentation and materials without AV's prior written consent. DISTRIBUTOR may use such modified copies and prints of Documentation and marketing materials to market the Products and may provide such copies and prints to End Users (subject to Section 3.2 below). In no event, however, shall DISTRIBUTOR make any representations regarding the Products different than or in excess of those in the information provided by AV to DISTRIBUTOR in writing.

**3.2. Manuals.** Each Product shall be distributed with the End User manual that AV provides for such Product. DISTRIBUTOR shall provide and disclose End User manuals only to End Users that purchase Product covered by such manuals.

**3.3. Seminars and Trade Shows.** Within the Territory, DISTRIBUTOR, as appropriate and at its option, will distribute marketing materials and provide a demonstration of the Products to potential End Users in order to promote the Products at (i) trade shows attended by DISTRIBUTOR and (ii) seminars, presentations, training sessions and follow-up meetings sponsored by DISTRIBUTOR relating to security.

**3.4. Costs and Expenses.** Except as otherwise expressly provided herein, each Party shall bear all of its respective costs and expenses in performing its obligations under this Agreement. Except as may otherwise be provided for under this Agreement, neither Party shall be liable for any costs or expenses incurred by the other Party without such other Party's prior written authorization.

## **4. Software Licensing.**

**4.1. Licensed Programs.** Subject to the terms and conditions of this Agreement, AV hereby grants to DISTRIBUTOR a non-exclusive, non-transferable, royalty-free license to (i) install copies of the Licensed Programs in appropriate hardware; (ii) use the Licensed Programs for the purpose of marketing or demonstrating the Products to potential End Users; (iii) use the Licensed Programs to provide technical support to End Users as contemplated by this Agreement; and (iv) distribute the Licensed Programs to End Users in the Territory in computer-readable form only. DISTRIBUTOR may make copies of any Licensed Programs only as necessary to exercise its respective rights authorized under Section 4.1 and as necessary to backup the Licensed Programs.

**4.2. Other Programs.** In addition to royalty-free Licensed Programs listed on Exhibit "B", AV shall offer to DISTRIBUTOR the option to purchase licenses for any other software products distributed by AV relating to the Products. These other software products shall be covered by the terms and conditions of this Agreement and may only be used with AV products specified in the software licenses purchased by DISTRIBUTOR.

**4.3. No Other Rights.** Except as expressly authorized under this Agreement, DISTRIBUTOR shall not copy, use or disclose the Licensed Programs or its functions (i) on behalf of or in relation to any third party products, devices or services; or (ii) on behalf of or to any third parties. DISTRIBUTOR acknowledges and agrees that the licenses granted pursuant to this Agreement do not provide DISTRIBUTOR with any title or ownership rights in or to the Licensed Program, but only a right of limited use in accordance with the terms of this Agreement.

**4.4. Enforcement.** DISTRIBUTOR shall promptly notify AV in writing of any unauthorized use of, or any claim or proceeding involving, a Licensed Program of which DISTRIBUTOR is or becomes aware. DISTRIBUTOR shall cooperate, and reasonably assist AV with the termination of any such unauthorized use.

**4.5. Source of Licensed Programs.** DISTRIBUTOR shall obtain all copies of the Licensed Programs only from AV or AV's designee.

## **5. Training and Support**

**5.1. Training.** AV shall make available to DISTRIBUTOR, at no charge by AV to DISTRIBUTOR, standard certification courses in accordance with the course description provided by AV to DISTRIBUTOR, for up to twenty (20) DISTRIBUTOR personnel concerning the operation, support and use of the Products (the "Training"). AV shall make the Training available at times reasonably convenient to the affected personnel of both DISTRIBUTOR and AV. AV shall make available to DISTRIBUTOR, at no charge by AV to DISTRIBUTOR, subsequent training as may be necessary due to new releases of the Product or Products. DISTRIBUTOR shall be solely responsible for all expenses incurred by DISTRIBUTOR associated with such Training, including, without limitation, travel, lodging, local transportation and meal costs. AV shall make subsequent training courses available to DISTRIBUTOR at AV's then-current practices and rates, as listed on Exhibit "C", for such training courses.

## 6. Trademarks/Trade Names.

### 6.1. Use of Trademarks and Names

a. Except as specifically provided for in this Agreement or upon express written consent of AV, DISTRIBUTOR shall not use the words "AV", "Arecont Vision", "MegaVideo", "SurroundVideo", "DualBand", "DayNight" or any other trademark or trade names of AV or any of its affiliates, or any other word or device likely to be confused therewith (the "Marks"), as part of DISTRIBUTOR's corporate, firm or trade names, or otherwise.

b. AV hereby grants to DISTRIBUTOR the right to use and employ in the Territory, AV's trade names, service marks and trademarks, including, without limitation, the words "Arecont Vision, LLC" in connection with the sale of the Products in the Territory and in the ordinary course of its business, subject, however, to the conditions and restrictions of this Section 6.1, as such Marks may be identified by AV and communicated to DISTRIBUTOR from time-to-time.

c. Except as otherwise specifically provided for herein, DISTRIBUTOR shall not use such Marks and at all times it will observe its status as an independent distributor of the Products. Wherever practicable, DISTRIBUTOR shall identify itself as an "authorized independent distributor" (or words of similar import) of AV or the Products.

d. All Products sold within the Territory, and all labels, packaging and advertising material and related literature shall exhibit appropriate designations with respect to ownership of the Marks by AV.

