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attached original document(s) or copy(ies).

TO: The Commissioner of

Submission Type

- New, Resubmission (Non-Recordation), Correction of PTO Error, Corrective Document

Conveyance Type

- Assignment, License, Merger, Security Agreement, Change of Name, Nunc Pro Tunc Assignment, Other: SOFTWARE SOURCE CODE LICENSE AGREEMENT



08-17-2000

U.S. Patent & TMO/TM Mail RptDt. #22

Conveying Party

Execution Date

Name RSA Security Inc. Formerly Security Dynamics Technologies, Inc.

09/30/99

- Individual, General Partnership, Limited Partnership, Corporation, Association, Other, Citizenship/State of Incorporation/Organization Delaware, Mark if Additional Names of Conveying Parties Attached

Receiving Party

Name ODS Networks, Inc. DBA/AKA/TA Address 1101 East Arapaho Road Address Richardson Texas 75081 City State/Country Zip Code

- Individual, General Partnership, Limited Partnership, Corporation, Association, Other, Citizenship/State of Incorporation/Organization Delaware, Domestic Representative Designation Attached: Yes No, Mark if Additional Names of Receiving Parties Attached

Correspondent Name and Address

James B. Muskal Leydig, Voit & Mayer, Ltd. Two Prudential Plaza, Suite 4900 Chicago, Illinois 60601-6780

Telephone: (312) 616-5600 Facsimile: (312) 616-5700 Attorney Docket No. 203486

Pages Enter the total number of pages of the attached conveyance document including any attachments: 20

Trademark Application Number(s) or Registration Number(s) Enter either the Trademark Application Number or the Registration Number (DO NOT ENTER BOTH numbers for the same property). Mark if additional numbers attached

Table with 2 columns: Trademark Application Number(s), Registration Number(s). Row 1: 75/914,456

Number of Properties

Enter the total number of properties involved: 1

Fee Amount

Fee Amount for Properties Listed (37 CFR 3.41): \$40.00

- Method of Payment: Enclosed, Deposit Account No. 12-1216, Authorization to Charge Additional Fees: Yes No

Statement and Signature

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document. Charges to deposit account are authorized, as indicated herein.

James B. Muskal Name of Person Signing Signature August 14, 2000 Date

SOFTWARE SOURCE CODE LICENSE AGREEMENT

This Software Source Code License Agreement (the "Agreement"), effective as of September 30, 1999 (the "Effective Date"), is entered into by and between RSA Security Inc., ("RSA") a Delaware corporation with an office at 20 Crosby Drive, Bedford, MA 01730 and ODS Networks, Inc., ("ODS") a Delaware corporation with an office at 1101 East Arapaho Road, Richardson, TX 75081.

RECITALS

WHEREAS RSA owns the Kane Security Monitor, Kane Security Analyst, and Kane Security Officer software products.

WHEREAS ODS desires to license RSA's rights in the Kane Security Monitor, Kane Security Analyst, and Kane Security Officer software products.

NOW, THEREFORE, the parties hereby agree as follows:

1. DEFINITIONS

The following terms when used in this Agreement shall have the following meanings:

- 1.1. "**Derivative Work**" means a work that is based upon the Licensed Software or the RSA Kane Documentation, such as a revision, modification, translation (including compilation or recapitulation by computer), abridgment, condensation, expansion or any other form in which the Licensed Software or the RSA Kane Documentation may be recast, transformed, or adapted, and that, if prepared without authorization by the owner of the Licensed Software or RSA Kane Documentation, would constitute a copyright infringement.
- 1.2. "**Exclusive Territory**" means Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Monaco, the Netherlands, Portugal, Spain, Sweden, Switzerland/Liechtenstein, the United Kingdom, and the United States of America.
- 1.3. "**Licensed Software**" means RSA's Kane Security Monitor, Kane Security Analyst and Kane Security Officer software products (in both Object Code and Source Code) and all Derivative Works thereof.
- 1.4. "**Net Sales Revenue**" shall mean ODS's actual revenue received (which does not include sales, tariff, duties and/or use taxes directly imposed and with reference to particular sales or outbound transportation costs charged to customers) for Licensed Software distributed to unaffiliated third parties in a bona fide arm's length transaction less only: (i) discounts allowed in amounts customary in the trade for quantity purchases and (ii) amounts allowed or credited on returns. Net Sales Revenue shall be calculated in accordance with generally accepted accounting practices. Net Sales Revenue shall

accrue when Licensed Software is invoiced. If Licensed Software is distributed or invoiced to an entity affiliated with ODS or otherwise for a discounted price substantially lower than customary in the trade, Net Sales Price shall be based on the customary amount billed by ODS for such Licensed Software to an unaffiliated third party.

- 1.5. "**Object Code**" means software in machine-readable, compiled object code form.
- 1.6. "**RSA Kane Documentation**" means all end user documentation and manuals associated with the Licensed Software.
- 1.7. "**RSA Kane Domain Name**" means the domain name identified by the Uniform Resource Locator address "www.intrusion.com".
- 1.8. "**RSA Kane Intellectual Property Rights**" means those intellectual property rights that relate to the Licensed Software and that are listed on Exhibit A attached hereto.
- 1.9. "**RSA Kane Trademarks**" means those trademark and trademark applications that relate to the Licensed Software and that are listed on Exhibit B attached hereto together with any common law trademarks not listed on Exhibit B that relate to the Licensed Software.
- 1.10. "**Source Code**" means computer software code in human-readable, high-level language form which, when compiled or assembled, becomes the Object Code of a software program. Source Code also includes logic diagrams, flow charts, and developer comments concerning the relevant software code.
- 1.11. "**Transition Date**" means the business day that is thirty calendar days after the Effective Date. In the event that the day which is thirty calendar days following the Effective Date falls on a Saturday, Sunday, or Federal holiday, the Transition Date shall be the next succeeding day which is not a Saturday, Sunday, or Federal holiday.

