

**THE COMPETITION TRIBUNAL**

**In the Matter of an Application by Barcode Systems Inc.  
for an Order pursuant to section 103.1  
of the *Competition Act*, RSC 1985 c. C-35, as amended  
granting leave to bring an application pursuant to  
section 75 of the *Competition Act***

**BETWEEN:**

**Barcode Systems Inc.**

COMPETITION TRIBUNAL TRIBUNAL DE LA CONCURRENCE	
FILED / PRODUIT December 2, 2003 CT-2003-008	
Jos LaRose for / pour REGISTRAR / REGISTRAIRE	
OTTAWA, ONT	# 0004c

**Applicant,**

**AND:**

**Symbol Technologies Canada ULC**

**Respondent**

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**AFFIDAVIT of MICHAEL REID  
Sworn the 1st day of December, 2003**

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AIKINS, MacAULAY & THORVALDSON  
Barristers and Solicitors  
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Winnipeg, Manitoba  
R3C 4G1

**(COLIN R. MacARTHUR, Q.C.)**

Phone No. (204) 957-4627  
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File No. (0302215)

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**Applicant,**

**AND:**

**Symbol Technologies Canada ULC**

**Respondent**

I, MICHAEL REID, of the City of Mississauga, in the Province of Ontario, Executive,

**MAKE OATH AND SAY THAT:**

1. I am the President of Symbol Technologies Canada ULC (hereinafter "Symbol Canada") and, as such, have personal knowledge of the facts and matters herein deposed to by me, except where stated to be based on information and belief, in which case I verily believe it to be true.
2. I have read the affidavit of David Sokolow, sworn October 23, 2003, and filed in this matter with the Competition Tribunal on November 4, 2003, and make this affidavit in response thereto.

**BACKGROUND**

3. Symbol Canada is a corporation incorporated under the laws of the Province of Nova Scotia and carries on business throughout Canada. Its head office is located in the City of Mississauga, in the Province of Ontario. Symbol Canada is a subsidiary of Symbol Technologies, Inc. (hereinafter "Symbol US"), which is a corporation incorporated under the laws of the State of Delaware, USA.

4. Symbol US manufactures portable data terminals, bar code scanners and wireless LANS (wireless LANS are wireless local area networks for transmitting voice and data) (hereinafter the "product").
5. Symbol Canada warehouses, distributes, sells and services the product which is intended to provide customers with a complete line of equipment to retrieve bar code data and to convey the information to customer's databases.
6. In this, my affidavit, I will refer to Symbol Canada and Symbol US collectively as Symbol.
7. It is important to understand that Symbol and its competitors are in the business of selling equipment related to retrieving information in the bar codes and then transmitting that information to other locales. In or around 1973, bar codes were first put into use by the grocery industry. The use of bar codes spread to other industries and bar codes were soon standardized as the Universal Product Code (hereinafter "UPC"). UPC is used around the world for a great variety of products. Although there are different versions of bar codes, standardized by UPC, all bar codes are intended to accomplish the same purpose. That is, a fast, easy and accurate data entry method and retrieval method.
8. One of the most common versions of bar codes is the 12 digit UPC, which is the version that most Canadians are familiar. As an example, it is found on the package of a loaf of bread or on a carton of milk.
9. The manufacturers of equipment to print bar codes and the manufacturers of product to read bar codes all manufacture equipment to comply with the UPC. In other words, those manufacturers, including Symbol, that manufacture bar code scanners all produce bar code scanners that can read the same types of bar codes. Similarly, manufacturers that manufacture bar code printers all manufacture equipment that print the same types of bar codes.

**THE CANADIAN MARKET IS HIGHLY COMPETITIVE**

10. The Canadian market in which Symbol Canada sells the product is highly competitive. The competitors of Symbol Canada in the Canadian market by product line include the following:

	<b>Company Name</b>	<b>Bar Code Scanners</b>	<b>Portable Data Terminals</b>	<b>Wireless LANS</b>
a)	Casio, Inc.		√	
b)	Cisco Systems, Inc.			√
c)	Datalogic S.P.A.	√	√	
d)	Fujitsu, Ltd.	√	√	
e)	Hand Held Products, Inc.	√	√	
f)	Hewlett-Packard Company		√	
g)	Intermec Technologies Corporation	√	√	√
h)	LXE Inc.	√	√	
i)	Metrologic Instruments, Inc.	√	√	
j)	Motorola, Inc.		√	
k)	NCR Corporation	√		
l)	NipponDenso Co.	√		
m)	Opticon, Inc.	√	√	
n)	Proxim, Inc.			√
o)	PSC, Inc.	√		
p)	Psion Teklogix, Inc	√	√	

11. David Sokolow has asserted in his affidavit, sworn October 23, 2003 (paragraph 10), that Symbol dominates the "scanning" segment of the bar code industry. That simply is not true. Although, Symbol views itself as a leader in this industry, a person or entity can carry on

business in the scanning segment of the bar code industry without access to Symbol bar code scanners.

12. As the chart set forth at paragraph 10, there are 11 competitors that Symbol competes with in the "scanning" segment of the market. Each of those competitors is represented by persons who carry on business as representatives for Symbol's competitors.
13. I have provided an explanation in this, my affidavit, specific to bar code scanners because, as I understand the affidavit of David Sokolow, sworn October 23, 2003, he expresses a concern that Barcode is unable to compete in the market without access to Symbol bar code scanners. Bar code scanners represent approximately 12% of the revenues earned by Symbol Canada in its last fiscal year.
14. Symbol Canada sells its product either directly to end users or to licensed distributors who sell Symbol product to resellers authorized by Symbol who in turn sell Symbol product to an end user. Symbol distributors do not sell product directly to end users. To my knowledge, Symbol's competitors market their product in essentially the same way.
15. Symbol Canada has entered into agreements with approximately 800 resellers in Canada. With very few exceptions all of the resellers authorized by Symbol Canada are also resellers for one or more of the competitors to Symbol. Some of the Symbol resellers realize the majority of their sales from Symbol product whereas other Symbol resellers realize only a very small percentage of their business from Symbol product.
16. I am unable to state accurately what percentage of the Canadian market Symbol has for the product it sells. I attempted months ago, and have continued in my attempts, to identify a market survey service that has information with respect to the bar code equipment market in Canada. I have been unable to find that resource. I have anecdotal information upon which I believe Symbol has the largest share of the market for portable data terminals whereas Cisco has the largest share of the market for wireless LANS. What I can state with certainty is that Symbol does not dominate any segment of the market for the product

manufactured by it such that a person cannot carry on business selling bar code equipment without access to Symbol product.

17. I understand that in his affidavit, sworn to on October 23, 2003 (paragraph 10), David Sokolow alleges that Symbol dominates the "scanning" segment of the market because it owns a patent for trigger/laser mechanism.
18. Bar code scanners either use lasers, or other scan engines. Laser scanners are generally regarded as more sophisticated and are more expensive. While Symbol has patents relating to its laser scan engines, its competitors also manufacture (and have patents related to) and sell laser and non-laser scanners. Symbol believes that its laser scanner is superior and does sell laser scanners on that basis. To my knowledge, the competitors make the same or similar claims with respect to their laser or other scanners.
19. In addition to selling bar code scanners, which incorporate the Symbol laser scan engine, Symbol sells its laser scan engines to:
  - a) Datalogic, S.P.A.
  - b) Hand Held Products, Inc.
  - c) Intermec Technologies Corporation
  - d) LXE Inc.
  - e) Psion Teklogix, Inc.

In summary, despite Symbol's patents, as reflected in paragraph 10 of this, my affidavit, numerous competitors offer competing products either using Symbol laser scan engines, or their own scan engines.

20. As stated earlier, Symbol sells its product to end users either directly or through resellers, which are known as VAR's, value-added resellers, integrators or channel partners.

21. In November of 1991, Symbol Canada entered into the first of a series of agreements with Barcode Systems Inc. (hereinafter "Barcode"). This initial agreement was replaced by the next subsequent agreement with Barcode which in turn was replaced by the next subsequent agreement with Barcode and so on. In each agreement entered into, Barcode was a value-added reseller until 1997, when Symbol Canada entered into a Master VAR Agreement with Barcode, which is attached hereto and marked as **Exhibit "A"** to this, my affidavit.
22. The Master VAR Agreement, Exhibit "A" to this, my affidavit, entitled Barcode not only to represent Symbol as a reseller but, in addition, authorized Barcode as a distributor of Symbol product. Barcode was thereby authorized to sell Symbol product directly to end users and, was authorized to sell product to Symbol authorized resellers.
23. The business relationship between Symbol and Barcode as a Master VAR did not go well.
24. By the end of 1997, Barcode was in default under the trade terms by which it received product from Symbol which required, pursuant to paragraph 13 of Exhibit "A" to this, my affidavit, that Barcode pay for product ordered within 30 days from date of shipment.
25. Symbol attempted to find a resolution for the chronic problem it faced in dealing with Barcode, because of the default by Barcode of the usual trade terms. In the first quarter of 1998, an arrangement was entered into between Barcode, Symbol and Deutsche Financial Services whereby product ordered by Barcode from Symbol would be paid for upon the presentation by Symbol to Deutsche Financial Services of the invoices for the product so ordered. This arrangement worked well for approximately 1 year when I was advised by representatives of Deutsche Financial Services and David Sokolow that the payment arrangements through Deutsche Financial Services would no longer be available.
26. Barcode, thereafter, obtained product directly from Symbol with the understanding that Barcode would pay for product ordered by it on the usual trade terms. Again, Barcode went into arrears.

27. Tom Zix of Symbol US, the Director, Channel Operations, and I had a number of discussions with David Sokolow in an attempt to address the failure of Barcode to pay for Symbol product. Eventually, we were successful in persuading David Sokolow that the distributor portion of his Master VAR business was the main cause for the arrears that Barcode owed to Symbol.
28. In the result, Barcode gave up its designation as a Master VAR. Barcode reverted to what was perceived to be the strength of its business, that is to say, a reseller. Barcode entered into the Agreement with Integrator (hereinafter the "Integrator Agreement") with Symbol which was signed on January 30, 2001. Attached hereto and marked as **Exhibit "B"** to this, my affidavit, is a copy of the said Integrator Agreement.
29. The Integrator Agreement, although entered into between Symbol US and Barcode Systems Inc., a US corporation, was intended to apply to the business relationship between Symbol Canada and Barcode Systems Inc., both the Canadian and US corporations. After the Integrator Agreement was signed, Barcode Systems Inc. ordered product from Symbol Canada both from its US corporation and its Canadian corporation, pursuant to the terms and conditions of the Integrator Agreement.
30. In conjunction with Barcode entering into the Integrator Agreement Symbol agreed to allow Barcode to return product that it held in its inventory to Symbol for credit against the outstanding receivable. It was agreed that Symbol would sell the product returned to one of its distributors, EMJ Data Systems Ltd. (hereinafter "EMJ") and, in addition, it was agreed that Barcode would order Symbol product from EMJ.
31. Eventually, that arrangement fell apart as I was informed by Jim Estill, the principal of EMJ, and I do verily believe, that Barcode failed to meet the trade terms under which it ordered product from EMJ with the result that EMJ was no longer prepared to do business with Barcode.
32. Once again, Symbol Canada agreed to accept orders for product directly from Barcode on the condition that Barcode pay for product ordered within the terms and conditions of sale,



that is to say, 45 days from date of delivery pursuant to paragraph 13 of the Integrator Agreement (attached as Exhibit "B").

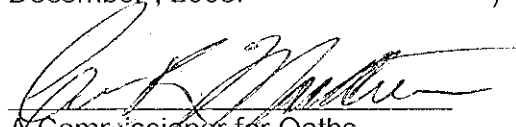
33. Despite the promises by David Sokolow to keep the Barcode account with Symbol current, Barcode failed to meet the usual trade terms, that is, pay for product ordered within 45 days from date of delivery. As at the date, Symbol terminated the Integrator Agreement with Barcode, Barcode was in arrears of the usual trade terms for product shipped to it in the amount of approximately \$1.2 million dollars.