e. DISTRIBUTOR specifically acknowledges and agrees that all Marks and any designs, patterns, copyrights, patents, marks or other intangible rights related to the Products are the exclusive property of AV. Any attempt by DISTRIBUTOR to assign, transfer or license any of such rights without the express prior written consent of AV shall be null and void and shall constitute a material breach of this Agreement. DISTRIBUTOR agrees that it will take no action which will or could in any way jeopardize or affect AV's rights in its Marks or other intangible properties, and DISTRIBUTOR is specifically prohibited from registering any of such Marks in its own or other names.

f. Upon the termination of this Agreement for any reason, all rights granted herein shall immediately cease and revert in full to AV. DISTRIBUTOR shall discontinue the use of AV's name and Marks and shall remove all signs and displays bearing the same. Any advertising literature or materials reflecting the Marks shall, at AV's direction, be properly disposed of. DISTRIBUTOR further agrees that it will not thereafter use any name, label or trademark confusingly similar to those of AV.

g. It is clearly understood and agreed by DISTRIBUTOR that nothing in this Agreement shall obligate AV to defend in any litigation or proceeding its right to its Marks or the license rights of DISTRIBUTOR under this Agreement. In the event that AV elects to defend in any such actions, DISTRIBUTOR agrees to cooperate and provide reasonable assistance to AV.

h. The obligations of this Section 6.1 shall survive the expiration or termination of this Agreement and continue indefinitely.

### 6.2. Property Rights and Confidentiality.

a. DISTRIBUTOR acknowledges and agrees that AV owns all right, title, and interest in the product lines that include the Products and in all of AV's Marks, patents, trademarks, trade names, inventions, copyrights, know-how, and trade secrets relating to the design, manufacture, operation or service of the Products. The use by DISTRIBUTOR of any of these property rights is authorized only for the purposes herein set forth, and upon termination of this Agreement for any reason such authorization shall cease.

b. DISTRIBUTOR shall not remove, alter, cover or obfuscate any proprietary rights notices, such as patent, copyright, or confidentiality notices, on or in any Product, Documentation, other materials, or copies thereof, unless agreed to by AV.

c. Except as expressly set forth herein, AV and its licensors own all right, title and interest in the Licensed Programs provided by AV to DISTRIBUTOR under this Agreement, and any modifications thereto supplied by AV, unless otherwise agreed by AV. Except for the limited license rights granted in Section 4.1 of this Agreement, AV shall retain all right, title and interest in and to the Licensed Program, and DISTRIBUTOR may not transfer, distribute, rent, or grant any of AV's intellectual property rights in the Licensed Program to any entity.

d. AV shall own all right, title and interest in (i) the Documentation and (ii) any modifications, alterations, translations or derivative works of the Documentation, regardless of by whom made; and (iii) all intellectual property rights related to (i) and (ii), unless otherwise agreed in writing by AV.

e. DISTRIBUTOR shall not willfully attempt to gain access to the firmware, FPGA configuration files and software embedded in AV products for the purposes of discovering AV intellectual property not disclosed to DISTRIBUTOR or for the purposes of unauthorized duplication. DISTRIBUTOR acknowledges that any attempt to discover AV intellectual property without AV authorization shall constitute the breach of this Agreement and may result in irreparable material harm to the AV.

f. Furthermore, DISTRIBUTOR acknowledges and agrees that, pursuant to the terms of this Agreement, it may have access to certain processes, ideas, information, formulations, data and materials concerning AV's business, plans, customers, customer lists, marketing plans, technology and products, written and unwritten, that AV considers confidential (the "Confidential Information"), and which AV considers of substantial value to it, which value would be impaired if it were improperly used or if it were disclosed to third parties. DISTRIBUTOR shall hold the Confidential Information in strictest confidence and shall not use any Confidential Information in any way for its own account or the account of any third party, nor shall DISTRIBUTOR disclose, furnish, communicate or make accessible any Confidential Information to any third party that has been revealed to DISTRIBUTOR during the course of performing her obligations under this Agreement, or otherwise. DISTRIBUTOR shall take every reasonable precaution to protect the confidentiality of the Confidential Information. Upon request by DISTRIBUTOR, AV shall advise DISTRIBUTOR whether or not it considers any particular information or materials to be Confidential Information; however, the failure by DISTRIBUTOR to request such advice or the failure of AV to provide such advice shall not, in any way, influence whether or not such information or materials are, in fact, Confidential Information under this Agreement. DISTRIBUTOR shall not publish any technical description of the Products beyond the description published by AV. After termination of this Agreement, there shall be no use or disclosure by DISTRIBUTOR of any Confidential Information and DISTRIBUTOR shall not manufacture or have manufactured any devices, components or assemblies utilizing any of the Confidential Information. Notwithstanding any other provision of this Section 6, Confidential Information shall include, without limitation, all processes, ideas, formulations, tools and data and other information, written and unwritten, with respect to the Products.

g. Notwithstanding any other provision of this Section 6.2, the term "Confidential Information" shall not include any information which (i) is or becomes generally available to the public other than as a result of a disclosure by DISTRIBUTOR; (ii) was within DISTRIBUTOR's possession prior to it being furnished by or on behalf of the AV pursuant hereto (including, without limitation, as a result of independent development by the DISTRIBUTOR), provided that the source of such information was not known by DISTRIBUTOR, after reasonable investigation, to be bound by a confidentiality agreement with, or other contractual, legal or fiduciary obligation of confidentiality to, AV or any other party with respect to such information; or (iii) becomes available to DISTRIBUTOR on a non-confidential basis from a source other than AV, provided that such source is not bound by a confidentiality agreement with, or other contractual, legal fiduciary obligation of confidentiality to, AV or any other party with respect to such information.

h. The obligations of this Section 6.2 shall survive the expiration or termination of this Agreement and continue indefinitely.