2. LICENSES

- 2.1. **Delivery**. RSA shall deliver to ODS on the Effective Date, one electronic copy (e.g., CD, diskettes or by ftp delivery) of the Source Code and the Object Code of the Licensed Software and one electronic copy of the RSA Kane Documentation.
- 2.2. **Intellectual Property License Grant**. Subject to the terms and conditions contained herein, RSA hereby grants to ODS, under the RSA Kane Intellectual Property Rights, the following worldwide, perpetual, irrevocable, non-terminable, transferable (in accordance with Section 12.4 below) license:
 - 2.2.1. To modify and create derivative works of the Licensed Software and RSA Kane Documentation;

2.2.2. To make, use, copy, import, distribute (directly or indirectly), license, sell, offer to sell, rent or lease the Licensed Software (and derivative works thereof created under 2.2.1 above) in Source and Object Code form;

2.2.3. To copy, and distribute (directly or indirectly) the RSA Kane Documentation (and derivative works thereof created under 2.1.1 above) in conjunction with the distribution of the Licensed Software;

2.2.4. To sublicense any and all of the rights set forth in 2.2.1, 2.2.2. and 2.2.3 to further third parties, including the right to sublicense such rights to further third parties.

2.3. **Trademark License Grant.** Subject to the terms and conditions contained herein, RSA hereby grants to ODS, a worldwide, perpetual, revocable, transferable (in accordance with Section 12.4 below) license to apply the RSA Kane Trademarks to the Licensed Software and any Derivative Works and to sell and distribute the Licensed Software and any Derivative Works bearing the RSA Kane Trademarks.

2.4. **Exclusivity.** The licenses granted in Section 2.2 and 2.3 above shall be exclusive, including as against RSA, in the Exclusive Territory, and shall be non-exclusive in all other countries of the world, except that RSA shall retain rights sufficient to fulfill its obligations with respect to Section 5.2.5 and to fulfill its obligations with respect to any of the Contracts not transferred in accordance with Section 5.4.

2.5. **Other Licensees.** For countries outside of the Exclusive Territory, RSA shall not license a third party under the RSA Kane Intellectual Property Rights or the RSA Kane Trademarks on terms and conditions (including but not limited to the upfront license fee and all royalties due hereunder) more favorable to such third party than to ODS under this Agreement.

2.6. **Enforcement of Exclusive License.** With respect to the Exclusive Territory, ODS shall have the exclusive right to bring an infringement action against any actual or suspected infringer of the RSA Kane Intellectual Property Rights or the RSA Kane Trademarks and to retain all recovery in connection with such action and any settlement thereof relating to infringement occurring after the Effective Date. RSA shall, at ODS's expense, provide all reasonably requested cooperation to ODS in connection with each and every such action or settlement, including without limitation joining in any such action in which RSA is determined to be an indispensable party or otherwise a necessary party for the conduct of such action.

2.7. **Prosecution of Underlying Intellectual Property.** As of the Effective Date, ODS shall be responsible, at its sole expense, for prosecution and maintenance of the RSA Kane Intellectual Property Rights. RSA agrees to deliver the prosecution files for the RSA Kane Intellectual Property Rights and RSA Kane Trademarks to ODS five (5) business days after the Effective Date. RSA further agrees to execute, upon request by ODS, any lawful documents necessary for ODS to prosecute and maintain the RSA Kane

Intellectual Property Rights. This section shall not obligate ODS to prosecute or maintain the RSA Kane Intellectual Property Rights.

- 2.8. **Delivery of Subsequent Copies and Grantback.** ODS will deliver to RSA a number of copies of each new version or release of the Licensed Software or Derivative Works sufficient to allow RSA to use the Licensed Software or Derivative Works on its internal network. RSA may use the versions of the Licensed Software or Derivative Works solely on its internal networks and will be subject to the terms and conditions provided in the end-user license agreement normally accompanying copies of the Licensed Software or Derivative Works.

3. PROPRIETARY RIGHTS

- 3.1. **Title.** Except for the licenses expressly granted in this Agreement, RSA shall at all times retain full and exclusive right, title, and ownership interest in and to the Licensed Software, RSA Kane Documentation and the RSA Kane Intellectual Property Rights. ODS shall at all times retain full and exclusive right, title and ownership interest in and to any Derivative Works of the Licensed Software created by ODS, subject to RSA's rights in the unmodified Licensed Software.
- 3.2. **Copyright Notices.** ODS agrees not to remove or destroy any proprietary or copyright notices placed upon or contained within the Licensed Software or the RSA Kane Documentation. ODS may add its own proprietary or copyright notices to Derivative Works of the Licensed Software or the RSA Kane Documentation.

