



## United Infrared, Inc.

# United Infrared DCIR Membership Agreement<sup>©</sup>

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This Agreement is executed and effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 2010 (the "Effective Date") by United Infrared, Inc., ("UI"), a North Carolina corporation having its principal place of business in Randleman, North Carolina and \_\_\_\_\_, ("AFILLIATE") a \_\_\_\_\_ [Corporation, LLC, Etc.], having its principal place of business in \_\_\_\_\_ [City/State].

### **TERMS OF AGREEMENT**

This Agreement will commence on the effective date and continue in force for 12 months as long as Affiliate agrees at all times to act in a manner that does not harm, discredit or devalue the tangible rights or goodwill of United Infrared, Inc. United Infrared, Inc. reserves the right to terminate this Agreement upon delivery of notice in writing to Affiliate if:

- a) Affiliate does not meet the terms and conditions of this Agreement, and/or,
- b) Affiliate or United Infrared, Inc. desires to withdraw from this Agreement and delivers such notice in writing.

### **1. DataCentIR™ Affiliate / United Infrared, Inc. Relationship**

It is agreed and understood that DataCentIR™ ("DCIR") Affiliate is an independent contractor and not an employee of United Infrared, Inc. Neither party shall be liable for any debts, accounts, obligations, or other liabilities of the other party or its employees. It is expressly recognized that no fiduciary relationship exists between the parties except on a particular project agreed upon in advance. United Infrared, Inc. has no proprietary interest in the Affiliate and has no interest in or responsibilities for the business of the Affiliate except to the extent set forth in this Agreement.

### **2. Confidentiality**

Through the expenditure of time, effort and money, UI has acquired experience, skills, methods, techniques and knowledge relating to the techniques and marketing of its infrared thermographic imaging services. UI performs its thermographic imaging services using confidential and proprietary processing techniques and analyses. The business operates with specialized formats, systems, standards, specifications, methods, procedures, software and technology, which are confidential and proprietary to UI. One of the applications that UI has developed is DataCentIR™. Affiliate acknowledges that he or she will obtain knowledge of United Infrared, Inc.'s competitive information, techniques, business procedures, operational systems, service rates, fee schedules, marketing methods and techniques and customer leads, which are proprietary to United Infrared, Inc. and agrees not to divulge, disclose or communicate in any manner any of the foregoing to any third party or use such confidential information in an unauthorized manner without prior written consent of United Infrared, Inc. Affiliate agrees to protect such information and treat it as strictly confidential. The obligation of the Affiliate not to disclose confidential information of United Infrared, Inc. shall commence with the effective date of this Agreement and continue for a period of three (3) years after expiration or termination of this Agreement.

### **3. Covenants Not To Compete**

Affiliate acknowledges that he or she will acquire certain proprietary information including without limitation, customer lists, customer needs, business plans, technology and other confidential and proprietary information from the other. Through the expenditure of time, effort and money, UI has acquired experience, skills, methods, techniques and knowledge relating to the techniques and marketing of its infrared thermographic imaging services, specifically Thermal Mapping of Data Centers. UI performs its thermographic imaging services using confidential and proprietary processing techniques and analyses. The business operates with specialized formats, systems, standards, specifications, methods, procedures, software and technology, which are confidential and proprietary to UI. In consideration of this agreement and the appointment of Affiliate to perform services, other covenants in this Agreement and the disclosure of such confidential and proprietary information Affiliate promises and agrees as follows:

- a. **Covenant Term.** The “Covenant Term” shall commence on the effective date and continue until three (3) years following the date of termination of this Agreement, with or without cause.
- b. **Personnel.** During the Covenant Term, the parties will not, directly or indirectly, on their own behalf or on behalf of another, induce or attempt to induce any of the other’s employees or independent contractors to leave their employment or engagement.
- c. **Non-Solicitation.** During the Covenant Term, neither will, directly or indirectly, sell or assist any person in selling, or offer to sell or assist any person in offering to sell, any competing product or service to any of the other’s clients within the geographic area: North America. The term “competing product or service” means any infrared Data Center Thermal Mapping service, whether application or marketing/business related, which is the same as or substantially similar to, and competitive with, such services provided by UI. The term “client” means any person or entity that is conducting business within any geographic territory described above.
- d. **Acknowledgements.** The parties acknowledge and agree that the geographical area listed above is reasonable and fairly describe areas in which each currently engages in business or intends to engage in business (as applicable) and for which each has access to client lists and confidential information of the other. The parties intend the above geographical areas to be completely severable and independent from each other, and any invalidity or unenforceability of this Agreement with respect to any one area shall not render this Agreement invalid or unenforceable as applied to any one or more of the areas.
- e. **Confidential Information.** Neither company shall at any time (i) disclose or otherwise directly or indirectly use any confidential or proprietary information of the other, including without limitation, information relating to past, current or prospective development, product and/or marketing plans, business strategies, contracts between other parties, software, technology, processes, procedures, trade secrets, personnel matters, technical specifications, financial information and forecasts, customer and customer prospects information, special customer needs, whether or not such information is in tangible medium and whether or not it is marked “Confidential” or is similarly legended (the “Confidential Information”), or (ii) make any copies of, or extracts from, any Confidential Information, other than strictly incidental to, and solely in furtherance and within the scope of the duties without expressed written consent. Upon termination of this agreement, each will return all property of each other and all documents (including copies) relating to the Business and delete all Confidential Information from any electronic medium.
- f. **Right to Injunction.** Affiliate agrees that a breach of the provisions of the Covenants Not To Compete of this Agreement would cause UI irreparable harm for which there is no adequate remedy at law. Accordingly, in the event of any threatened or actual breach, UI shall be entitled to enforce this Agreement by injunctive and any other appropriate equitable relief in any court of competent jurisdiction, in addition to other remedies available at law.
- g. **Attorneys’ Fees.** If the either company seeks to enforce the foregoing provisions of this Agreement, it shall be entitled to an award of its reasonable attorneys’ fees and expenses incurred in connection therewith.