**6.3. Enforcement.** DISTRIBUTOR shall promptly notify the AV in writing if it becomes aware of any use of the Marks, which it knows is, or reasonably suspects to be, unauthorized. DISTRIBUTOR shall cooperate, and reasonably assist AV with the termination of any such unauthorized use at the cost of AV.

## **7. Order and Purchase Procedures; Products.**

### **7.1. Purchase Orders.**

a. During the Term of this Agreement, DISTRIBUTOR shall initiate each order for Products by written purchase order (each, a "Purchase Order") sent to and received by AV at least forty five (45) days prior to the earliest Product Shipment Date requested in such Order. Each Purchase Order shall be a firm purchase commitment by DISTRIBUTOR not subject to withdrawal, and DISTRIBUTOR shall be obligated to purchase the Products in accordance therewith, except as set forth below in paragraph 8.1(b) regarding limited cancellation rights and in Section 7.2 below regarding New Shipment Dates. AV shall supply to DISTRIBUTOR written confirmation (acceptance/non-acceptance) of Purchase Orders as soon as reasonably practicable, but in any event, no later than five (5) business days after receipt of Purchase Order. Acceptance shall include the confirmation of the Shipment Dates. Partial acceptance of a Purchase Order

shall not constitute acceptance of the entire Purchase Order. Upon acceptance of a Purchase Order, AV shall be obligateded to sell such Product to DISTRIBUTOR, subject Section 16.4 below.

b. Notwithstanding the immediately preceding paragraph and subject to the following sentence, DISTRIBUTOR may cancel Purchase Orders with respect to those Products, if any, with Shipment Dates sixty (60) or more days after the date that DISTRIBUTOR provides AV with written notice of its request to do so. However, if the unit price for the Products included in any such Purchase Order would have been greater than the unit price charged DISTRIBUTOR had DISTRIBUTOR originally ordered the quantity of Products not cancelled by DISTRIBUTOR, AV may charge DISTRIBUTOR the aggregate difference in price and DISTRIBUTOR shall pay such amount to AV in accordance with the provisions of Section 11.1 below.

**7.2. Shipment Dates.** Shipment Dates in an accepted Purchase Order are estimates only, provided that (i) AV will use reasonable commercial efforts to ship the Products on such Shipment Dates and (ii) AV shall notify DISTRIBUTOR within five (5) days prior to the Shipment Date if a Shipment Date cannot be met, advising DISTRIBUTOR of a new Shipment Date (the "New Shipment Date"). Failure to notify DISTRIBUTOR within such period shall be deemed as a confirmation of the Shipment Dates set forth in the Purchase Order. AV, in its discretion, may make shipments within two (2) days of the confirmed Shipment Dates, provided it notifies DISTRIBUTOR at least three (3) business days prior to the confirmed Shipment Date. If (i) the New Shipment Date is unacceptable to DISTRIBUTOR and/or Customer, or (ii) AV fails to deliver within two (2) days of the confirmed Shipment Dates, DISTRIBUTOR may withdraw the Purchase Order and not be obligated to purchase said Product.

**7.3. Required Information.** Each Purchase Order shall (i) specify the Products ordered by DISTRIBUTOR model number, part number, requested quantities, requested shipment and delivery date, contact information, and Prices; (ii) specify a common carrier selected by DISTRIBUTOR, the delivery destination and any other shipping instructions; and (iii) comply with the ordering procedures set forth in this Agreement and as may be communicated in writing from AV to DISTRIBUTOR from time-to-time..

**7.4. Forecasts.** DISTRIBUTOR shall send to AV, no later than ten (10) business days after the beginning of each calendar quarter during the Term of this Agreement, a good faith forecast showing DISTRIBUTOR's best non-binding estimate of Products that DISTRIBUTOR will order from AV in the next four (4) months (each, a "Forecast"). Each Forecast shall identify Product and volumes for such Products. DISTRIBUTOR shall deliver to AV within 30 days of the Effective Date the first such Forecast.

**7.5. Product Updates.** AV and its suppliers, at their sole option, may from time to time incorporate modifications and improvements into the Products available hereunder and shall promptly inform DISTRIBUTOR of any such material changes. Subject to the foregoing, AV will inform DISTRIBUTOR at least sixty (60) days in advance of any material changes. AV may, but shall not be required to, provide such modified or improved Products to DISTRIBUTOR under previously placed or accepted Purchase Orders. Neither Party will incur any liability for then existing orders and obligations by reason of the inclusion of such modified or improved Products as described above. The Parties hereby acknowledge that material changes to the Products may have an impact on DISTRIBUTOR's sales and support to End Users, and each Party agrees to meet to discuss whether adjustments are fair and appropriate in the context of the Product change.

**7.6. Product Lead Time.** AV shall notify DISTRIBUTOR thirty (30) days prior to a change in Product lead-time when the lead-time is expected to be greater than forty five (45) days.