4. FEES, PAYMENT AND DELIVERY

- 4.1. **One Time License Fee.** On the Effective Date, ODS shall pay to RSA a non-refundable license fee of [REDACTED]

- 4.2. **Royalty and Referral Payments.** In addition to the license fee described above, ODS shall pay to RSA:

4.2.1. Royalties in an amount equal to [REDACTED] of all Net Sales Revenue from the sale, license, sublicense, lease, distribution, or other transfer of the Licensed Software. No royalty shall be due on Net Sales Revenue accrued more than two (2) years after the Effective Date; and

4.2.2. A referral fee equal to [REDACTED] of all Net Sales Revenue received from new customers identified by RSA in writing and invoiced by ODS prior to the first anniversary of the Effective Date. RSA may identify potential customers (other than existing customers of the Licensed Software) in writing and ODS shall notify RSA in writing within three (3) business days if ODS can demonstrate that it has previously contacted such potential customer. If no notice is received by RSA, then RSA shall be entitled to the payment under this Section 4.2.2 for all Net Sales

Revenue received for or on account of such potential customer prior to the first anniversary of the Effective Date. RSA and ODS may agree to participate in joint sales and marketing activities relating to customers identified by RSA.

4.2.3. In lieu of making the payments provided in this Section during the second year of the term, ODS may pay to RSA on the first year anniversary of the Effective Date a lump sum payment equal to 1.4 times the royalties paid under Section 4.2.1 above during the first year of the term of the Agreement to obtain a fully paid up, royalty free, license.

4.3. **Payments and Reports.** Within thirty (30) days after March 31, June 30, September 30 and December 31, of each of the two (2) years following the Effective Date, ODS shall deliver to RSA all royalties and referral fees due hereunder, together with a true and accurate report, giving such particulars of the business conducted by ODS during the proceeding three-month period under this Agreement as shall be reasonably pertinent to a royalty and referral fee accounting hereunder. These reports shall include at least the following:

4.3.1. Total Net Sales Revenue for Licensed Software sold, licensed, leased, distributed or otherwise transferred by ODS; and

4.3.2. Compensation received by ODS for or on account of any sublicense; and

4.3.3. Royalties due under Section 4.2.1 above (even if no royalties are due for the relevant report period); and

4.3.4. Referral fees due under Section 4.2.2 above.

4.4. **Interest.** The royalty payments set forth in this Agreement shall, if overdue, bear interest until payment at a per annum rate [REDACTED] above the prime rate in effect at the Chase Manhattan Bank (N.A.) on the due date. The payment of such interest shall not foreclose RSA from exercising any other rights it may have as a consequence of the lateness of any payment.

4.5. **Records.** ODS shall keep full, true and accurate books of account containing all particulars that may be reasonably necessary for the purpose of showing the amounts payable to RSA hereunder. These books of account shall be kept at ODS's principal place of business. Said books and supporting data shall be open to the inspection of RSA or its agents (upon written notice and at a mutually agreed date, time and place) for the purpose of verifying ODS's royalty statement or compliance in other respects with this Agreement. Should such inspection lead to the discovery of a greater than five percent (5%) discrepancy in reporting to RSA's detriment, ODS agrees to pay the reasonable costs of such inspection. Such inspections hereunder shall not occur more than two (2) times per each of the first two (2) years following the Effective Date.

5. OTHER OBLIGATIONS OF THE PARTIES

- 5.1. **Training.** During the period ending 30 days after the Effective Date, RSA shall provide for up to ten (10) of ODS's support personnel a two to three day training session relating to the installation, operation, demonstration and "Level 1 and Level 2" support of the Licensed Software (the "Product Instruction"). All such training shall take place at RSA's facility in Bedford, Massachusetts at no charge. If ODS requests RSA to deliver training at another location, ODS shall reimburse RSA its out-of-pocket expenses, such as travel, lodging and meals, related to such training. In connection with the training, RSA shall deliver to ODS information relating to the Licensed Software, i.e., its product knowledge database, a list of undocumented features and issues, a customer training curriculum (if such exists), "bug lists" and other documentation and databases reasonably necessary for ODS to take over all customer support and maintenance responsibilities. Information so delivered is subject to the confidentiality provisions of Section 8.
- 5.2. **Other Deliverables and Support.** In connection with the License, RSA shall provide following information and support:
- 5.2.1. ODS hereby acknowledges and RSA hereby warrants that RSA has delivered to ODS: (a) a partial list of distributors and resellers engaged in marketing and distribution of the Licensed Software; (b) a list of end-user customers who have purchased Licensed Software indicating those end-user customers that are party to a maintenance contract, together with contact information, where available; (c) a record of all sales of the Licensed Software made since 1995, including the name of the customer and the amount of the sale; and (d) to the extent known, organizations that have downloaded Licensed Software for evaluation or who have otherwise requested an evaluation of the Licensed Software during the twelve months immediately preceding the Effective Date.
- 5.2.2. Within ten (10) business days following the Effective Date, RSA will provide to ODS a list of SECURWORLD partners that ODS may use only for the purpose of preparing and issuing the written statement identified in Section 5.2.3 below. This list is confidential information of RSA and subject to the provisions of Section 8.
- 5.2.3. RSA and ODS shall, as promptly as possible following the Effective Date, jointly prepare a written communication to be signed by RSA and ODS and sent to customers of the Licensed software and to SECURWORLD partners, explaining that RSA has licensed the RSA Kane Intellectual Property Rights and the RSA Kane Trademarks to ODS and that ODS has assumed RSA's obligations under the Contracts (as defined in Section 5.3).
- 5.2.4. RSA shall forward to ODS within three days of receipt all purchase orders for Licensed Software received by RSA after the Effective Date.
- 5.2.5. In the event that, during the term of this Agreement, RSA receives a purchase order for the Licensed Software that RSA is contractually obligated to fill, RSA

shall do so and shall provide ODS with a copy of the purchase order and pay to ODS the amount received in connection with such purchase order within thirty (30) days of receipt by RSA.