#### **4. Trademarks; Proprietary Materials**

UI's names, partner companies names and other trade names, trademarks, service marks, logos and other commercial symbols as are now designated or may hereafter be designated by the other (collectively the "Marks"), the systems, formats, designs, methods, specifications, standards, procedures, software and other technology, whether patented, licensed, or designated by each company, are and shall be the sole property of the company who owns the trademarks etc. Each shall have no right to use the Marks of the other without the express written consent and any such use shall be limited to the conduct of business pursuant to and in compliance with this Agreement. The parties agree that all usage of the Marks and proprietary and confidential information by each other's companies will be used to benefit both companies. All data, documentation and imagery produced by or provided by either company in connection with a job shall be the joint property of UI and Affiliate. All imagery taken by Affiliate while on a job is the joint property of Affiliate and UI and may not be used for any purpose or given to a third party without the written consent of UI.

#### **5. Performance of Work**

Affiliate agrees to treat United Infrared, Inc.'s sales leads in a professional manner, perform high quality work, use only DataCentIR approved equipment, maintain and protect the equipment and employ only those who have successfully completed the DCIR training class and that are skilled and competent workers.

#### **6. Territories**

Unlike some other UI Modules, DCIR Module purchase does not include any territory assignments.

#### **7. Safety**

Affiliate agrees to conduct all work in an extraordinarily safe manner at all times as data center operations are extremely important to the operation of our client's corporations. Affiliate shall be contractually and financially responsible for initiating, maintaining and supervising all safety and health precautions and procedures in connection with the work. Affiliate shall take all reasonable precautions for the safety and health of, and shall provide all reasonable protection to prevent damage, injury or loss at the client data center to all employees performing any portion of the work and all other persons whom may be affected thereby. Affiliate shall keep all materials and equipment under the care, custody or control of the Affiliate. Affiliate shall take all reasonable precautions not to permit any employee to do work that violates OSHA law or to be exposed to harmful substances without providing adequate protection. Affiliate shall never allow an employee to perform hazardous work.

#### **8. Contracting, Referrals, Payments and Collections**

Before training class attendance, Affiliate agrees to complete this Agreement in full, including *Exhibit A - Contracting Fees / Payments and Collections*. This Agreement must be on file at UI's offices along with a Certificate of Insurance prior to the training class. During the term of this Agreement, in consideration of the marketing to clients and customers and the referral of clients and customers by United Infrared, Inc. to Affiliate, and by Affiliate to United Infrared, Inc., a Contracting Fee will be paid to the other party, depending on the type and amount of work carried out by Affiliate and UI. Affiliate will remit all payments to United Infrared, Inc. in a timely manner and UI will remit all payments to Affiliate in a timely manner.

## **9. Waiver and Release**

Before training class attendance, Affiliate agrees to complete this Agreement in full, including *Exhibit B - Liability Waiver and Release Form*. This document must be on file at UI's offices along with a Certificate of Insurance prior to attending any training class.

## **10. Insurance**

Before training class attendance and before any work is performed by Affiliate, Affiliate agrees to obtain and maintain through the term of this agreement, business liability insurance, naming United Infrared, Inc. as Additional Insured and offer a Waiver of Subrogation in favor of United Infrared, Inc. and Stockton Infrared Thermographic Services, Inc. Such insurance shall be underwritten by insurers satisfactory to United Infrared, Inc. and Stockton Infrared Thermographic Services, Inc. and shall be written for the limits of at least \$500,000 dollars. Affiliate shall furnish United Infrared, Inc. a current Certificate of Insurance stating the limits of liability, the period of coverage, the parties insured (United Infrared, Inc.) and containing an agreement by the insurer not to terminate or materially modify such insurance without notifying United Infrared, Inc. in writing at least thirty (30) calendar days in advance of such termination or modification. Insurance coverage provided for by the Affiliate shall be primary and any insurance maintained by United Infrared, Inc. shall be in excess and not contributory to Affiliate insurance requirements or coverage. Affiliate agrees to provide all Workers' Compensation insurance required in the jurisdictions in which Affiliate provides service.