## **8. Pricing.**

**8.1. Product Pricing.** The Price payable to AV for Products shipped hereunder shall be as set forth on Exhibit "C". Prices are FOB AV's facilities in Altadena, CA, USA.

**8.2. DISTRIBUTOR Remuneration.** The difference between the Price for Products paid to AV by DISTRIBUTOR and the price for such Products paid to DISTRIBUTOR by its End Users shall be DISTRIBUTOR's sole remuneration under this Agreement.

## **9. Shipment and Risk of Loss.**

**9.1. General.** All Product shipped hereunder shall be packaged in AV's shipping cartons so as to prevent damage and shall be delivered to a common carrier FOB AV's facilities in Altadena, CA, USA, at which time risk of loss shall pass to DISTRIBUTOR. If the common carrier is not specified in the Purchase Order, AV shall contact DISTRIBUTOR immediately

after receipt of the Purchase Order and obtain DISTRIBUTOR's written instruction on which carrier to use. All freight, insurance, and other shipping expenses, as well as expenses for any special packing requested by DISTRIBUTOR and provided by AV, shall be paid by DISTRIBUTOR.

**9.2. Discrepancies.** All shipments and charges set forth on any invoice will be deemed correct unless AV receives from DISTRIBUTOR, as soon as reasonably possible, but no later than thirty (30) after the receipt of invoice, a written notice specifying the shipment, the Purchase Order number, and the exact nature of the discrepancy between the order and the shipment in number and type of Products shipped, or freight or other charges, as the case may be.

## **10. Payment.**

**10.1. Payment.** Payment for all Product and pass-through-items purchased and support services provided by AV to DISTRIBUTOR hereunder shall be in U.S. Dollars, and shall be due and payable by DISTRIBUTOR to AV no later than pay due date specified on the applicable invoice from AV. Subject to Section 10.2 below, payment shall be in an amount equal to the purchase Price for the applicable Product plus all applicable taxes (as set forth in Section 10.2 below), shipping charges, and other charges to be borne by DISTRIBUTOR in accordance with this Agreement. Except as otherwise may be specifically provided for in this Agreement, receipt of payment by DISTRIBUTOR from End Users for any particular Products shall in no way effect DISTRIBUTOR's obligation to pay AV as provided for hereunder.

**10.2. Taxes, Duties, Tariffs and License Fees.** Prices do not include any taxes (including any excise, sales, use, value added, withholding, and similar taxes), customs duties, tariffs or license fees, and the payments by DISTRIBUTOR to AV hereunder shall be payable in full without reduction for any such taxes, duties, tariffs or fees. DISTRIBUTOR shall be responsible for and shall indemnify and hold AV harmless for any taxes, customs duties, tariffs and license fees actually paid by AV, based on payments to AV hereunder or on the use or possession by DISTRIBUTOR and any End Users of Products, or support or repair services, but excluding United States federal, state and local taxes based on AV's net income, state franchise taxes and taxes based upon AV's capitalization. AV shall provide DISTRIBUTOR with official receipts issued to it by the appropriate taxing or other authority or such other evidence as is reasonably requested by DISTRIBUTOR and available to AV to establish that such taxes, duties, tariffs, fees or charges have been paid by DISTRIBUTOR and are being charged inappropriately to AV. When AV has the legal obligation to pay or collect any such taxes, duties, tariffs, fees or other charges (excluding taxes on the net income of AV, state franchise taxes and taxes based upon AV's capitalization), the appropriate amount shall be invoiced to DISTRIBUTOR and timely paid by DISTRIBUTOR unless DISTRIBUTOR provides AV with a valid tax or other exemption certificate issued or authorized by the appropriate authority within a time frame allowed under applicable state or local law or provides AV such other evidence requested by AV to establish such exemption. DISTRIBUTOR shall provide AV with official receipts issued by the appropriate taxing or other authority or such other evidence as is reasonably requested by AV to establish that such taxes, duties, tariffs, fees or charges have been paid.

## **11. Rejection/Return.**

**11.1. Acceptance/Rejection.** All Products shall be deemed accepted by DISTRIBUTOR twenty (20) business days after receipt at DISTRIBUTOR's location or at the End User's premises, as applicable, unless DISTRIBUTOR rejects such Product within such twenty (20) business day period for failure to comply with the Limited Warranty set forth in Section 12 below. Upon such rejection by DISTRIBUTOR, DISTRIBUTOR shall immediately notify AV of the rejection and shall, at AV's option, return the Product or allow AV to inspect the rejected Product at the facility of DISTRIBUTOR or at the End User installation site (provided such inspection visit is acceptable to the End User), and shall follow AV's instructions regarding disposition of the rejected Product.

**11.2. Return.** Any Product sold by DISTRIBUTOR and returned to AV in accordance with the terms of this Agreement shall be returned by DISTRIBUTOR to AV. Prior to such return, DISTRIBUTOR shall obtain from AV's Technical Support Department a Return Material Authorization ("RMA") number. AV will send to DISTRIBUTOR an RMA form and number within five (5) business days of DISTRIBUTOR's request. Within ten (10) business days after receiving an RMA number for the Product, or, if the RMA number is not received within the timeframe mentioned above, at any time after the expiration of such timeframe, DISTRIBUTOR shall package such Product in its original packing material or an equivalent and return such Product to AV or such other location as AV may designate in writing. Distributor shall bear the cost of freight and insurance for the return to AV. DISTRIBUTOR shall enclose with the returned Product the applicable RMA form, and any other documentation or information requested by AV. AV may refuse to accept returns of any Product not packed and shipped as provided in this Section 11.2.