5.2.6. Within ten (10) business days following the Effective Date, RSA shall file papers with InterNic that transfer ownership of the RSA Kane Domain Name to ODS and RSA will provide ODS with executed copies of those papers.

5.2.7. RSA will maintain a hyperlink on its web site, currently located at www.rsasecurity.com that directs potential customers of the Licensed Software to a web site identified by ODS.

5.2.8. RSA and ODS shall, as promptly as possible following the Effective Date, jointly prepare a press release explaining that RSA has licensed the RSA Kane Intellectual Property Rights and the RSA Kane Trademarks to ODS.

5.3. **Assumption of Certain Obligations.** As of the Transition Date, ODS hereby assumes all customer support and software maintenance liabilities and obligations of RSA existing as of the Effective Date (the "Assumed Obligations") arising under the customer service and software maintenance contracts listed on Exhibit C (the "Contracts"), whether or not an assignment of such Contracts is completed in accordance with Section 5.4 below (other than liabilities or obligations related to claims or causes of action arising from actions or inactions of RSA prior to the Transition Date). Exhibit C lists customers for which customer service and maintenance fees are paid to RSA, and the corresponding fees due, dates paid, the respective period covered by the Contract. On the Transition Date, RSA will pay over to ODS [REDACTED] of all unearned customer service and maintenance fees paid by RSA's customers under the Contracts as of that date. "Unearned customer service and maintenance fees" are those fees paid by a customer that RSA has not recognized as income in accordance with generally accepted accounting practices.

5.4. **Assignment of Contracts.** RSA hereby assigns to ODS the Contracts. This Agreement shall not constitute an agreement to assign any Contract if an attempted assignment thereof, without consent of a third party thereto, would constitute a breach thereof. RSA and ODS will use all commercially reasonable efforts (but without any payment of money by RSA or ODS) to obtain the consent of the other parties to any Contract requiring consent or claim or right or any benefit arising thereunder for the assignment thereof to ODS as ODS may request. If such consent is not obtained, RSA and ODS will cooperate in a mutually agreeable arrangement under which ODS would obtain the benefits and assume the obligations thereunder in accordance with this Agreement, including subcontracting, sub-licensing, or subleasing to ODS, or under which RSA would enforce for the benefit of ODS, with ODS assuming RSA's obligations, any and all rights of RSA against a third party thereto. To the extent the benefits and obligations from the Contracts have not been provided by alternate arrangements satisfactory to ODS and RSA, ODS and RSA shall negotiate in good faith an adjustment in the consideration paid by ODS pursuant to this Agreement.

5.5. **Non-Compete**. During the period beginning on the Effective Date of this Agreement and terminating thirty-six (36) months later, RSA shall not acquire, create, develop, distribute or license any Derivative Work or other product similar to the Licensed Software that incorporates functionality similar to the Licensed Software or that is competitive with the Licensed Software. Notwithstanding the foregoing or any other provision of this Agreement to the contrary, in the event RSA acquires, merges with, or is acquired by another business which has revenue from the sale, license, distribution or transfer of products that compete with the Licensed Software, whether such transaction is by merger, consolidation, stock purchase or sale, purchase or sale of assets, or otherwise, this noncompete covenant shall not be violated and shall not be binding upon RSA or the surviving entity of such transaction.

6. LIMITED SOFTWARE WARRANTY

6.1. **Limited Warranty**. During the seven (7)-month period following delivery of the Licensed Software to ODS pursuant to Section 4.3 hereof, RSA represents and warrants that the Licensed Software will operate in conformance with the RSA Kane Documentation. ODS's exclusive remedy, and RSA's entire liability in tort, contract or otherwise, for breach of the immediately foregoing warranty, shall be RSA's use of commercially reasonable efforts (without the payment of money) to help ODS correct the Licensed Software such that the Licensed Software conforms to such warranty. RSA shall have no obligation with respect to this Section 6.1 with respect to any nonconformities caused by modifications to the Licensed Software made after the Effective Date.

6.2. **DISCLAIMER**. EXCEPT FOR THE EXPRESS WARRANTIES PROVIDED IN THIS AGREEMENT, THE LICENSED SOFTWARE IS PROVIDED "AS IS" WITHOUT ANY WARRANTY WHATSOEVER. RSA DISCLAIMS ALL WARRANTIES, IMPLIED OR STATUTORY, AS TO ANY MATTER WHATSOEVER, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. RSA DISCLAIMS ANY WARRANTY OR REPRESENTATION TO ANY PERSON OTHER THAN ODS WITH RESPECT TO THE LICENSED SOFTWARE. ODS SHALL NOT, AND SHALL TAKE ALL MEASURES NECESSARY TO INSURE THAT ITS AGENTS AND EMPLOYEES DO NOT, MAKE OR PASS THROUGH ANY SUCH WARRANTY ON BEHALF OF RSA TO ANY THIRD PARTY.

