

TRADEMARK LICENSE AGREEMENT

THIS AGREEMENT is made this _____ day of _____, 20____, (the “Effective Date”) by and between _____ (“Licensor”) and _____ (“Licensee”), (collectively, the “Parties”).

WHEREAS, Licensor is the owner of the trademark in _____ (*Brief description of trademark to be licensed*) (the “Trademark”).

AND WHEREAS, Licensor wishes to permit Licensee use of the Trademark for the purpose of _____ (*description of intended use*), under the terms set forth in this Agreement;

NOW THEREFORE, in consideration of the mutual promises, covenants, warranties, and other good and valuable consideration set forth herein, the Parties agree as follows:

1. Trademark. The Trademark shall be defined as those items listed on Schedule A.
2. Grant of License. Licensor hereby grants to Licensee a non-transferable license to use the Trademark (the “License”) in the following manner:

_____.

The License shall be exclusive nonexclusive.

Licensor does not hereby convey ownership of any property, and Licensor shall remain the sole owner of the copyright and all other intellectual property in the Trademark. Licensee shall enjoy only the rights set forth above, and nothing in this Agreement shall entitle Licensee to make any claim to ownership of the Trademark, or of any other intellectual property rights in the underlying material. Licensee may use Trademark only in accordance with the terms of this Agreement as stated above.

3. Term.
 - a. The term of this Agreement shall begin on the Effective Date and shall continue in full force and effect for a period of _____ years (the “Term”), unless terminated earlier pursuant to this the terms of this Section 3.
 - b. Licensor shall have the right to terminate this Agreement if:
 - i. Licensee fails to make commercial use of the Trademark within 12 months of the Effective Date, or

- ii. Licensee ceases to make commercial use of the Trademark for any period of 12 consecutive months during the Term, or
 - iii. Licensee breaches a material provision, term, or condition under this Agreement, including, but not limited to, a failure to meet quality standards as either set forth in this Agreement, or as mandated by Licensor pursuant to Section 7(b) below, or
 - iv. Licensee sells all or substantially all of its assets, or experiences a “Change in Control.” For the purposes of this Agreement, “Change in Control” shall mean a sale, or other transfer of equity in the Licensee, resulting in a new person or entity becoming the controlling equity holder of the Licensee. If Licensor does not exercise its right to terminate under this section, the terms of this Agreement shall be binding on those who succeed to the interest of Licensee in accordance with Section 15 below.
- c. Licensor may terminate this Agreement pursuant to Subsection (b) above by providing written notice to Licensee or to Licensee’s successor in interest, in accordance with Section 12, of Licensor’s intent to terminate the Agreement not less than 30 days before the date of termination stated in the notice.
 - d. In the event that this Agreement is terminated pursuant to this Section 3, Licensee shall cease use of the Trademark as soon as is commercially feasible.
 - e. At the end of the Term, or on the date of termination of this Agreement, all rights and interests in the Trademark shall revert to Licensor.

4. Payments.

- a. Licensee shall pay to Licensor: *(note that more than one may apply)*
 - a fee of \$_____, payable in the following manner: (lump sums payable at certain times, such as on the Effective Date, on Licensee’s first commercial use of the mark, etc).
 - a royalty of \$_____ per \$_____ worth of goods and services sold by Licensee in connection with the Trademark
 - a royalty of \$_____ per unit sold by Licensee in connection with the Trademark.
 - a royalty of _____ % of the gross sales from all goods and services sold by Licensee in connection with the Trademark.
 - Other terms:* _____

 _____.
- b. *(if applicable)* Licensee shall submit to Licensor, at licensor’s notice address as provided in Section 12, written quarterly reports (the “Quarterly Reports”) at the end of each quarter of the calendar year (March 31; June 30; September 30; December 31) stating the amount of goods and services sold in connection with the Trademark for the then-ending

quarter, and the corresponding amount owed to Licensor as royalty payments for that quarter (the “Quarterly Royalty Payment”) under the terms of this Agreement. Quarterly Reports must be received by Licensor no more than 7 days after the end of each quarter. Payment of each Quarterly Royalty Payment must be paid to Licensor in full within 30 days of the end of each quarter. Failure to submit Quarterly Reports or to make Quarterly Royalty Payments within the time allotted above shall be considered to be a material breach of this Agreement.