34. Ultimately, the decision was made to terminate Barcode as a reseller for Symbol product as set out in the affidavit of Todd Abbot sworn November 26, 2003.

35. I make this affidavit bona fide.

SWORN before me at the City )  
of Winnipeg in the Province of )  
Manitoba, this 1st day of )  
December, 2003. )

  
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MICHAEL REID

  
A Commissioner for Oaths  
in and for the Province of Ontario.  
My commission expires: \_\_\_\_\_

Notary Public for the Province of Ontario  
No. 123456789

This is exhibit "A" referred to in the affidavit of Michael Reid



sworn before me this 19 day of December, 2003  
[Signature]  
Commissioner, Canada Sales Region  
IN AND FOR THE PROVINCE OF ONTARIO  
MY COMMISSION EXPIRES 31 12

**VAR AGREEMENT**

AGREEMENT made this 19 day of November 1991, between Symbol Technologies Canada, Inc. a Canadian corporation, having its principal place of business at 93 Skyway Avenue, Unit 106, Etobicoke, Ontario M9W 6N6 and Barcode Systems Inc. ("VAR"), having its principal place of business at 89-1313 Borden Street, Wex. K1B.

The parties agree as follows:

1. Appointment as a Non-Exclusive VAR

- a. Symbol appoints VAR as a non-exclusive Reseller for the products described in Exhibit "A" (the "Products") in the geographic territory ("Territory") or vertical market segment ("Vertical Market Segment") described in Exhibit "B".
- b. VAR hereby accepts such appointment and agrees to solicit orders for, and promote the sale of, Products subject to the provisions and conditions of this Agreement.

2. Territory: Other Agreements not Barred

VAR recognizes that Symbol has appointed, or may appoint, other valued-added resellers (VAR) for Products in the Territory or Vertical Market Segment.

3. Purchase of Symbol Products

- a. Products. Symbol shall sell and deliver to VAR the products listed in Exhibit "A" hereto, and VAR shall purchase and accept delivery of such products in accordance with the pricing schedules listed in Exhibit "A", and revisions thereto, in accordance with purchase order releases issued by VAR. All purchase orders shall be subject to acceptance by Symbol with Symbol's standard terms and conditions of sale applicable thereto. Symbol's standard terms and conditions are attached hereto as Exhibit "C".

Form 3A, Rev. No. 02. July, 1989.

- b. Purchase orders. The terms and conditions on purchase order forms issued by VAR shall not be deemed to be a part of this Agreement and shall not be deemed to modify or supplement this Agreement in any way, notwithstanding the fact that Symbol may acknowledge or otherwise approve such purchase orders. In case of any conflict between this Agreement and any releases, purchase orders, acceptances, correspondence, memoranda or other documents for, or relating to, the Symbol Products exchanged by VAR and Symbol during the term of this Agreement which are not executed by a duly authorized representative of both of the parties, this Agreement shall govern and prevail.
- c. Price Protection. If, during the term of this Agreement, Symbol decreases its price of any Product, Symbol shall grant to VAR a credit corresponding to a corresponding reduction on unsold units of said Product that are held in VAR's inventory as of the effective date of the price decrease in an unused and undamaged condition, provided, however, that such units had been shipped to VAR within sixty (60) days before such decrease. Symbol shall grant such credit to VAR by crediting VAR's account with an amount equal to the difference between the net invoice price to VAR thereof, exclusive of credit rebates to VAR, provided that an authorized representative of Symbol has verified the number of such units in VAR's inventory as of the effective date of the price decrease.

4. Minimum Purchase (Quota) and Inventory

- a. Minimum Purchase. VAR agrees to purchase the minimum annual and quarterly net dollar volume of products as ("Quota") specified in Exhibit "B" except as provided in Section 4b hereunder. In order to qualify for meeting the Quota, all Products ordered hereunder shall be shippable within sixty (60) days after receipt of order, and VAR shall arrange payment, at its sole expense, import license, and any other arrangements which are necessary for remitting funds and importing the Products into the Territory by law or procedure, to enable Symbol to ship within said sixty (60) day period.

- b. Shortfall. In the event VAR is unable to meet the Quota for any quarter, VAR may make up for that quarter's shortfall in the immediately two succeeding quarters after which such shortfall occurred.
- c. Quota. The Quota for the Agreement year must be met in order to qualify for the discount levels set forth in Exhibit A. Symbol reserves the right to cancel this Agreement if VAR fails to meet the quota pursuant to termination provisions.
- d. Inventory Rotation. At the end of each three (3) month period during the term of this Agreement, upon prior written authorization of Symbol, VAR shall be permitted to return for credit up to fifteen percent (15%) of the aggregate number of Products purchased from Symbol by VAR in the preceding six (6) month period. Such credit shall be available for the shipment of other Symbol Products then available for shipment provided that such shipment shall be within sixty (60) days after Symbol's proper receipt of the returned products. Products returned must be new, unsold and undamaged, in their original sealed packages, and are subject to inspection and acceptance by Symbol.

5. Additional Duties of VAR

- a. Promote Products. VAR shall exert its best efforts to promote the sale of Products in the Territory and/or vertical market segment to End-Users or VAR's. VAR shall refrain from derogating, diminishing or otherwise weakening Symbol's rights by engaging in any activities whatsoever in the Territory involving any other products which may reasonably be deemed as injurious to the sales potential of the Products in the Territory, including sales and promotion of products competitive to the Products.
- b. Independent Business. VAR shall conduct its business in its own name and maintain a sales office for the promotion and sale of the Products. VAR shall serve Symbol as an independent contractor and not as an employee or agent. VAR shall be responsible for its own expenses in connection with the promotion, sale and distribution of Products covered by this Agreement, and has no authority to incur any liability, or to act for or to represent, Symbol in any manner, except for the sale of Symbol Products purchased hereunder.

6. Forecasts and training

- a. Reports. VAR shall provide to Symbol by the first working day of each month an activity report (sales out) and a forecast as shown in Exhibit "D" in a format requested by Symbol. VAR shall also provide an annual business plan. This business plan is in the format of the Value Added Reseller application and is to be submitted with initially executed VAR agreements and annually thereafter.
- b. Training. VAR agrees to employ sales and technical personnel whose qualifications are to be approved by Symbol. VAR shall train both sales and technical people at Symbol's factory or designated training site, and shall continue such training in future years as mutually agreed so that all VAR personnel are trained on new products.

7. Duties of Symbol

- a. Collateral Material. Symbol shall supply VAR with appropriate sales literature, catalogues and technical data as may be available in reasonable quantities concerning the Products. Any and all of the aforesaid literature, catalogues or technical materials that are unused by VAR shall be returned to Symbol upon termination or expiration of this Agreement. All expenses incurred in connection with the shipment of the above mentioned items shall be Symbol's responsibility, with the exception of premium transportation, if any, requested by VAR, which shall be paid by VAR.
- b. Price Changes. Symbol shall provide VAR with thirty (30) days written notice of any increase or decrease in the prices of Products or change in the Product Schedule of Exhibit "A".

8. Technical Assistance

- a. Technical Support. Symbol may, from time to time, provide technical assistance to VAR in connection with the utilization of Products procured under this Agreement, including providing hardware, software, consulting programming services, and technical information associated therewith.

- b. New Developments. VAR understands that the hardware, software, and programming services provided in connection with the technical assistance are experimental in nature, and if provided by Symbol in connection with the sale or utilization of Products purchased hereunder is done so solely on an "as is" basis as an accommodation to VAR. Symbol does not warrant that the functions contained in such hardware and software will meet VAR's requirements, or that the performance of such services will completely satisfy VAR. VAR understands that Symbol is under no obligation to release or complete the development of any hardware or software provided in connection with the technical assistance, or to provide continuing technical assistance, support or updating any information provided whether or not the same meets performance requirements.
  
- c. Licensed Information. All technical assistance and technical information provided to VAR is provided on a licensed basis. To the extent that any interfaces, circuit designs, programmed logic or similar accessory units are provided to VAR, Symbol grants to VAR a non-transferable (except as hereinafter provided), non-exclusive, license to use, copy, manufacture or have manufactured, and distribute the licensed software and Programmed Logic and documentation thereto. It is understood and agreed by both parties that Symbol retains all rights to use the Licensed Software and Programmed Logic.

9. Confidential Information

- a. Maintaining Confidentiality. VAR shall maintain in strict confidence and duly safeguard any and all confidential business and technical information pertaining to Products and shall not at any time knowingly disclose such information to others or use such information other than for the promotion and sale of the Products.
  
- b. Safeguarding Confidentiality. VAR shall establish such procedures and safeguards and perform such acts as Symbol may reasonably request in order to preserve and protect the confidential business and technical information from improper or inadvertent disclosure.

10. Duration and Termination of Agreement

- a. Term. This Agreement is for a term of twelve (12) months from the effective date. Nothing contained herein shall be interpreted as requiring either party to renew or extend this Agreement. Notwithstanding the provisions of this Section 10(a), or any other provisions of this Agreement, this Agreement may be terminated prior to the expiration of its stated term as set forth below.
- b. Symbol Termination For Cause. Symbol may terminate this Agreement at any time prior to the expiration of its stated term in the event that:
- (i) VAR defaults in any payment due to Symbol and such default continues unremedied for a period of ten (10) days;
  - (ii) VAR fails to perform any other obligation, warranty, duty or responsibility or is in default with respect to any term or condition undertaken by VAR under this Agreement, and such failure or default continues unremedied for a period of twenty (20) days; or
  - (iii) VAR is reorganized, amalgamated, sells all or substantially all of its assets, or implements or suffers any substantial change in management or control.
- c. Termination At Will. VAR or Symbol may terminate this Agreement at will, at any time during the term of this Agreement, with or without cause, by written notice given to the other party not less than sixty (60) days prior to the effective date of such termination.
- d. Orders After Termination Notice. In the event that any notice of termination of this Agreement is given, Symbol will be entitled to reject all or part of any orders received from VAR after notice but prior to the effective date of termination if availability of Symbol Products is insufficient at that time to meet the needs of Symbol and its customers fully. In any case, Symbol may limit monthly shipments to VAR during said period to VAR's average monthly shipments from Symbol during the three (3) months prior to the date of notice of termination. Notwithstanding any credit terms made available to VAR prior to such notice, any Symbol

Products shipped thereafter shall be paid for by certified or cashier's cheque prior to shipment.

e. Automatic Termination. This Agreement terminates automatically, with no further act or action of either party, if a receiver is appointed for VAR or its property, VAR makes an assignment for the benefit of its creditors, any proceedings are commenced by, for or against VAR under any bankruptcy, insolvency or creditors relief law, or VAR is liquidated, dissolved or wound up .

f. Effect of Termination. Upon termination of this Agreement:

(i) Symbol, at its option, may reacquire any or all Symbol Products then in VAR's possession at per unit fees not greater than the per unit fees paid by VAR for such Products (or, if the Products are not in unopened factory-sealed boxes, fifty percent [50%] of such per unit fees). Upon receipt of any Symbol Products so reacquired from VAR, Symbol shall issue an appropriate credit to VAR's account.

(ii) The due dates of all outstanding invoices to Distributor for Symbol Products automatically will be accelerated so they become due and payable on the effective date of termination, even if longer terms had been provided previously. All orders or portions thereof remaining unshipped as of the effective date of termination shall automatically be cancelled.

(iii) For a period of six (6) months after the date of termination, VAR shall make available to Symbol for inspection and copying all books and records of VAR that pertain to VAR's performance of, and compliance with, its obligation, warranties and representations under this Agreement.

(iv) VAR shall cease using any Symbol trademark, logo or trade name.

## 11. Notices

Any notice required or permitted to be given hereunder shall be in writing and shall be effective and deemed received upon personal delivery or three (3) business days after deposit in the mail, sent by registered or certified mail, return receipt requested, first class postage fully prepaid, or on the date of transmission if



transmitted by facsimile, telex or other form of electronic recorded communication, addressed as follows:

TO VAR:

Barcode Systems Inc.