**11.3. AV Evaluation.** Upon verification that the Product does not comply with the Warranty set forth in Section 12 below, AV will repair, replace, or provide a refund for such Product, at AV's option as set forth in Section 12 and at AV's cost, no later than thirty (30) days after the time AV receives from DISTRIBUTOR in accordance with this Section 11 written notice

of such return or rejection. AV shall be responsible for returning, at AV's cost, repaired or replaced Products to DISTRIBUTOR.

## **12. Product Warranties and Disclaimers.**

**12.1. Limited Warranty.** AV warrants to DISTRIBUTOR, subject to all of the provisions of this Agreement including Section 14 below (the "Limited Warranty"), that: (a) each Product and any Parts purchased hereunder shall be free from material defects in material and workmanship for a period of twelve (12) months from the Date of Shipment by AV of Products to DISTRIBUTOR or End User (as applicable) ("Warranty Period"); (b) during the Warranty Period, the Products will materially conform with the specification in the applicable Documentation; (c) all Licensed Programs will materially conform with the Licensed Program specifications in the applicable Documentation during the Warranty Period. With respect to out-of-warranty cases, these facilities and spare parts shall be available at AV's then current prices.

**12.2. Exclusive Remedy.** AV's sole liability and DISTRIBUTOR's exclusive remedy for a breach of the Limited Warranty of Section 12.1 shall be limited to repair or replacement (at no charge to DISTRIBUTOR) of, or refund for, the non-conforming Product at AV's sole option. Product returned to AV for non-compliance with this Limited Warranty shall be returned in accordance with Section 11 above. Any refund under this Section 12 shall be of the actual purchase price paid by DISTRIBUTOR for the applicable Product.

**12.3. Exclusions.** Notwithstanding the warranty of Section 12.1, AV shall have no obligation or responsibility with respect to any Product that (i) has been modified or altered without AV's written authorization; (ii) has not been used in accordance with Documentation for such Product; (iii) has been subjected to unusual electrical or physical stress; neglect; misuse; abuse; improper storage, testing or connection; or unauthorized repair; or (iv) is no longer covered under the Warranty Period.

**12.4. Repaired or Replaced Product.** The warranty for repaired or replaced Product shall be limited in scope to the warranty of Section 12.1 and shall have a duration of the greater of (i) the remaining Warranty Period in the original warranty of Section 12.1 that was applicable to the original Product, extended by the time elapsed between AV receiving notice of the non-conformity and DISTRIBUTOR's receipt of the repaired or replaced Product; or (ii) ninety (90) days following delivery to DISTRIBUTOR's of the repaired or replaced Product.

**12.5. Disclaimer.** AV MAKE NO WARRANTIES OR CONDITIONS, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, OTHER THAN THE EXPRESS LIMITED WARRANTIES MADE BY AV IN THIS SECTION 12, AND AV HEREBY SPECIFICALLY DISCLAIMS ALL OTHER EXPRESS, STATUTORY AND IMPLIED WARRANTIES AND CONDITIONS, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND THE IMPLIED CONDITION OF SATISFACTORY QUALITY. EXCEPT AS EXPRESSLY STATED IN THIS SECTION 12, ALL LICENSED PROGRAMS ARE LICENSED ON AN "AS IS" BASIS WITHOUT WARRANTY. AV DOES NOT WARRANT THAT (I) THE OPERATION OF THE PRODUCTS OR PASS THROUGH ITEMS WILL BE UNINTERRUPTED OR ERROR FREE; (II) THE PRODUCTS OR PASS THROUGH ITEMS AND DOCUMENTATION WILL MEET THE END USERS' REQUIREMENTS; (III) THE PRODUCTS OR PASS THROUGH ITEMS WILL OPERATE IN COMBINATIONS AND CONFIGURATIONS SELECTED BY THE END USER; OTHER THAN COMBINATIONS AND CONFIGURATIONS WITH PASS THROUGH ITEMS OR OTHER PRODUCTS AUTHORIZED BY AV OR (IV) THAT ALL LICENSED PROGRAM ERRORS WILL BE CORRECTED.

**12.6. Support.** AV shall provide Level Four Support (only) to DISTRIBUTOR to support the End Users, during the Warranty Period, at no cost to DISTRIBUTOR. Any other support, including, without limitation, Level One Support, Level Two Support and Level Three support shall be provided by, and shall be the sole responsibility of, DISTRIBUTOR.

**12.7. Scope.** The Limited Warranty of this Section 12 is by AV to DISTRIBUTOR only and not to any third party, including, without limitation, any End Users. DISTRIBUTOR shall be responsible for providing a warranty to End Users.

