

SETTLEMENT AGREEMENT

This Settlement Agreement ("**Agreement**") is made as of _____, 1997 ("**Effective Date**"), between XYZ L.P. , an Illinois limited partnership ("**XYZ**") and ABC, individually.

RECITALS

A. XYZ owns the pending federal trademark registrations for the marks **XYZ**,TM SN 75/007,217 and **XYZ**TM (**and design**), SN 75/007,219, for use on or in connection with retail store and repair services for office automation equipment, namely photocopiers, facsimile machines, shredders, and digital duplicators (International Classes 42 and 35 respectively).

B. ABC or any entity in which ABC is agent or owner thereof (collectively "**ABC**") has used the *Image Tech.* name or mark in connection with photography and digital imaging goods and services.

C. XYZ has demanded that ABC cease all use the name or mark *Image Tech* .

D. XYZ and ABC wish to settle any possible conflicts or disputes concerning ABC's use of the name or mark *Image Tech.* in connection with photography and digital imaging goods and services.

E. The parties expressly agree that this settlement is not, and shall not be construed as an admission to their actual rights or to any liability with respect to this matter.

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

1. Representations of ABC.

ABC represents and warrants as follows:

1.1 Exhibit A attached to this Agreement is an accurate representation of the manner in which ABC has used the *Image Tech.* name or mark. ABC has made no use of the *Image Tech.* name or mark other than as shown in Exhibit A.

1.2 ABC has not applied to register or registered with the U.S. Patent and Trademark Office ("**PTO**"), or with any other trademark office in any state or foreign country, the name or mark *Image Tech* .

1.3 ABC or any entity in which ABC is agent or owner thereof, has the right, ability and authority to enter into this Agreement and to carry out the terms of this Agreement and has not assigned or in any way conveyed, sold, donated, transferred, licensed, or encumbered all or any portion of any rights relating to this Agreement, or referred to in this Agreement.

1.4 ABC agrees and acknowledges that its representations and warranties to XYZ are a material part of this Agreement, and XYZ has entered into this Agreement based on its

reliance on these representations and warranties.

2. Representations of XYZ. XYZ warrants and represents that it is the owner of all right, title and interest to the trademarks **XYZ™ and XYZ™ (and design)** and that no other entity, corporation, individual or otherwise has any right or claims to those trademarks. XYZ further represents and warrants that no third party is required to be a party to this Agreement.

3. Reservation of Rights by XYZ. XYZ reserves the right to and ABC agrees and acknowledges that XYZ has the right to oppose in the future any registration or use for any name or mark confusingly similar to *Image Tech.* or **XYZ™** (as the case may be) or which may directly conflict or contravene the express terms and intent of this Agreement.

4. Cessation of use of *Image Tech.* by ABC. ABC will cease and forever desist from all use of the name or mark *Image Tech.* including the cessation of all display, sale, offering for sale, shipment, advertising, promotion or authorizing any third party to do the same in connection with photography and digital imaging goods and services sold or offered for sale under the name or mark *Image Tech.* by June 30, 1997.

5. ABC's Use of *Image Tech.*

5.1 ABC shall not use in advertising or promotion or as a trademark, trade name, service mark, business name, corporate name, trading style, or use in any way in connection with photography and digital imaging goods and services, or any promotion or advertising thereof any name or mark that includes, in whole or in part, *Image Tech.* or **XYZ™**, or any other names or marks confusingly similar to the **XYZ™** trademark of XYZ, however, nothing will preclude ABC from the use of a name or term (including but not limited to "image", "technology", or any combinations or abbreviations of those terms) which is descriptive of and used fairly and in good faith only to describe the goods or services of ABC or their geographic origin.

5.2 ABC shall not apply to register with the PTO or in any state or foreign trademark office or in any jurisdiction anywhere in the world or authorize any third party to apply to register any name or mark in connection with photography and digital imaging goods and services, which includes in whole or in part the term *Image Tech.* or **XYZ™** or any marks the use of which would violate the provision of this Agreement.

5.3 XYZ agrees to allow ABC to use any existing material which portrays the *Image Tech.* name or mark as is currently in contention up to and through June 30, 1997.

6. ABC SHALL NOT Challenge XYZ's Mark. ABC shall not oppose or challenge any use by XYZ of the marks **XYZ™** or **XYZ™ (and design)** or any other phonetic equivalent of **XYZ™** in connection with the sale, advertising, promotion, or marketing of retail store and repair services for office automation equipment, including, but not limited to, photocopiers, facsimile machines, shredders, and digital duplicators or any other related services.

7. Mutual Releases. XYZ and ABC, for themselves, and any and all of their parents,

subsidiaries, affiliates, divisions, predecessors, assigns, officers, directors, employees, distributors, attorneys and agents hereby acknowledge full and complete satisfaction of and do hereby release and forever discharge the other as well as their respective customers, parents, subsidiaries, affiliates, predecessors, successors, assigns, officers, directors, employees, distributors, attorneys and agents from any and all claims, rights, demands, obligations, agreements, contracts, representations, promises, liens, accounts, debts, liabilities, damages, expenses, costs, attorneys' fees, injunctive relief, obligations and causes of action of every kind and nature, whether in law or equity, known or unknown, suspected or unsuspected, existing or claim to exist which that party has ever had, now has, or claims to have, against the other with respect to ABC's prior use of the *Image Tech* name or mark in connection with photography and digital imaging goods and services, but excluding those obligations and claims arising out of a failure of a party to perform in conformity with the terms of this Agreement.