7. REPRESENTATIONS AND WARRANTIES

7.1. **General**. Each party hereby represents and warrants to the other that: (i) such party has the right, corporate power and authority to enter into this Agreement and to fully perform all its obligations, including the right to grant all licenses to the full extent and scope granted herein; (ii) the execution, delivery and performance of this Agreement requires no action by or in respect of, or filing with, any governmental body, agency, official or authority; (iii) the execution, delivery and performance of this Agreement does not and will not (a) contravene or conflict with the corporate charter or bylaws of

such party, (b) contravene or conflict with any provision of any law, regulation, judgment, injunction, order or decree binding upon such party or (c) the execution, delivery and performance of this Agreement does not and will not violate any agreement existing between such party and any third party.

7.2. **RSA Warranties.** RSA hereby represents and warrants to ODS that:

- 7.2.1. The Source Code of the Licensed Software or any portion, version or Derivative Work thereof has not been provided to any third parties except for HCL;
- 7.2.2. As of the Effective Date, the Licensed Software does not knowingly infringe any issued United States patent or any other intellectual property right of any third party.
- 7.2.3. No indispensable third-party software or other product (except for Seagate Software's read-only version of its Crystal Reports product) is required for ODS to use the Licensed Software as delivered and contemplated hereunder;
- 7.2.4. As of the Effective Date, there are no liens, security interests or other encumbrances on, with respect to, or relating to, the Licensed Software or the RSA Kane Documentation.
- 7.2.5. To the best of its knowledge, there is no action, suit, investigation or proceeding pending against, threatened against, or affecting the Licensed Software before any court or arbitrator or any governmental body, agency or official.
- 7.2.6. Each Contract is a valid and binding agreement of RSA and is in full force and effect and neither RSA nor, to the knowledge of RSA, any other party thereto is in default in any material respect under the terms of any such Contract.
- 7.2.7. It has all right, title, and interest in and to the Licensed Software.
- 7.2.8. Exhibits A and B identify all intellectual property owned by RSA that relates to the Licensed Software, except for common law trademarks.

8. CONFIDENTIALITY

- 8.1. **General Definition.** "Confidential Information" means any information: (i) disclosed by one party (the "Disclosing party") to the other (the "Receiving party"), which, if in written, graphic, machine-readable or other tangible form is marked as "Confidential" or "Proprietary", or which, if disclosed orally or by demonstration, is identified at the time of initial disclosure as confidential and reduced to writing and marked "Confidential" within thirty (30) days of such disclosure; or (ii) which is otherwise deemed to be confidential by the terms of this Agreement.
- 8.2. **Particular Confidential Information.** The Source Code and all unpublished RSA Kane Documentation shall be considered Confidential Information.

- 8.3. **Exclusions.** Notwithstanding paragraphs 8.1 and 8.2 hereof, Confidential Information shall exclude information that the Receiving party can demonstrate: (i) was independently developed by the Receiving party without any use of the Disclosing party's Confidential Information or by the Receiving party's employees or other agents (or independent contractors hired by the Receiving party) who have not been exposed to the Disclosing party's Confidential Information; (ii) becomes known to the Receiving party, without restriction, from a source other than the Disclosing party without breach of this Agreement and that had a right to disclose it; (iii) was in the public domain at the time it was disclosed or becomes in the public domain through no act or omission of the Receiving party; or (iv) was rightfully known to the Receiving party, without restriction, at the time of disclosure.
- 8.4. **Compelled Disclosure.** If the Confidential Information of a Disclosing party must be disclosed by the Receiving party pursuant to the order or requirement of a court, administrative agency, or other governmental body, the Receiving party shall (i) provide prompt notice thereof to the Disclosing party and (ii) use commercially reasonable efforts without the payment of money to obtain a protective order or otherwise prevent public disclosure of such information.
- 8.5. **Confidentiality Obligation.** The Receiving party shall treat as confidential all of the Disclosing party's Confidential Information and shall not use such confidential Information except as expressly permitted under this Agreement. Without limiting the foregoing, the Receiving party shall use at least the same degree of care which it uses to prevent the disclosure of its own confidential information of like importance, but in no event with less than reasonable care, to prevent the disclosure of the Disclosing party's Confidential Information.
- 8.6. **Confidentiality of Agreement.** Each party agrees that the terms and conditions, but not the existence, of this Agreement shall be treated as the other's Confidential Information and that no reference to the terms and conditions of this Agreement or to activities pertaining thereto can be made in any form of public or commercial advertising without the prior written consent of the other party; provided, however, that each party may disclose the terms and conditions of this Agreement; (i) as required by any court or other governmental body; (ii) as otherwise required by law; (iii) to legal counsel of the parties; (iv) in connection with the requirements of an initial public offering or securities filing; (v) in confidence, to accountants, banks, and financing sources and their advisors; (vi) in confidence, in connection with the enforcement of this Agreement or rights under this Agreement; (vii) in confidence, in connection with a merger or acquisition or proposed merger or acquisition, or the like; or (viii) as contemplated by the parties in connection with Sections 5.2.3 and 5.2.8 above.
- 8.7. **Remedies.** Unauthorized use by a party of the other party's Confidential Information will diminish the value of such information. Therefore, if a party breaches any of its obligations with respect to confidentiality or use of confidential Information hereunder,

the other party shall be entitled to seek equitable relief to protect its interest therein, including but not limited to injunctive relief, as well as money damages.