89-1313 Border Place

wps MB

Attention: ( Harry Mann )

TO SYMBOL:

Symbol Technologies Canada, Inc.  
93 Skyway Avenue  
Unit 106  
Etobicoke, Ontario  
M9W 6N6

Attention: Regional Administrator

Either party may change its address or the names of the designated individual from that indicated by sending written notice of such change to the other in the manner set forth above.

12. Miscellaneous Terms and Conditions

- a. Entire Agreement. This Agreement, along with the Exhibits hereto, constitutes the entire Agreement and understanding between the parties as to the subject matter hereof, and supersedes and replaces all prior or contemporaneous agreements, written or oral, express, implied or collateral as to such subject matter, except for purchase orders issued and accepted pursuant hereto. This Agreement may be changed only in writing stating that it is an amendment or modification to this Agreement, and signed by an authorized representative of each of the parties hereto.
- b. Assignment. The parties acknowledge that this Agreement is personal in nature and agree that this Agreement shall not be assigned, in whole or in part, by VAR without the prior written consent of Symbol. Any purported assignment of this Agreement

or any interest therein without the written consent of Symbol shall be void.

- c. Compliance with Laws. VAR in the conduct of its business under this Agreement shall comply with all applicable laws, regulations and orders and the like prevailing in the Territory and shall hold Symbol harmless from any claim, liability, cost or expense arising out of a violation thereof.
- d. Applicable Law. This Agreement shall be governed by, performed under and construed in accordance with the laws of the Province of Ontario.
- e. Captions. The headings of articles, sections and other subdivisions hereof are inserted only for the purpose of convenient reference and it is recognized that they may not adequately or accurately describe the contents of the paragraphs which they head. Such headings shall not be deemed to govern, limit, modify or in any other manner affect the scope, meaning or intent of the provisions of this Agreement or any part or portion thereof, nor shall they otherwise be given any legal effect.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed this 19 day of November, 1988 <sup>PM</sup> 1991

VAR Barcode System Inc. SYMBOL TECHNOLOGIES CANADA, INC.

BY: [Signature]  
Title: President  
Authorized Representative

BY: \_\_\_\_\_  
Title

ADDRESS: 59-1313 Border Ave  
Wex. Kan B

93 Skyway Avenue  
Unit 106  
Etobicoke, Ontario  
M9W 6N6

(416) 674-1497

BY: \_\_\_\_\_  
Title

116 Wilbur Place  
Bohemia, N.Y. 11716

(516) 563-2400

EXHIBIT A

PRODUCTS AND PRICE SCHEDULE

- 2 -

## TERRITORY AND VERTICAL MARKET ORIENTATION

### TERRITORY

Barcode Systems Inc. Intentions for 1992 are to continue to concentrate on developing the Manitoba market on the advantages of barcoding technologies. This will be done by direct mailers, seminars, and trade shows. Whenever possible, we will also include all prospects in Northwestern Ontario and Saskatchewan.

### VERTICAL MARKET ORIENTATION

There are three specific marketing areas that Barcode Systems will be addressing directly in 1992.

**Hospital/Personnel Care Homes** - Through 1991 Barcode Systems has been working with Unisys Health Care Division, Manitoba Health Organization Services, and specifically St. Boniface Hospital. It is the intent of St. Boniface Hospital to write and support a PC to Unisys Mainframe communications (estimated cost \$20,000.00). With this in place we would be able to provide all software and support on the PC through to the Symbol Handhelds. Upon the completion of St. Boniface Hospital's installation our intentions would be to market this as a turnkey solution to all Unisys hospital installations in Canada and then to other hospitals on different mainframe environments.

**Warehouse/Distribution** - Through direct marketing Barcode Systems has developed the following prospects in the Warehouse/Distribution industry: Manitoba Telephone Systems, Scott National Paper (6 locations), McMahon Canada (multiple locations), Manitoba Lotteries (Sask & Alberta), Defehr Furniture. With the right solution, we believe that we will be able to close a large number of these prospects and obtain referrals from them as they become established users.

**Cash Register & Point of Sale resellers** - As a Master Distributor Barcode Systems will endeavor to develop working relationships in this industry to distribute Symbol products and support the local reseller with technical expertise.

- 3 -

## ANNUAL VAR QUOTA

First Quarter - \$50,000.00

Second Quarter - \$75,000.00

Third Quarter - \$100,000.00

Fourth Quarter - \$150,000.00

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*\$ 375,000.00*

note: with the completion and installation of a working turnkey solution for either the Unisys Hospitals or the Warehouse Distribution Application, the estimated sales of the third and fourth quarter could be achieved sooner.

EXHIBIT B

TERRITORY and/or VERTICAL MARKET ORIENTATION

ANNUAL VAR QUOTA BY QUARTER

Net Dollar Volume of Product to be ordered for shipment within 60 days.

First Quarter

Second Quarter

Third Quarter

Fourth Quarter

EXHIBIT C

SYMBOL'S STANDARD TERMS AND CONDITIONS

1. Terms of Payment. All terms are thirty (30) days net from date of shipment, subject to the approval by Symbol of the amount and terms of credit. Symbol reserves the right at any time to revoke any credit extended to Customer if payment is in arrears for more than thirty (30) days after notice to Customer or Customer's credit does not warrant further extension of credit. Each shipment shall be invoiced and paid for when due without regard to other scheduled deliveries.

2. Title and Delivery.

A. At Symbol's option, shipment will be made F.O.B. Symbol's warehouse, freight paid. Risk of loss and damage shall pass from Symbol to VAR upon delivery to common carrier or Distributor's representative at the F.O.B. point. VAR shall have the responsibility to pay for insurance. All claims for damage must be filed by VAR directly with carrier.

B. In the absence of specific instructions, Symbol will select the carrier for shipment, but by doing so, will not thereby assume any liability in connection with shipment, nor shall the carrier in any way be construed to be the agent of Symbol.

C. Symbol shall not be liable for any damages or penalty for delay caused solely by transportation or failure to give notice of such delay.

3. Taxes. Prices under this Agreement for product are exclusive of all federal, state, municipal or other government excise, sales, use, occupational or like taxes now in force and any such taxes shall be assumed and paid for by the purchasing party. If a Certificate of Exemption or similar document is required in order to exempt the sale from sales or use tax liability, the purchasing party will supply such a certificate or document to the selling party prior to product shipment.

4. Infringement Indemnification. Symbol shall defend any claim, suit or proceeding brought against VAR so far as it is based on a claim that the use or transfer of any product delivered hereunder constitutes an infringement of any Canadian patent or copyright, so long as Symbol is notified promptly in writing by VAR as to any such action and is given full authority, information and assistance (at Symbol's expense) for the defence. Symbol shall pay all damages and costs awarded therein against VAR but shall not be responsible for any settlement made without its consent. If VAR's use of any product shall be prevented by permanent injunction based on an alleged infringement, Symbol shall have the right to obtain the rights to continued use of any such product, substitute other suitable equipment and/or software, replace or modify such product so that it is no longer infringing, or refund to VAR the



price thereof less a reasonable amount for use, damage or obsolescence.

Symbol shall have no liability to Customer under this paragraph 4 if any patent or copyright infringement or claim thereof if based upon the (i) use of products delivered hereunder in connection or in combination with equipment, devices or software not delivered by Symbol or (ii) use of any such products in a manner for which the same were not designed.

EXCEPT AS STATED ABOVE, SYMBOL  
DISCLAIMS ALL LIABILITY FOR PATENT  
OR COPYRIGHT INFRINGEMENT.

5. Warranty.

A. The Symbol Products covered by this Agreement are warranted against defects in workmanship and materials for a period of ninety (90) days from the date of shipment by VAR to its' customers or six (6) months from date of shipment by Symbol to VAR, whichever period occurs first, provided the product remains unmodified and is operated under normal and proper conditions.

The sole obligation of Symbol for defective hardware products is limited to repair or replacement (at Symbol's option) on a "return to factory" basis. No charge will be made to Customer for repair or replacement parts. Symbol shall be responsible for shipping costs under this paragraph.

B. Transportation from Symbol to VAR shall be by a carrier selected and paid for by Symbol. The aforementioned provisions do not extend the original warranty period of any

product which has either been repaired or replaced by Symbol. Symbol shall use its best efforts to repair and ship failed Products within forty-eight (48) hours after receipt.

C. The above warranty shall not apply to any product (i) which has been repaired or altered, except by Symbol, (ii) which has not been maintained in accordance with any handling or operating instructions supplied by Symbol or (iii) which has been subjected to unusual physical or electrical stress, misuse, abuse, negligence or accident.

EXCEPT FOR EXPRESS WARRANTIES STATED ABOVE OR ON THE FACE HEREOF, SYMBOL DISCLAIMS ALL WARRANTIES ON PRODUCTS FURNISHED HEREUNDER INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR USE.

The stated express warranties are in lieu of all obligations or liabilities on the part of Symbol or damages, including but not limited to, special, indirect or consequential damages, arising out of or in connection with the use or performance of the product. Symbol's liability for damages to Buyer or others resulting from the use of any product furnished hereunder shall in no event exceed the purchase price of said product except in instances of injury to persons or property.

6. Notices. All notices or other communications required hereunder shall be in writing, sent by registered or certified mail, postage prepaid, or transmitted by facimile, or other form of electronic recorded communication and shall be deemed to have been duly given five days after mailing, or on the date of transmission, as the case may be at the address set forth above, unless notice of change of address shall have been received prior to the notice thereof.

7. General.

A. This Agreement constitutes the entire Agreement between Symbol and Customer and no attempted variation, modification or waiver or any provision of this Agreement shall have any force or effect unless consented to in writing signed by the party against whom enforcement thereof is sought. Such variation, modification or waiver shall be effective only in the specific instance consented to. A failure by any party to exercise, or delay in exercising, any right or power conferred upon it in this Agreement, shall not operate as a waiver of any such right or power.

B. This Agreement shall be governed by the laws of the Province of Ontario.

C. Neither party shall delegate any duties, nor assign any rights or claim under this Agreement without the prior written consent of the other and any such attempted delegation or assignment shall be void.

D. The section headings used herein are for descriptive purposes only and shall not be used in construing the provisions of this Agreement.

EXHIBIT D

ACTIVITY REPORT AND FORECAST

ACTIVITY REPORT                      Month Ending \_\_\_\_\_, 198\_\_.

<u>QTY</u>	<u>PRODUCT DESC. AND MODEL NO.</u>	<u>SERIAL NO.</u>	<u>SHIP TO LOCATION</u>
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The following forecast should reflect net dollar volumes shown in Exhibit B, Quota.

FORECAST              Quarter Beginning \_\_\_\_\_, 198\_\_.

<u>QTY</u>	<u>PRODUCT DESC. AND MODEL NO.</u>	<u>DATE REQUIRED</u>
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# AGREEMENT WITH INTEGRATOR

**VERTICAL INTEGRATOR**  
**HARDWARE INTEGRATOR**  
**SOLUTIONS INTEGRATOR**

ATTACHMENTS:  
SCHEDULE A ADDITIONAL TERMS & CONDITIONS OF SALE  
SCHEDULE B MUTUAL NON-DISCLOSURE AGREEMENT  
SCHEDULE C PRODUCT & DISCOUNT SCHEDULE

THIS INTEGRATOR AGREEMENT (THE "AGREEMENT"), BETWEEN **SYMBOL TECHNOLOGIES, INC.** ("**SYMBOL**"; "**SELLER**"), ITS PRINCIPAL ADDRESS AT ONE SYMBOL PLAZA, HOLTSVILLE, NEW YORK, 11742-1300, AND **BARCODE SYSTEMS** ("**INTEGRATOR**"; "**BUYER**"), ITS PRINCIPAL ADDRESS AT 13400 N.E. 20<sup>TH</sup> STREET, SUITE 32, BELLEVUE, WA 98005, INCLUSIVE OF ALL ATTACHED SCHEDULES, SETS FORTH THE CONDITIONS BY WHICH INTEGRATOR MAY PURCHASE AND REMARKET SYMBOL PRODUCTS TO END-USERS.