8. Binding Effect. This Agreement is binding upon and shall inure to the benefit of ABC and XYZ as well as any of their respective successors, assigns, grantees or transferees.

9. Severability. If a court of competent jurisdiction rules that any one or more of this Agreement's provisions are invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any of this Agreement's provisions, this Agreement shall be construed as if it had never contained such invalid, illegal or unenforceable provisions, and any such unenforceable provisions shall be modified and enforced to the fullest extent then legally possible.

10. Descriptive Headings. All section headings, titles, and subtitles are in this Agreement for convenience of reference only, and are to be ignored in any construction of this Agreement's provisions.

11. Entire Agreement. This Agreement supersedes any prior understanding, written agreements, or oral arrangements between the parties respecting the subject matter which this Agreement addresses, the terms of this Agreement or any other written instrument which concerns or affects the subject matter of this Agreement.

12. Complete Understanding. This Agreement constitutes the complete understanding between the parties. No alterations or modifications of any provisions of this Agreement shall be valid unless made in writing and signed by all of the parties.

13. Waiver. A party's attempted waiver, consent or authorization of any kind whatsoever, whether required under this Agreement, or granted pursuant to any breach or default of any term of this Agreement, shall not be effective or binding upon such party unless the same is in writing and signed by such party. Any such waiver, consent or authorization shall be valid only to the extent specifically set forth in such writing. No failure or delay on the part of either party to this Agreement to exercise any right, remedy, power or privilege in connection with this Agreement shall preclude or limit any other or further exercise of such right or the exercise of any other right, remedy, power or privilege.

14. Advice of Counsel. The parties have each carefully reviewed this Agreement, and understood its terms. Each party has sought legal advice with counsel experienced in issues of

trademark law in regards to this Agreement and has relied wholly upon its own judgment and knowledge in executing this Agreement. Each party fully understands and voluntarily accepts each and every provision contained in this Agreement.

15. Construction of Documents. This Agreement has been prepared and negotiations have occurred in connection with such preparation pursuant to the joint efforts of the parties to this Agreement. This Agreement therefore shall be construed simply and fairly and not strictly for or against any party to this Agreement.

16. Extent of the Agreement. This Agreement shall remain in full force and effect so long as XYZ has any rights to the **XYZ™ and XYZ™ (and design)** marks in the United States, its territories or if registered or recognized in any foreign countries.

17. No Agency or Partnership. The parties agree that this Agreement does not constitute ABC as the agent, legal representative, partner or joint venturer of XYZ for any purpose whatsoever. ABC has no right to create any obligation or responsibility, express or implied, on behalf of or in the name of XYZ, or to bind XYZ in any manner or concerning any matter.

18. Authority to Sign. Each of the persons signing this Agreement does hereby warrant that he or she is duly authorized to enter this Agreement on behalf of the party for which he or she has signed, that he or she has the authority to bind that party, and that such party has taken all steps necessary to authorize its entry into this Agreement.

19. Notices. All notices concerning this Agreement shall be given in writing, as follows: (i) by actual delivery of the notice into the hands of the party entitled to receive it, in which case such notice shall be deemed given on the date of delivery; (ii) by mailing such notice by registered or certified mail, return receipt requested, in which case the notice shall be deemed given five (5) days from the date of its mailing; (iii) by Federal Express, UPS, DHL or any other overnight carrier, in which case the notice shall be deemed given two (2) days from the date of transmission; or (iv) by Facsimile or telecopy, in which case the notice shall be deemed given on the date it is sent. All notices which concern this Agreement shall be addressed as follows:

If to XYZ:

If to ABC:

20. Applicable Law and Venue. The laws of the State of Illinois in the United States of America (other than those pertaining to conflicts of law) shall govern the interpretation of this Agreement, irrespective of the fact that one of the parties now is or becomes a resident of a different county or state (within the United States of America). The parties shall submit all disputes which arise under this Agreement to state and federal courts located in the City of Chicago, Illinois for resolution. The parties acknowledge that the aforesaid courts shall have exclusive jurisdiction over this Agreement, and specifically waive any claims they may have which involve jurisdiction or venue, including but not limited to forum non conveniens. Service

of process for any claim which arises under this Agreement shall be valid if made in accordance with the notice provisions set forth in Section 19 above. If service of process is made as aforesaid, the party served agrees that such service shall constitute valid service, and specifically waives any objections the party served may have under any state or federal law or rule concerning service of process. Service of process in accordance with this Section shall be in addition to and not to the exclusion of any other service of process methods legally available.

21. Recitals Incorporated. The Recitals to this Agreement are not merely precatory but are fully incorporated into and constitute a substantive part of this Agreement.

22. Counterparts. This Agreement may be executed in any number of counterparts and each such counterpart will for all purposes constitute part of one original.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed as of the Effective Date.

XYZ L.P., an Illinois limited partnership

By: XYZ, Inc., a general partner

By: _____

Its: President

ABC, an individual