## **13. Representations and Indemnities.**

### **13.1. Intellectual Property Remedy.**

a. Notwithstanding any other provision in this Agreement, AV shall indemnify, defend and hold DISTRIBUTOR harmless, at its sole expense, against any claim or action brought against DISTRIBUTOR, to the extent based on a third party claim that the Products and/or Parts infringe any third party patent, copyright or other intellectual property rights arising under the laws of any country or other jurisdiction in the Territory. AV will pay any settlement and other costs, damages and attorneys' fees awarded against DISTRIBUTOR in such action which are caused by such claim;



provided that AV is (i) promptly informed in writing of such claim and action; (ii) given exclusive authority and control to defend, settle or otherwise remove or avoid such claim and action; and (iii) provided with all reasonable assistance that it requests in connection with such claim and action. AV shall not be responsible for costs or expenses incurred without its prior written authorization. The remedy set forth in this Section 13.1 shall not apply to the extent that such infringement arises from (a) use of a Product in a manner which is not provided for in the Documentation, including, without limitation in a combination or process where the Product used alone or not in that process would not have infringed such rights; (b) use of other than a current unaltered release of the Product to the extent that the infringement would have been avoided by such current unaltered release where such current unaltered release was made available to DISTRIBUTOR by AV; (c) modification of the Product by, or requested by DISTRIBUTOR or an End User; or (d) modification of Product by any third party unless implemented by AV and not requested by DISTRIBUTOR or an End User; or (e) continued infringement by DISTRIBUTOR if AV is providing a remedy in accordance with the terms of this Agreement; or (f) a breach of this Agreement by DISTRIBUTOR. AV shall have no obligation or responsibility under this Section 13.1 for damages, costs, expenses and other losses to the extent that DISTRIBUTOR or an End User refuses to comply with a commercially reasonable written request to take action to prevent or mitigate such losses, costs, expenses or damages.

b. In addition, in the event that it is determined or AV reasonably believes that a Product or Part thereof may infringe any intellectual property rights, AV shall, at its option, (i) procure for DISTRIBUTOR the right to continue using such Product or Part; (ii) modify the Product or Part to avoid such infringement; or (iii) replace the Product or Part with a suitable cosmetically and functionally equivalent non-infringing substitute. If all of the remedies in (i) through (iii) above are unavailable, AV shall (1) require that DISTRIBUTOR return any effected Product in its inventory (and DISTRIBUTOR shall return any effected Product), refund to DISTRIBUTOR the actual price paid by DISTRIBUTOR to AV for such Product and (2) terminate this Agreement without any further liability hereunder.

c. THE PARTIES ACKNOWLEDGE AND AGREE THAT THIS SECTION 13.1 STATES THE ENTIRE LIABILITY AND OBLIGATION OF AV AND, WITH RESPECT TO AV, THE EXCLUSIVE REMEDY OF DISTRIBUTOR OR ANY END USERS WITH RESPECT TO INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS BY THE PRODUCTS OR PART THEREOF AND PASS THROUGH ITEMS.

### **13.2. Indemnification by DISTRIBUTOR.**

Except for any obligations that AV may have pursuant to Section 13.1 above, DISTRIBUTOR shall indemnify, defend and hold harmless AV against any and all claim or action brought by a third party against AV to the extent caused by (1) any activities of DISTRIBUTOR or its distributors in connection with the marketing, selling, licensing, or use of Products in violation of this Agreement or in a manner not provided for in the Documentation, or (2) any representation or warranty of DISTRIBUTOR or its employees that exceeds those provided by AV in writing. AV shall (i) promptly inform DISTRIBUTOR in writing of such claim and action; (ii) give DISTRIBUTOR exclusive authority and control to defend, settle or otherwise remove or avoid such claim and action; and (iii) provide DISTRIBUTOR with all reasonable assistance that it requests in connection with such claim and action. DISTRIBUTOR shall not be responsible under this Section 13.2 for costs, expenses and fees incurred by AV without DISTRIBUTOR's prior written authorization.

### **13.3. Indemnification by AV.**

AV shall indemnify, defend and hold harmless DISTRIBUTOR against any and all claims or actions brought by a third party against DISTRIBUTOR to the extent caused by (1) the use by DISTRIBUTOR or its distributors of the Documentation provided by AV in connection with the marketing, selling, licensing, or use of Products, or (2) any representation or warranty of DISTRIBUTOR or its employees that are in accordance with those provided by AV in writing. DISTRIBUTOR shall (i) promptly inform AV in writing of such claim and action; (ii) give AV exclusive authority and control to defend, settle or otherwise remove or avoid such claim and action; and (iii) provide AV with all reasonable assistance that it requests in connection with such claim and action. AV shall not be responsible under this Section 13.3 for costs, expenses and fees incurred by DISTRIBUTOR without AV's prior written authorization.

## **14. Limitation of Liability.**

**14.1. EXCEPT AS MAY OTHERWISE BE PROVIDED IN SECTION 14 ABOVE, NEITHER AV NOR DISTRIBUTOR SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, LOSSES, COSTS OR EXPENSES OF ANY KIND, HOWEVER CAUSED AND WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCTS LIABILITY OR ANY OTHER THEORY OF LIABILITY, INCLUDING BUT NOT LIMITED TO LOST PROFITS, COSTS OF PROCUREMENT OF SUBSTITUTE GOODS, LOSS OF GOODWILL, LOSS OF DATA OR SYSTEM USE, AND OTHER BUSINESS LOSS, REGARDLESS OF WHETHER SUCH PARTY KNOWS OR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, LOSSES, COSTS, OR EXPENSES.**

**14.2.**AV SHALL HAVE NO LIABILITY ARISING OUT OF THE MISUSE; UNAUTHORIZED ALTERATION, MODIFICATION, OR USE OF, OR TAMPERING WITH A PRODUCT UNLESS IT WAS CAUSED BY THE NEGLIGENCE OR WILLFUL MISCONDUCT OF AV.