**1.0 DEFINITIONS.** THE FOLLOWING TERMS ARE USED IN THE AGREEMENT AND SHALL MEAN THE FOLLOWING:

**1.1 "PRODUCT" OR "PRODUCTS."** HARDWARE AND LICENSED SOFTWARE PURCHASED FROM SYMBOL BY INTEGRATOR, IN ACCORDANCE WITH THE TERMS AND CONDITIONS HEREIN, FOR RESALE TO END-USERS.

**1.2 "INTEGRATOR."** RESELLER AUTHORIZED BY THIS AGREEMENT TO RESELL SYMBOL PRODUCTS TO END-USERS. AN INTEGRATOR IS FURTHER DEFINED AS ONE OF THE FOLLOWING:

**1.2.1 "VERTICAL INTEGRATOR."** A SYMBOL INTEGRATOR THAT OFFERS A SUITE OF VERTICAL MARKET APPLICATIONS TO PRODUCT END-USERS AND HAS PROVEN EXPERTISE IN ONE OR MORE VERTICAL MARKETS SPECIFIED IN SYMBOL'S INTEGRATOR PROGRAM GUIDELINES.

**1.2.2 "HARDWARE INTEGRATOR."** A SYMBOL INTEGRATOR THAT OFFERS AUTOMATIC IDENTIFICATION APPLICATIONS TO PRODUCT END-USERS INCLUDING HARDWARE INTEGRATION SERVICES.

**1.2.3 "SOLUTIONS INTEGRATOR."** A SYMBOL INTEGRATOR THAT OFFERS INTEGRATION SERVICES FOR NETWORK AND VERTICAL APPLICATIONS, INCLUDING SOFTWARE DEVELOPMENT SERVICES FOR INTEGRATION OF AUTOMATIC IDENTIFICATION AND RADIO FREQUENCY SOLUTIONS INTO ENTERPRISE SYSTEMS.

**1.3 "AGENT,"** ANY ENTITY THAT IS NOT AN EMPLOYEE OF THE INTEGRATOR.

**1.4 "TERRITORY"** IS NORTH AMERICA AND SPECIFICALLY, THE UNITED STATES AND CANADA, AND DOES NOT INCLUDE MEXICO.

**2.0 SCOPE,** SYMBOL GRANTS THE INTEGRATOR A NON-EXCLUSIVE RIGHT TO PURCHASE PRODUCTS AND LICENSED SOFTWARE, AT DISCOUNTS SET FORTH IN THE ATTACHED SCHEDULE C, FOR RESALE DIRECTLY TO THE INTEGRATOR'S END-USER CUSTOMERS LOCATED WITHIN THE TERRITORY. INTEGRATOR SHALL NOTIFY SYMBOL OF ITS INTENT TO RESELL PRODUCT TO A CUSTOMER THAT IS OUTSIDE THE TERRITORY BY WAY OF THE SYMBOL MULTINATIONAL RESELLER PROGRAM. THE INTEGRATOR'S PARTICIPATION IN THE SYMBOL MULTINATIONAL PROGRAM IS SUBJECT TO SYMBOL'S REVIEW AND WRITTEN APPROVAL.

**2.1** THE INTEGRATOR SHALL NOT RESELL PRODUCT TO OR THROUGH AGENTS.

**2.2** IN EXCHANGE FOR SUCH RIGHT, INTEGRATOR SHALL CONTRIBUTE ONE OR MORE VALUE-ADD SERVICES FOR PRODUCT, WHICH ARE DEFINED IN SECTION 1.0.

**2.3** THE INTEGRATOR SHALL SUBMIT, FOR SYMBOL REVIEW AND APPROVAL, THE RESELLER APPLICATION, CREDIT APPLICATION, TAX EXEMPTION CERTIFICATE, EDUCATION PROFILE, PRODUCT MARKETING PLAN, AND OTHER INFORMATION REASONABLY REQUIRED BY SYMBOL TO QUALIFY RESELLER.

This is exhibit "B" referred to

Integrator Agreement in the affidavit of

*Michael Reid*  
MICHAEL REID  
LIGHTNING BOLT

sworn before me this 1<sup>st</sup> day of

December 2003  
*[Signature]*  
NOTARY PUBLIC

IN AND FOR THE PROVINCE OF MANITOBA

MY COMMISSION EXPIRES \_\_\_\_\_ 20\_\_\_\_

2.4 SUBSEQUENT TO THE INITIAL SUBMITTAL, UPON SYMBOL'S REQUEST, THE INTEGRATOR SHALL PROVIDE SYMBOL WITH ANNUAL UPDATES TO INTEGRATOR'S PRODUCT MARKETING PLAN. EACH PRODUCT MARKETING PLAN SHALL INCLUDE INFORMATION IN SUPPORT OF THE INTEGRATOR'S RESPONSIBILITIES SET FORTH IN THIS AGREEMENT.

2.5 THE INTEGRATOR SHALL HAVE APPROPRIATELY TRAINED STAFF TO SELL AND SUPPORT THE PRODUCTS TO ITS END-USER CUSTOMERS. THE INTEGRATOR SHALL HAVE FULL RESPONSIBILITY AND LIABILITY FOR END-USER INSTALLATIONS. THE INTEGRATOR SHALL BE RESPONSIBLE FOR ALL EXPENSES IT INCURS IN SUPPORT OF ITS END-USERS.

2.6 THE INTEGRATOR SHALL CONDUCT BUSINESS IN ITS OWN NAME AS AN INDEPENDENT CONTRACTOR AND SHALL NOT REPRESENT ITSELF AS AN EMPLOYEE OR AGENT OF SYMBOL.

2.7 THE INTEGRATOR SHALL ATTEND AND SUCCESSFULLY COMPLETE CERTIFICATION TRAINING FOR ALL PRODUCT PLATFORMS TO BE RESOLD. TRAINING IS AT INTEGRATOR'S SOLE EXPENSE.

2.8 THE INTEGRATOR IS NOT AUTHORIZED TO RESELL USED PRODUCT OR PRODUCT THAT HAS BEEN PREVIOUSLY SOLD WITHOUT SYMBOL'S PRIOR EXPRESS WRITTEN PERMISSION.

2.9 THE INTEGRATOR SHALL FURNISH TO SYMBOL A (I) MONTHLY INVENTORY REPORT, AND (II) A MONTHLY SALES-OUT REPORT IN A FORMAT SPECIFIED BY SYMBOL, DUE BY THE 5TH BUSINESS DAY OF EACH MONTH FOR THE PREVIOUS THIRTY (30) DAY PERIOD. THE REPORTS SPECIFIED IN THIS SECTION SHALL BE IN A FORMAT PRESCRIBED BY SYMBOL. SYMBOL RESERVES THE RIGHT TO REASONABLY MODIFY THE INTEGRATOR'S REPORT REQUIREMENTS FROM TIME TO TIME WITH PRIOR WRITTEN NOTICE.

2.10 THE INTEGRATOR SHALL NOT RECRUIT AN AUTHORIZED SYMBOL RESSELLER WITHOUT SYMBOL'S PRIOR WRITTEN CONSENT.

2.11 AN INTEGRATOR THAT HAS MATERIALLY INFLUENCED THE DIRECT SALE OF PRODUCTS, AND UPON MEETING SYMBOL'S THEN-CURRENT PROGRAM CRITERIA, MAY QUALIFY FOR REFERRAL CREDIT AS ESTABLISHED BY

SYMBOL. SYMBOL'S REFERRAL PROGRAM IS SUBJECT TO CHANGE AT SYMBOL'S SOLE OPTION AND DISCRETION.

2.12 THE INTEGRATOR AGREES NOT TO INTENTIONALLY ENGAGE IN ACTIVITIES WHICH MAY DIMINISH SYMBOL'S RIGHTS OR INDUSTRY STANDING.

2.13 THE INTEGRATOR SHALL ADVISE SYMBOL IN WRITING WITHIN THIRTY (30) DAYS OF THE EFFECTIVE DATE OF CHANGES IN MAJORITY OWNERSHIP OR LEGAL ADDRESS.

2.14 THE INTEGRATOR SHALL HAVE A HELP DESK AVAILABLE FOR ITS END-USER CUSTOMERS AS WELL AS TECHNICAL AND SALES SUPPORT FOR THE PRODUCTS. THE INTEGRATOR MAY ALSO BE REQUIRED, AS PRESCRIBED BY THE SPECIFIC PRODUCTS PURCHASED FOR RESALE, TO PROVIDE ITS END-USER CUSTOMERS WITH PRODUCT CONFIGURATION SUPPORT, DIAGNOSTICS SUPPORT, INSTALLATION SERVICES, AND OTHER PROFESSIONAL SERVICES.

**3.0 PURCHASE ORDERS.** A PURCHASE ORDER FOR PRODUCT ("ORDER") IS REQUIRED AND SUBJECT TO SYMBOL ACCEPTANCE. AN ORDER IS BOUND BY AND SUBJECT TO THE PROVISIONS OF THIS AGREEMENT, SYMBOL'S *BUSINESS PARTNER'S GUIDE FOR ORDER PLACEMENT AND PRODUCT RETURNS*, AND OTHER PROGRAM GUIDELINES ISSUED BY SYMBOL TO INTEGRATOR FROM TIME TO TIME DURING THE TERM OF THIS AGREEMENT. NO OTHER TERMS AND CONDITIONS OTHER THAN THOSE SET FORTH HEREIN SHALL APPLY TO AN ORDER. IN THE EVENT OF A CONFLICT IN TERMS, THOSE CONTAINED HEREIN SHALL PREVAIL.

3.1 AN ORDER SHALL SPECIFY, AT A MINIMUM, CALENDAR DELIVERY DATE, COMPLETE DELIVERY AND BILLING LOCATION, PRODUCT MODEL NUMBER AND DESCRIPTION, SYMBOL PART NUMBER, QUANTITY, UNIT LIST PRICE, AUTHORIZED DISCOUNT AND RESALE/TAX IDENTIFICATION NUMBER. AN ORDER RECEIVED WITHOUT THIS INFORMATION MAY BE RETURNED TO INTEGRATOR FOR COMPLETION OR FULFILLED AT SYMBOL'S REASONABLE DISCRETION.

3.2 IN THE EVENT THE INTEGRATOR REQUESTS SYMBOL DELAY DELIVERY OF THE PRODUCT WITH LESS THAN THIRTY (30) DAYS WRITTEN NOTICE PRIOR TO SCHEDULED SHIPMENT DATE, THE INTEGRATOR SHALL BE SUBJECT TO A FIFTEEN (15%) PERCENT CHARGE BASED

UPON THE CURRENT CONTRACT PRICE OF THE PRODUCT(S) AFFECTED.

**4.0 PRICE DISCOUNTS.** THE INTEGRATOR'S INITIAL PRODUCT DISCOUNT LEVEL SHALL BE DETERMINED BY SYMBOL BASED UPON INTEGRATOR'S PRODUCT MARKETING PLAN AND APPLICATION INFORMATION.

4.1 UPON COMPLETION OF EACH TWELVE-MONTH TERM, SYMBOL SHALL REVIEW THE INTEGRATOR'S DISCOUNT LEVEL, WHICH SHALL BE BASED UPON ACTUAL NET REVENUE AND THE INTEGRATOR'S COMPLIANCE WITH THE TERMS AND CONDITIONS SET FORTH IN THIS AGREEMENT. SYMBOL RESERVES THE RIGHT TO AMEND INTEGRATOR'S RESELLER STATUS AS A RESULT OF SUCH REVIEW.