## **11. Licenses, Permits and Taxes**

Affiliate agrees to obtain all state and local licenses and permits that may be required by law. Affiliate further agrees that it shall be solely responsible for the payment of all taxes that may be incurred in the performance of the work, including but not limited to income, self-employment, sales, use, occupational and unemployment taxes and will fully and properly report all payments received from United Infrared, Inc. pursuant to this agreement as business income to all appropriate federal, state and local authorities.

## **12. Disputes**

If a dispute arises between Affiliate and United Infrared, Inc., out of, or in relation to this contract, or the breach thereof, and if the dispute cannot be settled through negotiation, the parties agree to first try in good faith to settle the dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Rules before restoring it to arbitration, litigation, or some other dispute resolution procedure. If said dispute cannot be settled by mediation, Affiliate and United Infrared, Inc. agree to submit the matter to non-binding arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

## **13. Representations**

Affiliate agrees to make no direct representations to United Infrared, Inc. clients, customers, or the public on behalf of United Infrared, Inc., and further agrees that all United Infrared, Inc. generated work will be governed by the Contracting Fees / Payments and Collections Fee structure. United Infrared, Inc.-generated work includes, but is not limited to, direct telephone calls, correspondence or personal contacts from United Infrared, Inc. clients or customers to Affiliates, and referrals generated through work performed for United Infrared, Inc. clients or customers.

## **14. Indemnification**

Affiliate agrees that it shall indemnify, hold harmless and defend United Infrared, Inc., United Infrared, Inc. clients and customers and their respective agents and employees from and against all claims, damages, losses and expenses, including attorney's fees and costs, arising out of or resulting from the performance of this Agreement and the work, regardless of whether such acts are intentional, reckless or negligent. Affiliate further agrees to indemnify United Infrared, Inc., United Infrared, Inc.'s clients or customers and their respective agents and employees for any losses caused by Affiliate's failure to perform this Agreement in a professional manner that fully conforms to any and all specifications set forth in any contract between United Infrared, Inc. and United Infrared, Inc. clients or customers.

## **15. Remedies**

In the event that legal action is necessary to enforce the terms of this Agreement, the prevailing party in such action shall be entitled to receive its reasonable attorney's fees and attendant costs incurred in such proceeding from the other party.

## **16. Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina. If a claim is asserted in any legal proceeding, the parties irrevocably submit to the jurisdiction of the Municipal or Superior Court of the State of North Carolina, as appropriate, and agree that venue for any action or proceeding shall be in Greensboro, NC. This Agreement shall come into effect and force when executed by United Infrared, Inc. and may be subject to future changes in terms and conditions. Any such changes will be communicated in writing to the Affiliate who reserves the right to terminate this Agreement within thirty (30) calendar days of notification of such changes. Affiliate acknowledges that the person signing this agreement has authority to do so and that person has read this Agreement, understands it, and agrees to be bound by its terms and conditions and further agrees that it is the complete and exclusive statement of the agreement between the parties, which supersedes all prior and collateral agreements, understandings, statements, proposals oral or written and all other communications between the parties relating to the subject matter of this Agreement.

Affiliate agrees to maintain their membership in as affiliate of United Infrared, Inc., under the Affiliate Membership Program. This entitles the Affiliate to purchase equipment at discounted rates and entitles the Affiliate to purchase individual Modules which include training and marketing. These can be selected on-line and are subject to fees depending on the module. The UI membership is renewed on a year-to-year basis, based upon successful payment of the annual membership fee, currently \$500. The terms of this agreement are subject to change and may require affiliate to sign new agreement with renewal.

## **17. Miscellaneous**

This Agreement embodies and contains the entire Agreement of the parties hereto. Any prior or contemporaneous understandings or agreements relating to the subject matter hereof, whether written or oral, shall be void and of no effect. This Agreement may be amended only in a writing signed by all parties hereto. The waiver, by either party, of a breach of any provision of this Agreement shall not be deemed to be a waiver of any subsequent breach. This Agreement shall be binding upon and inure to the benefit of the successors, assigns and legal representatives of the respective parties hereto. This Agreement shall not be assigned by either company without the prior written consent of the other, which consent shall not be unreasonably withheld.

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized representatives to execute this Agreement effective as of the day and year first above written.