**14.3.**NOTHING HEREIN, HOWEVER, SHALL LIMIT IN ANY MANNER, THE LIABILITY OF EITHER PARTY HEREUNDER ARISING OUT OF A BREACH OF THIS CONTRACT, INCLUDING, WITHOUT LIMITATION, AS A RESULT OF DISTRIBUTOR'S FAILURE TO PAY TO AV WHEN DUE AMOUNTS DUE AV UNDER THIS AGREEMENT.

## **15. Term and Termination.**

**15.1.**Term. Subject to the early termination provisions set forth below in this Agreement, the term of this Agreement shall commence upon the Effective Date and shall continue in full force and effect for a period of one (1) year from the Effective Date. Thereafter, this Agreement shall renew automatically for successive one (1) year periods unless terminated by either Party upon at least thirty written notice delivered to the other Party at least thirty (30) days prior to the date this Agreement otherwise would terminate.

**15.2.**Termination for Cause. This Agreement may be terminated immediately for cause by a Party on written notice to the other Party in the event that:

- a. the other Party ceases to function as a going concern or to conduct its operations in the normal course of business; or
- b. the other Party is in default of its obligations under this Agreement and fails to cure such default within thirty (30) days after written notice thereof, except if the default is a failure by DISTRIBUTOR to pay when due any amounts payable to AV in accordance with the terms of this Agreement then the cure period shall be ten (10) days and AV shall not be obligated to provide DISTRIBUTOR with written notice of the default; or

**15.3.**Purchase Order, No Waiver. AV shall be obligated to ship and DISTRIBUTOR shall be obligated to accept deliveries of Products for which AV accepted Purchase Orders prior to the effective date of termination of this Agreement. The acceptance of any Purchase Order from, or the sale of any Product to, DISTRIBUTOR after the termination of this Agreement for any reason shall not be construed as a renewal or extension of this Agreement or any provision hereof.

**15.4.**Termination Obligations: In the event of termination of this Agreement for any reason:

- a. DISTRIBUTOR shall pay to AV all payments due and/or owing to AV under Purchase Orders issued by DISTRIBUTOR and accepted by AV at the time of such termination upon AV's fulfillment of all open Purchase Orders and issuance of invoices for said orders which shall be paid in accordance with the payment terms in this Agreement.
- b. After the expiration of the Warranty Period, AV shall have the right to charge DISTRIBUTOR a reasonable fee (in accordance with AV's then standard prices and practices) for any Level Four Support requested by DISTRIBUTOR.
- c. Subject to its obligations under Section 16.4(a) above, AV shall immediately cease any use of the DISTRIBUTOR Trademarks.

## **16. Miscellaneous Provisions.**

**16.1.**Independent Contractors. AV and DISTRIBUTOR are independent Contractors, and nothing in this Agreement shall be construed to (a) give either Party the power to direct and control the day-to-day activities of the other, (b) constitute the Parties as partners, joint ventures, co-owners, employers or employees of the other or otherwise participants in a joint undertaking, or (c) authorize either Party to create or assume any obligation on behalf of the other Party for any purpose whatsoever.

**16.2.**Waiver. The failure of either Party to require performance of any provision of this Agreement shall not affect the right of such Party to require full performance at any time thereafter, nor shall the waiver of either Party of a breach or default be taken or held to be a waiver of a provision itself or a waiver of any other right hereunder.

**16.3.**Notice. Any notice required or permitted to be given hereunder shall be in writing and shall be sent by certified mail return receipt requested or delivered by a recognized international express courier service (such as DHL or Federal

Express) or delivered by hand to the address of the other Party set forth below, or such other address as a Party may designate by written notice in accordance with this Section 17.3. Any such notice shall be deemed effective when received.

**16.4. Force Majeure.** Other than the payment of moneys, nonperformance of either Party shall be excused to the extent that performance is rendered commercially unreasonable by acts of God, war, fire, flood, riot, power failure, embargo, material shortages, strikes, governmental acts, man-made or natural disasters, earthquakes, failure or limitation of supply, or any other reason where failure to perform is beyond the reasonable control and not caused by the negligence of the non-performing Party. The time for performance shall be extended for the time period lost due to the delay. When affected by a force majeure event, DISTRIBUTOR may, without incurring any liability to AV, delay its purchases of any Product. AV may, without incurring any liability to DISTRIBUTOR, allocate, delay or limit deliveries of any Product in time of shortage caused by a force majeure event. AV will allocate Products in a fair and reasonable manner. Notwithstanding the foregoing, in the event that either Party postpones delivery of Product by more than sixty (60) days after the delivery date requested in a Purchase Order for such Product, the other Party may cancel such Purchase Order within ten (10) days after such other Party receives notice of such postponement.

**16.5. Governing Law and Jurisdiction.** This Agreement shall be governed by and construed under the laws of the State of California, USA, without reference to conflict of laws. All such disputes shall be subject to the exclusive jurisdiction of California law, and the Parties agree and submit to the personal and exclusive jurisdiction and venue of courts located in the State of California, USA.

**16.6. Assignment.** The rights and obligations under this Agreement are personal and may not be transferred or assigned directly or indirectly except upon written consent of the non-assigning Party; except however, either Party may assign this Agreement to a successor in interest (or its equivalent) of all or substantially all of its assets, whether by sale, merger or similar transaction and either Party may assign this Agreement to an entity that is controlled by, under common control with, or controlling such Party. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the Parties hereto, their successors and assigns.