4.2 MODIFICATIONS TO PRODUCT LIST PRICE MAY OCCUR FROM TIME TO TIME IN THE EVENT OF A: (1) *PRICE DECREASE* - THE INTEGRATOR'S ACCOUNT SHALL BE CREDITED, SUBJECT TO VERIFICATION BY SYMBOL, FOR EACH UNSOLD UNIT IN THE INTEGRATOR'S INVENTORY ON THE EFFECTIVE DATE OF THE DECREASE; A UNIT MUST BE UNUSED, UNDAMAGED AND HAVE BEEN SHEPPED FROM SYMBOL TO INTEGRATOR NO MORE THAN SIX (6) MONTHS BEFORE THE PRICE DECREASE. FIRM, ACCEPTED ORDERS IN BACKLOG OR ORDERS RECEIVED BY SYMBOL SUBSEQUENT TO THE EFFECTIVE DATE OF THE PRICE DECREASE WILL BE INVOICED AT THE NEW, REDUCED PRICE. (2) *PRICE INCREASE* - FIRM, ACCEPTED ORDERS IN BACKLOG, AND ORDERS RECEIVED BY SYMBOL WITHIN NINETY (90) DAYS OF THE EFFECTIVE DATE OF THE INCREASE, WILL BE INVOICED AT THE ORIGINAL PRICE, PROVIDED THE SHIP DATE IS WITHIN NINETY (90) DAYS OF THE EFFECTIVE DATE OF THE INCREASE. THE PRICE INCREASE WILL APPLY TO UNSHIPED ORDERS IN BACKLOG AFTER NINETY (90) DAYS.

**5.0 STANDARD PRODUCT SUPPORT.** SYMBOL SHALL PROVIDE THE INTEGRATOR WITH ITS STANDARD PRODUCT PROMOTIONAL MATERIALS. CUSTOMER SERVICE PRODUCT SUPPORT IS AVAILABLE TO THE INTEGRATOR BY TELEPHONE DURING SYMBOL STANDARD BUSINESS HOURS.

**6.0 USE OF TRADEMARKS/TRADE NAMES.** SYMBOL HAS THE EXCLUSIVE WORLDWIDE RIGHTS TO ITS TRADEMARKS AND TRADE NAMES. THIS AGREEMENT DOES NOT AUTHORIZE USE OR DUPLICATION BY THE INTEGRATOR OR ANY THIRD PARTY OF SYMBOL

TRADEMARKS OR TRADE NAMES WITHOUT SYMBOL'S PRIOR REVIEW AND WRITTEN APPROVAL. NOTWITHSTANDING THE FOREGOING, THE INTEGRATOR MAY USE THE APPROPRIATE SYMBOL PARTNER MARK FOR WHICH THE INTEGRATOR QUALIFIES AND INTEGRATOR SHALL ONLY USE SUCH MARK AS PRESCRIBED IN THE THEN-CURRENT RELEASE OF THE "SYMBOL PARTNER MARK USAGE GUIDE".

**7.0 SERVICE.** INTEGRATOR IS REQUIRED BY SYMBOL TO PROVIDE ITS CUSTOMERS WITH, OR ARRANGE FOR, FIRST TIER, INITIAL SERVICE FOR THE PRODUCTS. INTEGRATOR MAY ALSO OFFER ITS END-USER CUSTOMERS SYMBOL DIRECT SERVICE OPTIONS FOR WHICH INTEGRATOR MAY QUALIFY FOR A REFERRAL FEE PROVIDED ALL THEN-CURRENT PROGRAM CRITERIA IS SATISFIED.

**8.0 PRODUCT DISCONTINUANCE.** SYMBOL MAY, FROM TIME TO TIME, AT ITS SOLE DISCRETION, DISCONTINUE THE MANUFACTURE AND SALE OF ANY PRODUCT. SYMBOL SHALL PROVIDE NINETY (90) DAYS WRITTEN NOTICE TO THE INTEGRATOR PRIOR TO DISCONTINUANCE OF ANY PRODUCT ("NOTICE OF DISCONTINUANCE"). THE INTEGRATOR SHALL BE ENTITLED TO RETURN ITS THEN-CURRENT STOCK OF SUCH PRODUCT IN ACCORDANCE WITH THE PROCEDURES OF THIS SECTION AND OF SECTION 9 ("STANDARD PRODUCT RETURN") AND WILL NOTIFY SYMBOL OF INTEGRATOR'S WRITTEN INTENT TO RETURN DISCONTINUED PRODUCT. WITHIN THIRTY (30) DAYS OF INTEGRATOR'S RECEIPT OF SYMBOL'S WRITTEN RETURN AUTHORIZATION, INTEGRATOR MUST RETURN THE DISCONTINUED PRODUCT FOR CREDIT AGAINST FUTURE PURCHASES ONLY, PROVIDED, UPON SYMBOL INSPECTION, THE RETURNED PRODUCT IS UNUSED, UNDAMAGED AND IN THE ORIGINAL PACKAGING.

**9.0 STANDARD PRODUCT RETURN.** PRODUCT RECEIVED BY INTEGRATOR WITHIN SEVEN (7) BUSINESS DAYS OF THE DATE THE RETURN IS REQUESTED WILL BE ACCEPTED BY SYMBOL WITHOUT A RESTOCKING CHARGE PROVIDING RETURN AUTHORIZATION HAS BEEN GRANTED. PRODUCT DELIVERED TO THE INTEGRATOR THIRTY (30) DAYS PRIOR TO RECEIPT OF THE RETURN REQUEST BUT MORE THAN SEVEN (7) DAYS IS ELIGIBLE FOR RETURN WITH A RESTOCKING CHARGE OF FIFTEEN PERCENT (15%) OF INTEGRATOR'S PRICE IF APPROVED BY SYMBOL. PRODUCT PURCHASED MORE THAN THIRTY (30) DAYS PRIOR TO RECEIPT OF THE REQUEST IS NOT ELIGIBLE FOR CREDIT. THE INTEGRATOR'S REQUEST



MUST STATE A VALID BUSINESS REASON FOR THE RETURN OF PRODUCT IN ORDER TO OBTAIN A RETURN AUTHORIZATION NUMBER. THE INTEGRATOR MUST PROVIDE COMPLETE, VALID SERIAL NUMBERS OF PRODUCT AND THE ASSOCIATED INVOICE NUMBER. PRODUCT ELIGIBLE FOR RETURN CREDIT MUST BE NEW, UNSOLD, UNDAMAGED AND IN THE ORIGINAL PACKAGING. DAMAGED OR USED PRODUCT IS NOT ELIGIBLE FOR CREDIT. PRODUCTS THAT HAVE BEEN DISCONTINUED OR OBSOLETE ARE NOT ELIGIBLE FOR RETURN OR STOCK ROTATION.

**9.1 CREDITS FOR RETURNED PRODUCT.** PRODUCT RETURNS SHALL BE CREDITED AT FULL VALUE. WHEN PROCESSING RETURNS WITH A FIFTEEN PERCENT (15%) RESTOCKING CHARGE, THE RESTOCKING FEE WILL BE DEDUCTED FROM THE INTEGRATOR'S NET CREDIT AMOUNT. CREDIT FOR RETURNED PRODUCT WILL BE APPLIED TO THE INTEGRATOR'S ACCOUNT WITHIN FIFTEEN (15) DAYS OF RECEIPT AND ACCEPTANCE OF THE PRODUCT AT THE SYMBOL-DESIGNATED LOCATION. CREDIT IS ISSUED BY SYMBOL TOWARD PRODUCT PURCHASE PROVIDED SUCH PRODUCT PURCHASE OCCURS WITHIN SIXTY (60) DAYS OF SYMBOL'S RECEIPT OF RETURNED PRODUCT. RETURNED PRODUCT MUST BE SHIPPED PREPAID TO THE SYMBOL-DESIGNATED LOCATION WITHIN SEVEN (7) BUSINESS DAYS OF RECEIPT OF RETURN AUTHORIZATION. INTEGRATOR IS RESPONSIBLE FOR THE ORIGINAL FREIGHT CHARGES.

**9.2 OUT OF BOX FAILURE.** AN OUT-OF-BOX PRODUCT FAILURE IS ELIGIBLE FOR DUPLICATE PRODUCT EXCHANGE ONLY, UPON INTEGRATOR'S REQUEST FOR RETURN AND SYMBOL'S ISSUANCE OF A RETURN AUTHORIZATION, IN ACCORDANCE WITH THE PROCEDURES OUTLINED IN SECTION 9.0 OF THIS AGREEMENT. SUCH RETURNS ARE NOT ELIGIBLE FOR CREDIT.

**9.3 CUSTOM PRODUCT.** CUSTOM PRODUCT IS NOT RETURNABLE. CUSTOM PRODUCT IS PRODUCT MODIFIED TO MEET A SPECIFIC REQUIREMENT OF INTEGRATOR AND NOT ORDINARILY SOLD BY SYMBOL IN THE MODIFIED FORM.

**10.0 PROPRIETARY INFORMATION.** PROPRIETARY INFORMATION EXCHANGED BY THE PARTIES SHALL BE GOVERNED BY SCHEDULE B TO THIS AGREEMENT. PROPRIETARY INFORMATION SHALL INCLUDE, BUT IS NOT LIMITED TO, THE PROVISIONS OF THIS AGREEMENT, NON-STANDARD PRODUCT DOCUMENTATION, PROGRAM MATERIALS, DEMONSTRATION PRODUCT, TRAINING DATA, PRODUCT PRICING AND DISCOUNTS.

**11.0 ASSIGNMENT.** THIS AGREEMENT IS PERSONAL BETWEEN SYMBOL AND THE INTEGRATOR. NEITHER PARTY MAY ASSIGN OR TRANSFER THIS AGREEMENT, IN WHOLE OR IN PART, WITHOUT PRIOR WRITTEN CONSENT OF THE OTHER.

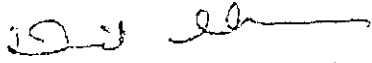
**12.0 TERM & TERMINATION.**

**12.1 TERM.** THE TERM OF THE AGREEMENT IS TWELVE (12) MONTHS FROM THE EFFECTIVE DATE OF JANUARY 1, 2001, TO ESTABLISH THE INTEGRATOR'S PURCHASE VOLUME APPLICABLE TO SYMBOL'S PROGRAM REQUIREMENTS. RENEWALS SHALL BE FOR TWELVE (12) MONTH TERMS AND SHALL BE AUTOMATIC, EXCEPT THAT SYMBOL MAY REQUEST THE INTEGRATOR TO PROVIDE ANNUAL UPDATES TO INFORMATION REQUIRED IN THIS AGREEMENT TO QUALIFY INTEGRATOR FOR A RENEWAL TERM.

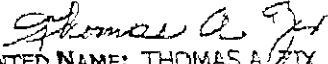
**12.2 TERMINATION.** THE AGREEMENT MAY BE TERMINATED BY EITHER PARTY PROVIDED A WRITTEN NOTICE IS FURNISHED TO THE OTHER PARTY NO LESS THAN THIRTY (30) DAYS PRIOR TO THE EFFECTIVE DATE OF CANCELLATION. THE AGREEMENT SHALL ALSO TERMINATE IN THE EVENT OF ANY OF THE FOLLOWING, EFFECTIVE THIRTY (30) DAYS FROM RECEIPT OF WRITTEN NOTICE: (A) FAILURE TO CURE A MATERIAL BREACH WITHIN TWENTY (20) BUSINESS DAYS FROM RECEIPT OF NOTIFICATION OF SUCH BREACH; (B) INSOLVENCY OR FILING TO SEEK RELIEF FROM CREDITORS; (C) UPON MUTUAL AGREEMENT OF THE PARTIES IN A WRITING SIGNED BY BOTH PARTIES.

IN WITNESS WHEREOF, THE PARTIES HAVE SET THEIR SIGNATURES AS OF THE DATES SET FORTH. THE EFFECTIVE DATE OF THE AGREEMENT IS JANUARY 1, 2001.