- c. Licensor shall be given access by Licensee to Licensee’s records, upon reasonable notice, wherever commercially reasonable, in order to audit Licensee’s stated sales records, and to confirm that all royalty payments are properly stated and accounted for. If it is determined that any Quarterly Royalty Payment has been deficient, Licensee shall have 7 days to pay Licensor the deficient amount. Failure to pay deficient royalty amounts within the time allotted above shall be considered to be a material breach of this Agreement.
- d. Licensee’s obligation to pay royalties due to Licensor shall survive this agreement. In the event that this Agreement expires or is terminated pursuant to the terms and conditions under Section 3 above, Licensee shall remain obligated to pay to Licensor any royalties due to Licensor, or any payments, whether those units were sold before or after the termination of this Agreement.

5. Licensor’s Representations and Warranties.

- a. Licensor hereby represents and warrants that it is the sole and exclusive owner of the Trademark, and owns all rights, title and interests in the Trademark.
- b. Licensor hereby represents and warrants that it has the legal authority to grant Licensee the License, and that no other person or entity is required to give its consent for the License to be valid.
- c. *(For exclusive licenses only)* Licensor represents and warrants that Licensor has not licensed the Trademark for use during the Term to any person or entity other than Licensee. Under the terms of this Agreement, Licensor agrees not to license use of the Trademark to any person or entity other than Licensee for the duration of this Agreement. Licensee acknowledges that a transfer of rights in the Trademark to Licensor’s successor in interest shall not constitute breach of this Subsection (c).

6. Indemnification. Licensor agrees to indemnify and hold harmless Licensee for any claims, suits, damages, actions, or other costs arising out any breach of Licensor’s warranties set forth in Section 5 above.

7. Quality Control.

- a. Licensee hereby agrees that any product or services that it sells in connection with the Trademark shall conform to the quality standards set forth in Section 2 above, provided that

Licensor may set additional specifics or standards for such sale of goods or services pursuant to Subsection (b) below.

b. Licensor may, at any time, set reasonable standards for the quality of goods or services marketed or sold in connection with the Trademark in addition to those standards set forth in this Agreement. Licensor must give written notice of such additional standards (the "Notice of Additional Standards") to Licensee in order for those standards to be applicable. To the extent that Licensee is not in compliance with these additional standards at the time it receives a Notice of Additional Standards, Licensee must conform to the stated standards as soon as is commercially feasible.

c. Licensee shall make available to Licensor, upon Licensor's request, samples of any products or services sold in connection with the Trademark, including any packaging, displays, or other materials employed in the marketing, display or sale of such products or services. Licensee shall also grant Licensor access upon reasonable notice to inspect any facilities in which such products are designed or manufactured for the purpose of ascertaining whether Licensee is in compliance with the quality standards then in effect for the use of the Trademark, where such access is commercially reasonable.

8. Assignment. Licensee may not assign its rights, duties or obligations under this Agreement without the prior written approval of Licensor. Licensee may, however, assign this Agreement without Licensor's prior written approval if such transfer is to a purchaser of all or substantially all of Licensee's assets, or to a purchaser or other transferee of a controlling equity interest in Licensee. Licensor shall have the right to transfer its interest in this Agreement and in the Trademark without the consent of Licensee. Licensor must notify Licensee in writing in the event of that Licensor assigns all or a material part of this Agreement (the "Licensor's Notice of Assignment"). The Licensor's Notice of Assignment must be sent to Licensee within 30 days of such assignment.
9. Governing Law. This Agreement shall be construed in accordance with, and governed in all respects by, the laws of the State of _____, without regard to conflicts of law principles.
10. Counterparts. This Agreement may be executed in several counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one agreement.
11. Severability. If any part or parts of this Agreement shall be held unenforceable for any reason, the remainder of this Agreement shall continue in full force and effect. If any provision of this Agreement is deemed invalid or unenforceable by any court of competent jurisdiction, and if limiting such provision would make the provision valid, then such provision shall be deemed to be construed as so limited.
12. Notice. Any notice required or otherwise given pursuant to this Agreement shall be in writing and mailed certified return receipt requested, postage prepaid, or delivered by overnight delivery service, addressed as follows:

If to Licensor:

If to Licensee:

13. Headings. The headings for section herein are for convenience only and shall not affect the meaning of the provisions of this Agreement.
14. Entire Agreement. This Agreement constitutes the entire agreement between Licensor and Licensee, and supersedes any prior understanding or representation of any kind preceding the date of this Agreement. There are no other promises, conditions, understandings or other agreements, whether oral or written, relating to the subject matter of this Agreement. Changes to this Agreement may be made only in writing and shall be effective only if signed by Licensor and Licensee.
15. This Agreement shall be binding on Licensor and Licensee and on those who succeed to the interest of Licensor and Licensee by law, by approved assignment or by transfer.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed the day and year first above written.

LICENSOR

LICENSEE

Signature

Signature

Print Name

Print Name

Schedule A

Trademark Description