**16.7. Severability.** If, for any reason, a court or other body of competent jurisdiction finds, or the Parties mutually believe, any provision of this Agreement, or portion thereof, to be invalid or unenforceable, such provision will be enforced to the maximum extent permissible so as to effect the intent of the Parties, and the remainder of this Agreement will continue in full force and effect. The Parties shall negotiate in good faith an enforceable substitute provision that most nearly achieves the intent and economic effect of such invalid or unenforceable provision.

**16.8. Survival.** In the event of termination or cancellation of this Agreement, those Sections which by their nature continue beyond the expiration of this Agreement shall continue beyond the termination of this Agreement, including, without limitation, Sections 11, 12, 13, 14, 16 and this Section 17.

**16.9. Compliance with Laws; Licenses.** Each Party shall comply with all laws, regulations, orders and other governmental requirements in performing obligations and exercising rights under this Agreement (including without limitation all applicable export and import laws and regulations). AV has to abide all applicable U.S. Export Regulations. Unless otherwise agreed upon, as set forth hereinafter, when required by any federal or state law or regulation of any country of the Territory that a manufacturer obtain certain licenses, permits and approvals ("Mandatory Licenses") in connection with the purchase and distribution of the Products, AV shall be responsible (with DISTRIBUTOR's reasonable assistance) for obtaining such Mandatory Licenses. For any other Mandatory Licenses, the parties will, on a case-by-case basis, discuss and agree in good faith the division of responsibilities among them. DISTRIBUTOR shall be responsible (with AV's reasonable assistance) for obtaining any governmental licenses and approvals, other than the Mandatory Licenses, that may be necessary in connection with the purchase and distribution of Products in accordance with this Agreement.

**16.10. Gifts and Gratuities.** Each Party, with respect to any transaction arising from this Agreement, shall make no offer, or commit to the making of, or make a transfer of anything of value (in the form of compensation, gift, contribution or otherwise) to any employee, representative, person or organization in any way connected with any customer, private or governmental, in violation of any applicable United States federal, state or local law or regulation, or of the law or regulation of any other country of the Territory.

**16.11. Entire Agreement; Modifications; Amendments.** This Agreement, including the Exhibits attached hereto, sets forth the entire agreement and understanding of the Parties with respect to the sale and distribution of Products, the Licensed Products and pass-through-items in the Territory and supersedes all prior and contemporaneous agreements relating thereto, written or oral, between the Parties. No modification of or amendment to this Agreement, and no waiver of any rights under this Agreement shall be effective unless in writing signed by the Party to be charged. All Exhibits attached to this Agreement are incorporated into this Agreement by reference.

**16.12. Conflicting Terms.** Except with respect to modifications and amendments in accordance with Section 17.11 above, the terms and conditions of this Agreement, including the Exhibits attached hereto, shall prevail, notwithstanding any limitations on acceptances or any contrary, additional, different, altering or conflicting terms in any policy, quotation, Purchase Order, sales acceptance or acknowledgment, confirmation or other document issued by either Party affecting the purchase and/or sale of Products. The body of this Agreement shall prevail in the event of a conflict with any of the Exhibits attached hereto. DISTRIBUTOR agrees to waive and does waive the terms of any Purchase Order that purport to limit, add to, vary, alter, supplement, or modify the terms of this Agreement. AV agrees to waive and does waive the terms of any sales acceptance or acknowledgment, or other document issued by AV that purport to limit, add to, vary, alter, supplement, or modify the terms of this Agreement.

**16.13. Employee Solicitation.** During the term of this Agreement, neither Party will solicit the employment of any person while he/she is an employee of the other Party, absent the prior express written consent of the other Party. This Section 17.13 shall not prevent a Party from employing general recruiting strategies, such as placement of advertisements, posting of positions on Web sites and the like.

**16.14. Construction.** In this Agreement, all references to "Sections" and "Exhibits" refer to sections and exhibits of this Agreement; the words "hereof," "herein," "hereunder" and other words of similar import refer to this Agreement as a whole and not to any subdivision contained in this Agreement; the words; and the words "include" and "including" when used herein are not exclusive and mean "include, without limitation" and "including, without limitation," respectively.

**16.15. Headings.** Section and Exhibit headings herein are inserted for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

**16.16. Counterparts.** This Agreement may be executed in counterparts which taken together shall be regarded as one and the same Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused their respective authorized representatives to execute and enter into this Agreement.

\_\_\_\_\_  
Company Name

Arecont Vision, LLC,  
a Delaware limited liability company

By \_\_\_\_\_

By: \_\_\_\_\_

Name \_\_\_\_\_

Steven Sarfati

Title \_\_\_\_\_

Senior VP of Sales and Marketing

**Please FAX this entire document to + 1.626.628.1870 (North American and Asia)  
or +49 2433 4469 1001(Europe)**

**EXHIBIT "A"**  
**DOCUMENTATION**

1. Camera Specifications
  2. AV Video System Software User Manual
  3. AV SDK Developer Manual
  4. Available Application Notes
- 

**EXHIBIT "B"**  
**LICENSED PROGRAMS**

1. Camera SDK for Linux and Windows
- 

**EXHIBIT "C"**  
**PRODUCTS AND PRICES**

1. See standard published price list supplied by Arecont Vision
- 

**EXHIBIT "D"**  
**TERRITORY**

(Please list territory): \_\_\_\_\_