**BARCODE SYSTEMS**

By:   
PRINTED NAME: DAVID SOKOLOW  
TITLE: PRESIDENT  
DATE: 01/30/2001

**SYMBOL TECHNOLOGIES, INC.:**

By:   
PRINTED NAME: THOMAS A. ZICK  
TITLE: DIRECTOR, CHANNEL OPERATIONS  
DATE: JAN 30, 2001

**SCHEDULE A to INTEGRATOR AGREEMENT**  
**Additional Standard Terms and Conditions of Sales and Service**

**13. Terms of Payment.** (A) *For Products* - Terms of payment are net forty-five (45) days from date of shipment, subject to the approval by Seller of the amount and terms of credit. Seller reserves the right at any time to revoke any credit extended to Buyer if payment is in arrears for more than thirty (30) days after notice to Buyer or Buyer's credit does not warrant further extension of credit. Each shipment shall be invoiced and paid for when due without regard to other scheduled deliveries. (B) *For Service* - Payment terms for the purchase of Seller's service are thirty (30) days net from the date of Seller's invoice. Invoices will be provided by Seller in advance of the applicable billing period. Buyer shall have the option of purchasing an Extended Billing Option at a discount for additional years of service coverage with a service agreement that is executed annually. In such event, Buyer shall pre-pay the total value of that contract for the entire coverage period. Service costs are the basic monthly charges for the product and associated service. These charges do not include applicable taxes or Seller's imposed charges for zones, response times, custom service options or extended hours of coverage. Basic monthly charges will remain as listed during the initial service term. Any service provided to the Buyer by Seller that is outside the scope of the Service Agreement will be invoiced as incurred at Buyer's time and material rates prevailing at the time such service is provided. (C) Seller reserves the right at any time to revoke any credit extended to Buyer if payment is in arrears for more than thirty (30) days after notice to Buyer or Buyer's credit does not warrant further extension of credit.

**14. Title & Delivery.** (A) At Seller's option, shipment will be FOB Seller's Long Island, NY plant, or its plant of manufacture. Risk of loss or damage shall pass from Seller to Buyer upon delivery to common carrier or Buyer's representative at the FOB point, Seller's Long Island, NY factory or its plant of manufacture. Buyer shall have the responsibility to pay for insurance; all claims for damage must be filed by Buyer directly with carrier; (B) Absent specific instructions, Seller will select the carrier for shipment, but by doing so, will not thereby assume any liability in connection with shipment nor shall the carrier in any way be construed to be the agent of Seller; (C) Seller shall not be liable for any damages or penalty for delay caused solely by transportation or failure to give notice of such delay.

**15. Taxes.** Prices are exclusive of all federal, state, municipal or other government excise, custom duties, sales, use, occupational or like taxes in force and any such taxes shall be assumed and paid for by Buyer. In

order to exempt a sale from sales or use tax liability, Buyer will supply a Certificate of Exemption or similar document to Seller at the time of order placement.

**16. Software.** All software (including firmware) furnished to Buyer is on a licensed basis. Seller grants to Buyer a non-transferable and non-exclusive license to use each software or firmware program delivered hereunder ("Licensed Program"). Each such license granted authorizes Buyer to use the Licensed Program in machine-readable form only, and in the case of software supplied with hardware, only on systems supplied by Seller to Buyer under this agreement. Such license may not be assigned, sublicensed or otherwise transferred by Buyer without prior written consent of Seller, except that, regarding any Licensed Program embodied in a product, the transfer of such product shall convey to Buyer's transferee a license to use such Licensed Program under terms commensurate with the license set forth in this agreement. No right to copy a Licensed Program in whole or in part is granted except as permitted under the Copyright Law. Buyer shall not modify, merge, or incorporate any form or portion of a Licensed Program with other program material, create a derivative work from a Licensed Program, or use a Licensed Program in a network. Buyer agrees to maintain Seller's copyright notice on the Licensed Programs delivered hereunder, and to include the same on any authorized copies it makes, in whole or in part. Buyer agrees not to decompile, disassemble, decode or reverse engineer any Licensed Program delivered to Buyer or any portion thereof.

**17. Infringement Indemnification.** Seller shall defend any claim, suit or proceeding brought against Buyer insofar as it is based on a claim that the use or transfer of any product delivered hereunder constitutes an infringement of a United States patent or copyright in existence as of the date of delivery of the product to Buyer (an "Infringement Claim") so long as Seller is notified promptly in writing by Buyer as to any such action and is given full authority, information and assistance (at Seller's expense) for the defense. In addition to Seller's obligation to defend, Seller shall pay all damages and costs (except consequential damages) awarded therein against Buyer. The obligations set forth above shall not, however, extend to products delivered hereunder which would give rise to a claim, suit, proceeding, finding or conclusion solely for contributory infringement or inducement of infringement. Seller shall not be responsible for any compromise made by Buyer without its consent. Notwithstanding the foregoing, in the event of an infringement claim, Seller's obligation under this



PARAGRAPH SHALL BE FULFILLED, AT SELLER'S SOLE OPTION AND EXPENSE, IF SELLER AT ANY TIME: (A) OBTAINS A LICENSE FOR BUYER TO CONTINUE THE USE OR TO SELL THE INFRINGING PRODUCT PURCHASED FROM SELLER; OR (B) REFUNDS THE PURCHASE PRICE PAID TO SELLER BY BUYER FOR SUCH INFRINGING PRODUCT LESS A REASONABLE AMOUNT FOR USE, DAMAGE, OR OBSOLESCENCE, AND REMOVES SUCH PRODUCT; OR (C) REPLACES OR MODIFIES THE INFRINGING PRODUCT SO AS TO BE SUBSTANTIALLY FUNCTIONALLY EQUIVALENT TO THE INFRINGING PRODUCT BUT NON-INFRINGING. BUYER AGREES THAT THE FOREGOING INDEMNIFICATION SHALL NOT APPLY AND MORSOVER, SHALL BE EXTENDED TO SELLER FOR ANY CLAIM OF U.S. PATENT INFRINGEMENT WHICH MAY BE BROUGHT AGAINST SELLER BECAUSE OF COMPLIANCE WITH BUYER'S PARTICULAR DESIGN REQUIREMENTS, SPECIFICATIONS OR INSTRUCTIONS. BUYER GRANTS TO SELLER THE BENEFIT OF ANY LICENSE TO BUYER UNDER ANY PATENT WHICH MAY BE THE SUBJECT OF AN INFRINGEMENT ALLEGATION HEREUNDER TO THE EXTENT PERMITTED BY SAID LICENSE.

SELLER SHALL HAVE NO LIABILITY TO BUYER UNDER THIS PARAGRAPH IF ANY INFRINGEMENT CLAIM IS BASED UPON THE (I) USE OF PRODUCTS DELIVERED HEREUNDER IN CONNECTION OR IN COMBINATION WITH EQUIPMENT, DEVICES OR SOFTWARE NOT DELIVERED BY SELLER, OR (II) USE OF PRODUCTS DELIVERED HEREUNDER IN A MANNER FOR WHICH THE SAME WERE NOT DESIGNED, OR (III) MODIFICATION BY BUYER OF PRODUCTS DELIVERED HEREUNDER TO THE EXTENT SUCH MODIFICATION IS THE CAUSE OF THE CLAIM OR SUIT. SELLER SHALL FURTHER HAVE NO LIABILITY TO BUYER FOR ANY INFRINGEMENT CLAIM BASED ON BUYER'S USE OR TRANSFER OF THE PRODUCT DELIVERED HEREUNDER AFTER SELLER'S NOTICE THAT BUYER SHALL CEASE USE OR TRANSFER OF SUCH PRODUCT DUE TO SUCH CLAIM. EXCEPT AS STATED ABOVE, SELLER DISCLAIMS ALL WARRANTIES AND INDEMNITIES, EXPRESS, IMPLIED OR STATUTORY, FOR PATENT OR COPYRIGHT INFRINGEMENT.

**18. WARRANTY.** (A) SELLER'S STANDARD SCANNER AND TERMINAL PRODUCTS ARE WARRANTED AGAINST DEFECTS IN WORKMANSHIP AND MATERIALS FOR A PERIOD OF FIFTEEN (15) MONTHS FROM THE DATE OF SHIPMENT, PROVIDED THE PRODUCT REMAINS UNMODIFIED AND IS OPERATED UNDER NORMAL AND PROPER CONDITIONS. THE SOLE OBLIGATION OF SELLER FOR DEFECTIVE HARDWARE PRODUCTS IS LIMITED TO REPAIR OR REPLACEMENT (AT SELLER'S OPTION) ON A "RETURN TO FACTORY" BASIS WITH PRIOR SELLER AUTHORIZATION. SHIPMENT TO AND FROM SELLER WILL BE AT SELLER'S EXPENSE, UNLESS NO DEFECT IS FOUND. NO CHARGE WILL BE MADE TO BUYER FOR REPAIR OR REPLACEMENT PARTS. (B) THE AFORESAID PROVISIONS DO NOT EXTEND THE ORIGINAL WARRANTY PERIOD OF ANY PRODUCT THAT HAD EITHER BEEN REPAIRED OR REPLACED BY SELLER. (C) THE ABOVE WARRANTY SHALL NOT APPLY TO ANY PRODUCT (I) WHICH HAS BEEN REPAIRED OR ALTERED, EXCEPT BY SELLER; (II) WHICH HAS NOT BEEN MAINTAINED IN ACCORDANCE WITH ANY OPERATING OR HANDLING INSTRUCTIONS SUPPLIED BY SELLER, OR (III) WHICH

HAS BEEN SUBJECTED TO UNUSUAL PHYSICAL OR ELECTRICAL STRESS, MISUSE, ABUSE, NEGLIGENCE OR ACCIDENT. EXCEPT FOR THE WARRANTY OF TITLE AND THE EXPRESS WARRANTIES STATED ABOVE, SELLER DISCLAIMS ALL WARRANTIES ON PRODUCTS FURNISHED HEREUNDER INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR USE. THE STATED EXPRESS WARRANTIES ARE IN LIEU OF ALL OBLIGATIONS OR LIABILITIES ON THE PART OF SELLER FOR DAMAGES, INCLUDING BUT NOT LIMITED TO, SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE USE OR PERFORMANCE OF THE PRODUCT OR SERVICE. SELLER'S LIABILITY FOR DAMAGES TO BUYER OR OTHERS RESULTING FROM THE USE OF ANY PRODUCT OR SERVICE FURNISHED HEREUNDER SHALL IN NO WAY EXCEED THE PURCHASE PRICE OF SAID PRODUCT OR THE FAIR MARKET VALUE OF SAID SERVICE, EXCEPT IN INSTANCES OF INJURY TO PERSONS OR PROPERTY.

**19. NOTICES.** NOTICES AND OTHER REQUIRED COMMUNICATIONS SHALL BE IN WRITING, SENT BY COURIER, CERTIFIED MAIL, TO THE ADDRESSES NOTED ABOVE, OR SHALL BE ELECTRONICALLY TRANSMITTED EITHER BY TELEFACSIMILE OR ELECTRONIC MAIL TO PERSONS DESIGNATED BY THE PARTIES, AND SHALL BE DEEMED TO HAVE BEEN DULY GIVEN UPON RECEIPT THEREOF. EITHER PARTY MAY CHANGE THE ADDRESS, NAMES OR TITLES OF THE DESIGNATED PERSON BY SENDING WRITTEN NOTICE IN ADVANCE OF THE EFFECTIVE DATE OF SUCH CHANGES IN THE MANNER SET FORTH ABOVE.

**20. SERVICE CHANGES; RENEWALS.** (A) SELLER'S PRODUCTS TO BE SERVICED ARE LISTED BY SELLER'S PRODUCT NUMBER AND SERIAL NUMBER. SOFTWARE IS LISTED BY SELLER'S PRODUCT NUMBER AND QUANTITY. (B) BUYER MAY REQUEST TO CHANGE THE LIST OF ITEMS SERVICED BY SELLER UNDER THE SERVICE AGREEMENT BY ADDRESSING THOSE CHANGES IN WRITING TO SELLER AT THE ABOVE ADDRESS, ATTN: SERVICE CONTRACT ADMINISTRATION. CHANGES ARE EFFECTIVE UPON BUYER'S REQUEST DATE OR RECEIPT OF SUCH CHANGES SHOULD A REQUEST DATE NOT BE PROVIDED. (C) UPON BUYER'S AUTHORIZATION, SERVICE RENEWAL COVERAGE BEGINS UPON THE EXPIRATION DATE OF THE INITIAL COVERAGE PERIOD. A SERVICE RENEWAL IS ANNUAL UNLESS OTHERWISE AGREED IN WRITING. SERVICE RENEWAL REQUIRES BUYER'S COMPLIANCE WITH SELLER'S PAYMENT TERMS.