9. LIMITATION OF LIABILITY

- 9.1. UNDER NO CIRCUMSTANCES SHALL RSA'S TOTAL LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, REGARDLESS OF THE CAUSE OF ACTION UNDER WHICH SUCH DAMAGES ARE SOUGHT, INCLUDING WITHOUT LIMITATION BREACH OF CONTRACT, INDEMNITY, NEGLIGENCE OR OTHER TORT, EXCEED THE TOTAL AMOUNT PAID BY ODS HEREUNDER.
- 9.2. TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, EXCEPT FOR AMOUNTS PAYABLE UNDER SECTION 10 HEREOF OR BREACHES OF SECTION 8 HEREOF, NEITHER PARTY HERETO SHALL BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, MULTIPLE, OR PUNITIVE DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING LIMITATION OF LIABILITY SHALL APPLY REGARDLESS OF THE CAUSE OF ACTION UNDER WHICH SUCH DAMAGES ARE SOUGHT, INCLUDING WITHOUT LIMITATION BREACH OF CONTRACT, NEGLIGENCE OR OTHER TORT.

10. INDEMNITY

- 10.1. **RSA Indemnification.** RSA shall defend, at its expense, ODS from and against any third party claims (A) alleging that the Licensed Software infringes any (i) U.S. patent issued on or before the Effective Date, (ii) U.S. trademark, (iii) copyright, (iv) trade secret, or (v) other intellectual property right, or (B) alleging any breach by RSA of any representation or warranty under this Agreement and shall indemnify ODS against all damages payable as part of a final judgement or settlement (upon the written consent of ODS) thereof. Should the Licensed Software become, or in RSA's opinion be likely to become, the subject of a claim of infringement, RSA shall, at RSA's election, (a) obtain for ODS the right to continue using such Licensed Software, pursuant to the terms and conditions of this Agreement, (b) replace or modify such Software so that it becomes noninfringing but functionally equivalent, or, if neither of the foregoing is commercially reasonable, (c) return to ODS an amount equal to the license fee and royalties paid by ODS to RSA for all copies of the Licensed Software subject to the claim of infringement, provided that ODS returns to RSA all such copies in its possession, upon which the licenses granted for such software in this Agreement in the infringing jurisdiction shall terminate. The indemnification obligation of this Section 10.1 shall not apply to any claim arising out of (I) the combination of the Licensed Software with other products (other than the combination of the Licensed Software with hardware reasonably necessary for its use) not claimed to be owned or developed by or on behalf of RSA, to the extent that the alleged infringement would have been avoided absent such combination, (II) any Derivative Work of the Licensed Software prepared by anyone other than RSA or a party acting on RSA's behalf, to the extent that alleged infringement

would have been avoided absent such modification, or (III) use of the Licensed Software in a manner not provided for or described in the RSA Kane Documentation, or (IV) portions of the Licensed Software made to meet ODS's specific request.

- 10.2. **ODS Indemnification.** ODS shall defend, at its expense, RSA from and against any third party claims (A) alleging any breach by ODS of any representation or warranty under this Agreement and (B) any claim arising out of or in connection with any performance or nonperformance of ODS of the Assumed Obligations after the date of this Agreement and shall indemnify RSA against all damages payable as part of a final judgement or settlement thereof.
- 10.3. **Notice of Indemnification.** A party seeking indemnification pursuant to this Section 10 (an "Indemnified Party") from or against the assertion of any claim by a third person (a "Third Person Assertion") shall give prompt notice to the party from whom indemnification is sought (the "Indemnifying Party"); provided, however, that failure to give prompt notice shall not relieve the Indemnifying Party of any liability hereunder (except to the extent the Indemnifying Party has suffered actual material prejudice by such failure).
- 10.4. **Assumption of Defense.** Within ten (10) business days of receipt of notice from the Indemnified Party pursuant to Section 10.3 hereof, the Indemnifying Party shall have the right exercisable by written notice to the Indemnified Party, to assume the defense of a Third Person Assertion. If the Indemnifying Party assumes such defense, the Indemnifying Party may select counsel, which shall be reasonably acceptable to the Indemnified Party.
- 10.5. **Failure to Defend.** If the Indemnifying Party (a) does not assume the defense of any Third Person Assertion in accordance with Section 10.4 hereof; or (b) having so assumed such defense, unreasonably fails to defend against such Third Person Assertion, then, upon ten (10) days' written notice to the Indemnifying Party, the Indemnified Party may assume the defense of such Third Person Assertion. In such event, the Indemnified Party shall be entitled under this Section 10 as part of its damages to indemnification for the costs of such defense.
- 10.6. **Conflicts of Interest.** If the Indemnifying Party has been advised by the written opinion of counsel to the Indemnified Party that the use of the same counsel to represent both the Indemnified Party and the Indemnifying Party would present a conflict of interest, then the Indemnified Party may select its own counsel to represent the Indemnified Party in the defense of the matter and the costs of such defense shall be borne by the Indemnifying Party. The Indemnifying Party shall be entitled to continue to handle its own representation in such matter through its own counsel.
- 10.7. **Settlement.** The party controlling the defense of a Third Person Assertion shall have the right to consent to the entry of judgment with respect to, or otherwise settle, such Third Person Assertion with the prior written consent of the other party, which consent shall not be unreasonably withheld.