**AFFILIATE:**

\_\_\_\_\_  
*Company's complete legal name and Federal ID #*

BY: \_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
PRINT NAME/TITLE

\_\_\_\_\_  
ADDRESS

\_\_\_\_\_  
CITY/STATE/ZIP

**UNITED INFRARED, INC.**  
8472 Adams Farm Road  
Randleman, NC 27317-7331  
Phone/Fax: 1-888-722-6447

BY: \_\_\_\_\_  
SIGNATURE

Gregory R. Stockton

\_\_\_\_\_  
PRINT NAME/TITLE

Please print this agreement, sign it and mail to:

United Infrared, Inc.  
Attn: Accounting Office  
P.O. Box 1403  
Bonsall, CA 92003

Attachment: Exhibit A - Contracting Fees / Payments and Collections  
Attachment: Exhibit B - Liability Waiver and Release Form



## United Infrared, Inc.

# United Infrared DCIR Membership Agreement<sup>®</sup>

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### Exhibit A - Contracting Fees / Payments and Collections

During the term of this Agreement, the following schedules of fees shall be in effect:

#### ThermalMapIR™ Fee Structure

Contracting Fee	5% of Gross Sale
Lead Fee (deducted from Sales Commission if supplied)	3% of Gross Sale
Sales Commission Fee	10% of Gross Sale
Data Collection Fee	20% of Gross Sale
Post-Processing of the Data into the Final Product Fee	65% of Gross Sale

#### **ThermalMapIR™ Fee Structure Notes:**

**Contracting Fee** is paid to the Contract Holder for the project. The Contract Holder is the party that owns the contract for a given project. This could be Affiliate, UI or a third party.

**Sales Commission Fee** is paid by the Contract Holder to the party that brings the sale to the Contract Holder.

**Data Collection Fee** is paid by the Contract Holder to the party that collects the data in the field. If the Technical Director rejects the imagery, the party that collected the data will be required to re-visit the site to collect acceptable imagery at their own expense.

**Post-Processing of the Data into the Final Product Fee** is paid by the Contract Holder to UI to post-process the raw data into a final product and report.

- a. UI will provide all the data collection equipment including shipping of the equipment to and from the Affiliate's Offices. Affiliate will keep the equipment in their care, custody and control at all times and use extraordinary care to ensure the protection of the equipment.
- b. Only UI is allowed to post-process data.
- c. The approved DataCentIR Cart System™ will be purchased by Affiliate (or rented) from UI or a third party.
- d. Affiliate will be provided marketing materials for use by Affiliate including web site designs, proposal templates, samples, etc.
- e. Affiliate will not publish any standardized pricing structures to the public.
- f. Only one formal proposal will come from any Affiliate Member of DataCentIR™ to any given client. The Affiliate that notifies UI first will be given control of the sale.
- g. UI will approve all fixed-price proposals in writing before Affiliate sends same to the client.

*Continued...*









**United Infrared, Inc.**

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**Exhibit B - Liability Waiver and Release Form**

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, intending to be legally bound hereby, the undersigned, for himself or herself, and his or her executors, administrators, personal representatives, collectors, heirs, beneficiaries, successors and assigns, agrees and does hereby release from liability and agrees to indemnify and hold harmless United Infrared, Inc, and any of its directors, officers, employees, agents, affiliate groups, vendors, successors or assigns (the "Releasees") in relation to any class trainings, in-field trainings and projects assigned while collecting data at a job site or on a sales or technical call to a client's facility.

THIS RELEASE AND WAIVER IS FOR ANY AND ALL LIABILITY, DAMAGE, OR COST FOR PERSONAL INJURIES (INCLUDING DEATH) AND PROPERTY LOSSES OR DAMAGE OCCASIONED BY, OR IN CONNECTION WITH ANY ACTIVITY OR ACCOMMODATIONS FOR THIS EVENT, WHETHER CAUSED BY THE NEGLIGENCE OF RELEASEES OR OTHERWISE.

The undersigned further agrees to abide by all the rules and regulations promulgated by United Infrared, Inc. and/or its affiliate groups and vendors throughout the term of the Agreement.

I (THE UNDERSIGNED) HAVE READ THIS RELEASE AND WAIVER OF LIABILITY AND FULLY UNDERSTAND ITS TERMS, UNDERSTAND THAT I HAVE GIVEN UP SUBSTANTIAL RIGHTS BY SIGNING IT, AND HAVE SIGNED IT FREELY AND VOLUNTARILY WITHOUT ANY INDUCEMENT, ASSURANCE OR GUARANTEE BEING MADE TO ME AND INTEND MY SIGNATURE TO BE A COMPLETE AND UNCONDITIONAL RELEASE OF ALL LIABILITY TO THE GREATEST EXTENT ALLOWED BY LAW.

BY: \_\_\_\_\_ Date: \_\_\_\_\_ SIGNATURE \_\_\_\_\_  
Print name/title