**21. SECURITY INTEREST.** BUYER GRANTS TO SELLER A PURCHASE MONEY SECURITY INTEREST IN THE PRODUCTS PURCHASED BY BUYER UNTIL SELLER IS PAID IN FULL. UNTIL SUCH PAYMENT, SELLER MAY FILE WITH THE APPROPRIATE AUTHORITIES A COPY OF THE AGREEMENT AS A FINANCING STATEMENT OR SELLER MAY SIGN AND FILE A FINANCING STATEMENT STRICTLY ON BEHALF OF BUYER, AND BUYER HEREBY APPOINTS SELLER AS ITS AGENT AND ATTORNEY-IN-FACT FOR THIS PURPOSE.

Integrator Agreement

NA Sales Contract  
Integrator Agreement  
Final Rev. 11/2000

**symbol**  
TECHNOLOGIES

**22. FORCE MAJEURE.** SHIPPING DATES ACKNOWLEDGED BY SELLER ARE APPROXIMATE AND SELLER WILL NOT BE LIABLE FOR ANY LOSS OR DAMAGE DUE TO ITS FAILURE TO MEET SCHEDULED SHIPPING DATES. SELLER SHALL IN NO EVENT BE LIABLE FOR ANY DELAY OR DEFAULT IN ITS PERFORMANCE OF ANY OBLIGATION UNDER THIS AGREEMENT CAUSED DIRECTLY OR INDIRECTLY BY AN ACT OF OMISSION OF BUYER, FIRE, FLOOD, ACT OF GOD, ACTS OF GOVERNMENT, AN ACT OF OMISSION OF CIVIL OR MILITARY AUTHORITY OF A STATE OR NATION, STRIKE, LOCKOUT OR OTHER LABOR PROBLEM, INABILITY TO SECURE, DELAY IN SECURING OR SHORTAGE OF LABOR, MATERIALS, SUPPLIES, TRANSPORTATION OR ENERGY, FAILURES OF SUBCONTRACTORS OR SUPPLIERS, OR BY WAR, RIOT, EMBARGO OR CIVIL DISTURBANCE, BREAKDOWN, OR DESTRUCTION OF PLAN OR EQUIPMENT ARISING FROM ANY CAUSE WHATSOEVER, OR ANY CAUSE OR CAUSES BEYOND SELLER'S REASONABLE CONTROL. AT SELLER'S OPTION AND FOLLOWING NOTICE TO BUYER, ANY OF THE FOREGOING CAUSES SHALL BE DEEMED TO SUSPEND SUCH OBLIGATIONS OF SELLER AS LONG AS ANY SUCH CAUSE SHALL PREVENT OR DELAY PERFORMANCE, AND SELLER AGREES TO MAKE AND BUYER AGREES TO ACCEPT PERFORMANCE OF SUCH OBLIGATIONS WHENEVER SUCH CAUSE HAS BEEN REMEDIED.

**23. DISPUTES.** IF LEGAL PROCEEDINGS ARE COMMENCED TO RESOLVE A DISPUTE ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE PREVAILING PARTY SHALL BE ENTITLED TO RECOVER ALL OF ITS COSTS, ATTORNEY FEES, AND EXPERT WITNESS FEES, INCLUDING ANY REASONABLE COSTS OR ATTORNEY FEES IN CONNECTION WITH ANY APPEALS.

**24. ENTIRE AGREEMENT; NO WAIVER.** THIS AGREEMENT, ALONG WITH THE SCHEDULES, CONSTITUTES THE ENTIRE AGREEMENT AND UNDERSTANDINGS BETWEEN THE PARTIES AS TO THE SUBJECT MATTER THEREOF, AND SUPERSEDES AND REPLACES ALL PRIOR OR CONTEMPORANEOUS AGREEMENTS, WRITTEN OR ORAL, AS TO SUCH SUBJECT MATTER. EXCEPT AS SET FORTH IN THIS AGREEMENT, NO ATTEMPTED VARIATION, MODIFICATION OR WAIVER OF ANY PROVISION OF THIS AGREEMENT SHALL HAVE ANY FORCE OR EFFECT UNLESS CONSENTED TO IN WRITING SIGNED BY THE PARTY AGAINST WHOM ENFORCEMENT THEREOF IS SOUGHT. SUCH VARIATION, MODIFICATION OR WAIVER SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCES CONSENTED TO. A FAILURE BY ANY PARTY TO EXERCISE OR DELAY IN EXERCISING ANY RIGHT OR POWER CONFERRED UPON IT IN THIS AGREEMENT SHALL NOT OPERATE AS A WAIVER OF ANY SUCH RIGHT OR POWER.

**25. GOVERNING LAW.** THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO THE CONFLICT OF LAW PRINCIPLES THEREOF AND EXCLUDING THE CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS. EACH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY SUBMITS FOR ITSELF AND ITS PROPERTY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR FOR RECOGNITION AND ENFORCEMENT OF ANY JUDGMENT IN RESPECT THEREOF, TO THE EXCLUSIVE GENERAL JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK, IN THE COUNTY OF SUFFOLK, NEW YORK, AND TO THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK, AND TO THE RESPECTIVE APPELLATE COURTS THEREOF IN CONNECTION WITH ANY APPEAL THEREFROM.

**26. MISCELLANEOUS.** (A) THE SECTION HEADINGS USED HEREIN ARE FOR DESCRIPTIVE PURPOSES ONLY AND SHALL NOT BE USED IN CONSTRUING THE PROVISIONS OF THIS AGREEMENT. (B) SERVICE EXCLUSIONS. SERVICE AGREEMENT COVERAGE DOES NOT INCLUDE PHYSICAL DAMAGE, MISUSE, UNAUTHORIZED ALTERATIONS OR ATTEMPTS TO REPAIR, ABNORMAL OPERATING ENVIRONMENTS, MAN-MADE OR NATURAL DISASTERS, DIRECT LIGHTNING DAMAGE, NOR CONSUMABLE ITEMS SUCH AS TAPES, DISKETTES, RIBBONS, PAPER, CABLES, PRINT HEADS, BATTERIES OR CHARGERS, AND ANY ASSOCIATED EQUIPMENT OR SYSTEM EXCEPT AS AFFECTED BY THE PARTICULAR COVERED PRODUCT, UNLESS ALSO SPECIFICALLY COVERED. (C) RIGHT TO INSPECT. SELLER RESERVES THE RIGHT TO INSPECT ANY PRODUCT THAT HAS NOT BEEN COVERED AND IS OUT OF WARRANTY AND MAKE OPERATIONAL AT A FEE, BEFORE PLACING UNDER COVERAGE OF THIS AGREEMENT. IF THE SYSTEM WAS INSTALLED BY OTHER THAN SELLER, SELLER SHALL NOT BE LIABLE FOR PHYSICAL BACKBONE. (D) UNLESS NOTICE OTHERWISE SPECIFIES, SELLER OBSERVES THE FOLLOWING HOLIDAYS: NEW YEARS DAY, PRESIDENTS DAY, MEMORIAL DAY, INDEPENDENCE DAY, LABOR DAY, THANKSGIVING DAY, AND CHRISTMAS DAY.

END OF SCHEDULE A

**SCHEDULE B TO INTEGRATOR AGREEMENT : MUTUAL NON-DISCLOSURE AGREEMENT**

1. SYMBOL AND INTEGRATOR MAY RECEIVE DATA ("PROPRIETARY INFORMATION") FROM EACH OTHER DURING THE TERM OF THE BUSINESS RELATIONSHIP DEFINED BY THE INTEGRATOR AGREEMENT. THE PROVISIONS THAT FOLLOW SHALL SUPERSEDE THE PROVISIONS OF ANY LEGEND WHICH MAY BE AFFIXED TO THE PROPRIETARY INFORMATION BY THE DISCLOSING PARTY AND THE PROVISIONS OF SUCH LEGEND SHALL, TO THE EXTENT IT IS INCONSISTENT HERewith, BE WITHOUT ANY FORCE OR EFFECT.

2. NOTWITHSTANDING THAT THIS AGREEMENT SHALL HAVE TERMINATED OR EXPIRED, EACH PARTY AGREES TO KEEP IN CONFIDENCE AND PREVENT THE UNAUTHORIZED USE OR DISCLOSURE TO ANY UNAUTHORIZED PERSON OR PERSONS OF ALL PROPRIETARY INFORMATION WHICH IS DESIGNATED IN WRITING, OR BY AN APPROPRIATE STAMP OR LEGEND BY THE DISCLOSING PARTY TO BE OF A PROPRIETARY OR CONFIDENTIAL NATURE RECEIVED AND TO USE SUCH DATA ONLY FOR THE ABOVE STATED PURPOSE. PROPRIETARY INFORMATION SHALL INCLUDE INFORMATION DISCLOSED ORALLY ONLY IF IDENTIFIED AS PROPRIETARY INFORMATION AT THE TIME OF THE FIRST ORAL DISCLOSURE AND REDUCED TO WRITING WITHIN THIRTY (30) DAYS THEREOF. NEITHER PARTY SHALL BE LIABLE FOR USE OR DISCLOSURE OF ANY SUCH CONFIDENTIAL INFORMATION IF SAME: (A) IS IN THE PUBLIC DOMAIN AT THE TIME IT IS DISCLOSED; OR (B) IS KNOWN TO THE RECEIVING PARTY AT THE TIME OF DISCLOSURE; OR (C) IS USED OR DISCLOSED WITH THE PRIOR, WRITTEN APPROVAL OF THE OTHER PARTY; OR (D) IS USED OR DISCLOSED AFTER FIVE (5) YEARS FROM THE DATE OF THIS AGREEMENT; OR (E) IS INDEPENDENTLY DEVELOPED BY THE RECEIVING PARTY; OR (F) BECOMES KNOWN TO THE RECEIVING PARTY FROM A SOURCE OTHER THAN THE DISCLOSING PARTY WITHOUT A BREACH OF THIS AGREEMENT BY THE RECEIVING PARTY. NEITHER PARTY SHALL BE LIABLE FOR INADVERTENT, ACCIDENTAL OR MISTAKEN USE OR DISCLOSURE OF CONFIDENTIAL INFORMATION OBTAINED UNDER THIS AGREEMENT DESPITE THE EXERCISE OF THE SAME REASONABLE PRECAUTION AS THE RECEIVING PARTY TAKES TO SAFEGUARD ITS OWN PROPRIETARY INFORMATION.

3. THE DISCLOSURE OF CONFIDENTIAL INFORMATION HEREUNDER BY EITHER PARTY HERETO SHALL NOT BE CONSTRUED AS GRANTING TO THE OTHER, EITHER EXPRESSLY OR OTHERWISE, ANY LICENSE UNDER ANY INVENTION OR PATENT NOW OR HEREAFTER OWNED OR CONTROLLED BY SUCH PARTY, NOR SHALL SUCH AGREEMENT OR DISCLOSURE CONSTITUTE ANY REPRESENTATION, WARRANTY OR ASSURANCE BY THE TRANSMITTING PARTY WITH RESPECT TO ANY INFRINGEMENT OF PATENTS OR OTHER RIGHTS OF THIRD PARTIES.

4. EACH PARTY SHALL PERFORM ITS OBLIGATIONS HEREUNDER WITHOUT CHARGE TO THE OTHER. NOTHING IN THIS AGREEMENT SHALL (A) GRANT EITHER PARTY THE RIGHT TO MAKE ANY COMMITMENT OF ANY KIND FOR OR ON BEHALF OF THE OTHER PARTY WITHOUT THE PRIOR WRITTEN CONSENT OF THE OTHER PARTY; OR (B) CREATE OR BE INTERPRETED IN ANY WAY AS A JOINT VENTURE, PARTNERSHIP OR FORMAL BUSINESS ORGANIZATION OF ANY KIND.