- 10.8. **Participation.** The Indemnifying Party and the Indemnified Party shall cooperate, in the defense or prosecution of any Third Person Assertion. The Indemnified Party shall have the right to participate, at its own expense, in the defense or settlement of any Third Person Assertion.
- 10.9. **Exclusive Remedy.** NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, EXCEPT FOR A CLAIM UNDER SECTION 8 HEREOF, THE FOREGOING STATES EACH PARTY'S ENTIRE LIABILITY, AND EACH OTHER PARTY'S EXCLUSIVE REMEDY, FOR PROPRIETARY RIGHTS INFRINGEMENT.

11. TERM AND TERMINATION

- 11.1. **Term.** This Agreement shall take effect on the Effective Date and shall continue in full force and effect for the life of the RSA Kane Intellectual Property unless terminated earlier in accordance with this Section. In the event that this Agreement is terminated, ODS agrees to cease immediately making, using, distributing and selling the Licensed Software.
- 11.2. **Termination.**
- 11.2.1. Should ODS breach its royalty payment obligations under Section 4, RSA may notify ODS of such breach and give ODS no less than thirty (30) days prior written notice in which to correct the breach. Should ODS not correct the breach within that time then RSA shall provide written notice of its intent to terminate this Agreement and the licenses granted to ODS hereunder. Upon receipt by ODS of RSA's written notice, the parties shall enter into good faith discussions to attempt to resolve the dispute. In the event that, after sixty (60) days, the parties are unable to resolve the dispute, the parties shall enter into arbitration according to the rules of the American Arbitration Association at a mutually agreed upon time and place. RSA shall not terminate this Agreement until completion of the steps provided for in this Section.
- 11.2.2. RSA shall have the right to terminate this Agreement immediately should ODS, or any successor in interest to ODS, cease distribution of the Licensed Software (including all Derivative Works thereof). RSA shall also have the right to terminate this Agreement immediately should any bankruptcy, insolvency, or similar proceedings be instituted by or against ODS and such bankruptcy, insolvency, or similar proceeding is not withdrawn or dismissed within sixty (60) days, or if ODS is adjudicated a bankrupt or insolvent, or if ODS shall make a general assignment for the benefit of creditors. In the event that the Agreement is terminated under this Section, the Contracts will be assigned back to RSA and ODS shall provide the necessary documents and take the necessary actions to effect such assignment.

11.2.3. Any sublicense granted by ODS will survive termination and continue according to its terms provided that (1) it was properly granted, (2) RSA will have no obligation thereunder, (3) all the restrictions and limitations of this Agreement shall apply to the sublicensee as though this Agreement continued in effect, (4) RSA shall receive all consideration due in connection with the sublicense, and, in any event the payments to RSA based on the sublicense and activity thereunder shall be at least as great as they would have been had this Agreement remained in effect and such action been taken by ODS and (5) in addition to any termination rights under the sublicense agreement, RSA shall be entitled to terminate such sublicense on the same basis as is provided herein for termination of this Agreement.

11.3. **Survival of Certain Terms.** The following provisions of this Agreement shall survive any expiration or termination hereof: 1, 3, 4, 6, 7, 8, 9, 10 (but only with respect to events occurring prior to such expiration or termination), 11 and 12.

12. MISCELLANEOUS PROVISIONS

12.1. **Governing Law and Jurisdiction.** THIS AGREEMENT WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE COMMONWEALTH OF MASSACHUSETTS, IRRESPECTIVE OF ITS CHOICE OF LAW PRINCIPLES. The Parties agree that the United Nations Convention on Contracts for the International sale of Goods shall not apply to this Agreement and hereby exclude such application.

12.2. **Bankruptcy.** All rights and licenses granted to ODS under or pursuant to this Agreement are, and shall otherwise be deemed to be, for purposes of Section 365(n) of the United States Bankruptcy Code, licenses to rights of "intellectual property" as defined thereunder. Notwithstanding any provision contained herein to the contrary, if RSA is under any proceeding under the Bankruptcy Code and the trustee in bankruptcy of RSA, or RSA, as a debtor in possession, rightfully elects to reject this Agreement, ODS may, pursuant to 11 U.S.C. Section 365(n)(1) and (2), retain any and all of ODS's rights hereunder, to the maximum extent permitted by law, subject to the payments specified herein.

12.3. **No Liens.** RSA shall not impose or incur, and shall not permit the imposition or placement of, any liens, security interests or other encumbrances on, with respect to, or relating to the Licensed Software or the RSA Kane Documentation, except as may be incurred or imposed by or in favor of ODS.

12.4. **Binding upon Successors and Assigns.** Neither party shall assign or delegate this Agreement or any right or obligation hereunder, by operation of law or otherwise, and any purported assignment or delegation shall be void and without force or effect, except (a) following the written consent of the other party or (b) in connection with a change of control of such party; provided that (i) except as provided in Section 5.5 above, any permitted successor to a party shall be bound by each and every obligation and restriction to which such party is bound hereunder, (ii) no license granted hereunder shall apply to any conduct or product of any such successor prior to the relevant

assignment of this Agreement and (iii) the assigning party shall provide the other party with prompt notice of the relevant assignment of this Agreement. Notwithstanding any other provision hereof, neither (1) a sale of assets unrelated to this Agreement, (2) any merger or other transaction to which a party is the surviving entity nor (3) any reincorporation shall be considered an assignment or delegation hereof. For purposes of this paragraph, "change of control" of a party shall mean the direct or indirect acquisition of either (i) the majority of such party's voting stock or (ii) all or substantially all of the assets of such party to which this Agreement relates in a single transaction or a series of related transactions.

12.5. **Severability.** If any provision of this Agreement is found to be invalid or unenforceable, such provision shall be severed from the Agreement and the remainder of this Agreement shall be interpreted so as best to reasonably effect the intent of the parties.

12.6. **Entire Agreement.** This Agreement, together with its exhibits, constitutes the entire understanding and agreement of the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements, representations and understandings between the parties.

12.7. **Amendment and Waivers.** Any terms or provisions of this Agreement may be amended, and the observance of any term of this Agreement may be waived, only by a writing signed by a duly authorized representative of the party to be bound. The failure of either party to enforce, at any time, any of the provisions of this Agreement or the failure to require, at any time, performance by the other party of any of the provisions of this Agreement, shall in no way be construed to be a present or future waiver of such provisions, nor shall it in any way affect the ability of either party to enforce each and every such provision thereafter. The express waiver by either party of any provision, condition or requirement of this Agreement shall not constitute a waiver of any future obligation to comply with such provision, condition or requirement.

12.8. **Notices.** Any notice, demand, or request with respect to this Agreement shall be in writing and shall be effective only if it is delivered by hand or mailed, certified or registered mail, postage prepaid, return receipt requested, addressed to the appropriate party as follows: Such communications shall be effective when they are received by the addressee; but if sent by certified or registered mail in the manner set forth above, they shall be effective not later than three (3) days after being deposited in the mail. Any party may change its address for such communications by giving notice to the other party in conformity with this paragraph.

To RSA:

RSA Security, Inc.
20 Crosby Drive
Bedford, Massachusetts 01730
Attn: Chief Financial Officer

With a copy to:
RSA Security, Inc.
20 Crosby Drive
Bedford, Massachusetts 01730
Attn: General Counsel

To ODS:
ODS Networks, Inc.
1101 East Arapaho Road
Richardson, TX 75081
Attention: Chief Financial Officer

With a copy to:
Brobeck, Phleger & Harrison LLP
301 Congress Avenue, Suite 1200
Austin, TX 78701
Attention: Jeffrey L. Garrett

12.9. **Federal Government License.** ODS shall ensure that any contract between ODS and the United States government in connection with the Licensed Software or the RSA Kane Documentation shall include the following:

The Licensed Software and RSA Kane Documentation shall be deemed to be "commercial computer software" and "commercial computer software documentation" pursuant to DFAR Section 227.7202 and FAR Section 12.212, as applicable. Any use, modification, reproduction, release, performance, display or disclosure of the Licensed Software and/or RSA Kane Documentation to or by the U.S. government shall be governed solely by the terms of this agreement and such regulations.

12.10. **Remedies Non-Exclusive.** Except as otherwise expressly provided, any remedy provided for in this Agreement is deemed cumulative with, and not exclusive of, any other remedy provided for in this Agreement or otherwise available at law or in equity. The exercise by a party of any remedy shall not preclude the exercise by such party of any other remedy.

12.11. **Independent Contractors.** The parties are independent contractors. Nothing contained herein or done pursuant to this Agreement shall constitute either party the

agent of the other party for any purpose or in any sense whatsoever, or constitute the parties as partners or joint venturers.

12.12. **Titles and Subtitles.** The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

12.13. **Counterparts.** This Agreement may be executed in counterparts or duplicate originals, both of which shall be regarded as one and the same instrument, and which shall be the official and governing version in the interpretation of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of the last signature below.

RSA SECURITY INC.

By: A.W. Lovell

Title: PRESIDENT

ODS NETWORKS, INC.

By: Timothy W. Kinnear

Title: Chief Operating Officer

LANZA7216/1.857212-5

RSA Kane Intellectual Property Rights

Patents

None.

Copyrights

Registration No.	Work	Date Registered
TX 615 073	Kane Security Analyst	December 20, 1993
TX 839 126	Kane Security Monitor	November 21, 1997
TX 852 097	Kane Security Officer	February 9, 1998

Trade Secrets

None.

RSA Kane Trademarks**Trademarks**

<u>Country</u>	<u>Appl No./ Reg. No</u>	<u>Mark</u>	<u>Filing Date/ Reg. Date</u>	<u>Class</u>
US	1,824,782	Intrusion Detection	March 1, 1994	42
US	1,881,250	Shadoware	Feb. 28, 1995	9
US	2,075,564	KSA	July 1, 1997	9
US	75/414,650	KSO	Jan. 7, 1998	9
US	75/613,505	Kane Security Analyst	Dec. 30, 1998	9
US	75,612,007	Kane Security Monitor	March 31, 1997	9
JP	10-56996	Kane Security Analyst	July 3, 1998	9
JP	10-56997	Kane Security Monitor	July 3, 1998	9