5. UPON EXPIRATION OR TERMINATION OF THIS AGREEMENT, OR UPON BREACH OF ANY OBLIGATION OF THIS AGREEMENT BY THE RECEIVING PARTY, OR UPON REQUEST OF THE DISCLOSING PARTY, ALL RECORDED COPIES OF THE CONFIDENTIAL INFORMATION AND PORTIONS THEREOF REMAINING IN THE RECEIVING PARTY'S POSSESSION SHALL BE RETURNED TO THE DISCLOSING PARTY OR DESTROYED, AND SUCH RETURN OR DESTRUCTION CERTIFIED TO THE DISCLOSING PARTY.

6. THIS AGREEMENT CONSTITUTES THE ENTIRE AGREEMENT AND UNDERSTANDING BETWEEN THE PARTIES AS TO THE SUBJECT MATTER HEREOF, AND SUPERSEDES AND REPLACES ALL PRIOR AND CONTEMPORANEOUS AGREEMENTS, WRITTEN OR ORAL, AS TO SUCH SUBJECT MATTER.

7. NO SUBSEQUENT AGREEMENT, ARRANGEMENT, RELATIONSHIP OR UNDERSTANDING BETWEEN THE PARTIES SHALL BE VALID, EFFECTIVE OR ENFORCEABLE AND NO OBLIGATION OR LIABILITY SHALL BE CREATED ON BEHALF OF EITHER PARTY HERETO UNLESS AND UNTIL IT IS CONTAINED IN A WRITING, SIGNED BY DULY AUTHORIZED REPRESENTATIVES OF EACH PARTY.

8. IF ANY LEGAL PROCEEDINGS ARE COMMENCED TO RESOLVE ANY DISPUTE OR DIFFERENCE WHICH MAY ARISE BETWEEN THE PARTIES HERETO, OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE PREVAILING PARTY SHALL BE ENTITLED, IN ADDITION TO ANY OTHER AWARD THAT MAY BE MADE, TO RECOVER COSTS, ATTORNEYS FEES, AND EXPERT WITNESS FEES, INCLUDING ANY COSTS OR ATTORNEYS FEES INCURRED IN CONNECTION WITH ANY APPEALS.

9. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE COMMERCIAL LAWS BUT NOT THE CONFLICT OF LAW PROVISIONS OF THE STATE OF NEW YORK.

END OF SCHEDULE B

**INTEGRATOR AGREEMENT**  
**SCHEDULE C : PRODUCT AND DISCOUNT SCHEDULE**

*TO BE PROVIDED BY YOUR SYMBOL ACCOUNT MANAGER*

SYMBOL STOCK ROTATION ADDENDUM TO INTEGRATOR AGREEMENT

Authorized Reseller

BARCODE SYSTEMS

This Addendum acknowledges that the above-named authorized Symbol reseller ("Integrator") is entitled to participate in Symbol's Stock Rotation Program in accordance with the following terms and conditions

**PRODUCT RETURN AND STOCK ROTATION.** AN INTEGRATOR THAT SUCCESSFULLY COMPLETES ITS ANNUAL NET REVENUE COMMITMENT HAS STOCK ROTATION PRIVILEGES AND MAY RETURN FOR CREDIT UP TO THE STATED AMOUNT OF THE TOTAL PURCHASE VOLUME FOR THE PREVIOUS CONCURRENT PURCHASE PERIOD, INDEPENDENT OF THE EFFECTIVE DATE OF THIS AGREEMENT, AS SET FORTH IN TABLE 1 HEREIN. INTEGRATOR SHALL DENOTE ITS ELECTED OPTION, CONCURRENT WITH OR SUBSEQUENT TO EXECUTION OF THE AGREEMENT, WITHIN TABLE 1 BELOW. SYMBOL SHALL DENOTE CONCURRENCE BY COUNTER-INITIALING. ONCE ELECTED, INTEGRATOR'S STOCK ROTATION CREDIT SHALL BE CONSTANT THROUGHOUT THE TERM OF THE AGREEMENT, SUBJECT TO SYMBOL'S PERIODIC REVIEW.

TABLE 1: STOCK ROTATION CREDIT TIMETABLE				
TOTAL PURCHASE VOLUME	PRODUCT PURCHASE PERIOD	PRODUCT AGE	INTEGRATOR ELECTS: (INITIAL)	SYMBOL APPROVED: (INITIAL)
15%	6 MOS.	6 MOS.		
10%	3 MOS.	9 MOS.	<i>DS</i>	<i>TS</i>

THE VALUE OF THE RETURN IS FIRST APPLIED TO THE EARLIEST QUARTER. WHEN THE LIMIT FOR THE RETURN RELATIVE TO THAT QUARTER IS MET, THE RETURN VALUE IS THEN APPLIED TO THE MOST RECENT QUARTER. IF RETURNS IN ANY SINGLE QUARTER DO NOT EQUAL THE ELIGIBLE RETURN VALUE FOR THE EARLIEST QUARTER, THE UNUSED ELIGIBLE RETURN VALUE WILL EXPIRE. INTEGRATOR IS PERMITTED THIS STOCK ROTATION PRIVILEGE CONDITIONED UPON ALL OF THE FOLLOWING: (A) A STOCK ROTATION REQUEST FORM MUST BE SUBMITTED BY INTEGRATOR TO SYMBOL NO LATER THAN THE TENTH (10TH) DAY OF EACH CALENDAR QUARTER FOR WHICH A STOCK ROTATION IS REQUESTED. A RETURN AUTHORIZATION NUMBER WILL BE ISSUED WITHIN FIVE (5) BUSINESS DAYS OF THE REQUEST; (B) PRODUCT IS RETURNED NEW, UNSOLD, UNDAMAGED AND UNOPENED IN ITS ORIGINAL SEALED PACKAGING. DEMONSTRATION EQUIPMENT OR USED PRODUCT ARE NOT ELIGIBLE FOR STOCK ROTATION; (C) INTEGRATOR MUST PROVIDE COMPLETE VALID SERIAL NUMBERS FOR ALL PRODUCTS, AND ASSOCIATED INVOICE NUMBER, TO QUALIFY FOR THE FULL INVOICE VALUE OF PRODUCT RETURNED; (D) RETURNED PRODUCT MUST BE SHIPPED PREPAID TO THE SYMBOL-DESIGNATED LOCATION WITHIN SEVEN (7) BUSINESS DAYS OF RECEIPT OF THE RETURN AUTHORIZATION.

**CREDIT FOR STOCK ROTATION RETURNS.** CREDIT IS APPLIED TO INTEGRATOR'S ACCOUNT AS FOLLOWS: (A) PROVIDED INTEGRATOR COMPLIES WITH ALL SYMBOL PRODUCT RETURNS CRITERIA; (B) PRODUCT PURCHASED MORE THAN THE SPECIFIED PERIODS SET FORTH IN TABLE 1 CANNOT BE STOCK-ROTATED. A PRODUCT'S MANUFACTURE DATE HAS NO BEARING ON THE PERIOD IN QUESTION; (C) CREDIT WILL BE ISSUED TOWARD PRODUCT PURCHASES FROM SYMBOL, PROVIDED SUCH PURCHASES OCCUR WITHIN THIRTY (30) DAYS OF RECEIPT OF RETURNED PRODUCT; (D) CREDIT FOR RETURNED PRODUCT WILL BE APPLIED TO INTEGRATOR'S ACCOUNT WITHIN FIFTEEN (15) BUSINESS DAYS OF RECEIPT AND ACCEPTANCE OF THE PRODUCT AT THE SYMBOL-DESIGNATED LOCATION.

This addendum also modifies the following term associated with Section 1.0 of the contract:

1.1 INTEGRATOR MAY PURCHASE SYMBOL PRODUCT FOR RESALE TO END USERS AND RESELLERS. "RESELLER" IS DEFINED AS INTEGRATOR'S AUTHORIZED REMARKETER OF SYMBOL PRODUCTS, AND IS RESPONSIBLE FOR ITS END-USER PRODUCT SALES, TECHNICAL SUPPORT, DELIVERY AND PAYMENT OBLIGATIONS.

Symbol may, from time to time, and at its sole option and discretion, modify the terms of the Stock Rotation Program. Symbol shall provide the Integrator with written notice of any such change(s). This Addendum is effective as of January 1, 2001. Except as set forth herein, this Addendum does not change any of the provisions of the current Agreement between Symbol and Integrator.

BARCODE SYSTEMS

SYMBOL TECHNOLOGIES, INC.

By: *David Sokolow*

By: *Thomas A. Zix*

Name: David Sokolow

Name: Thomas A. Zix

Title: President

Title: Director, Channel Operations

Date: JAN 23/2001

Date: JAN 30, 2001

Symbol Technologies, Inc., One Symbol Plaza, Holtsville, New York, 11742 (516) 736-2400



**Symbol Technologies, Inc.**  
**Schedule C1**  
**Integrator Product and Discount Schedule**  
**Effective September 14, 2000**

Pricing		Pricing Level
Category	Product	11
ZN	LS1000 Series	67.78%
ZN	LS100X Series	66.10%
ZN	LT1800 Series	67.78%
ZN	LT18XX Series	66.00%
ZN	LS2100 Series	67.40%
ZN	LS210X Series	67.10%
ZN	LS4000 Series	See Easy Price List
ZN	LS4074/5	See Easy Price List
ZN	LS5700/5800	See Easy Price List
A1	LS3000 Series (except for LS3070), LS9100, LS6000, M2XXX	63.00%
A8	P370, P460, P470	57.69%
A9	7870, 7875	60.50%
C1	LS3070, LS1220, Scan Interfaces (LL425, L390, LL500)	53.00%
C3	LS4900, LS6800, PL140	56.00%
D1, D2, D3, D7	Batch Terminals, PDT7500, PDT7200, PCK91XX, and Wearables and Ring Scanners (except as noted right below)	52.00%
D5, D6, D8	Spectrum One and Spectrum24 Terminals, PDT 754X, PCK914X, and Wearables	54.00%
E1, E2, E3	Most accessories including LL700, Cradles, Scanstands, Manuals, Accessories, Contact wands, cables, adapters, Symbol 8-bit software: VRC4000	41.00%
E4, E5, E6	Most Spectrum Backbone Equipment including Access Points, LA2400, RF Transceivers, Network Controllers, except NCU2064 hardware & software) SAB Lite, antennas; PPT 41XX, PPT 46XX, VRC4040, VRC5040, AP-4111-10X0	43.00%
FN	3rd Party Hardware, OEM, eligible Education Services, and Outsourced Products, NCU hardware	25.00%
F7	FMT 1000, FMT 3000	33.00%
G1	Off-the-Shelf Software (Symbol 16-bit software, NCU 2064 software, 3rd party software licenses) (see exceptions below under "S"), Monarch Table Top Printers, Packaged Professional Services, i.e., one price is listed for a pre-defined, standard scope of work, e.g. SSV-XXX, INS-XX00	15.00%
G2	Any and all Professional Services ordered on a "per hour" (Time & Materials) basis. All Y2K Services, i.e., all part numbers beginning Y2K -	30.00%
HN	AMITY, Custom quoted services, including CPG-XXX, BBI-XXX and any others. Note: Fixed price quotes include all discounts available	0.00%
	See EPOG for other specially priced products in this category	
IN	PFT4300 and accessories	32.00%
JN	SPT1500, AP-4111-1XXX, LA-4111-1XXX, and accessories	28.00%
KN	NetVision Phone, SPT17XX, PPT27XX, and accessories	36.00%
LN	Cyberpen, CS2000, and accessories	5.00%
M1	Holotrak, and accessories	35.00%
N1	Trilogy 2 AF-4121	21.00%
N2	Trilogy 2 LA-4121	24.00%
SN	Wavelink Studio, SNC, MCL, and accessories	32.00%

For Exact Configurations and descriptions, please refer to EPOG  
 The EPOG URL is:  
<http://swob.symbol.com/sale/mkt/pgg/epog/default.htm>