

LICENSE AGREEMENT

This Agreement ("Agreement") is by and between **LICENSOR**, a California limited liability company ("Licensor"), on the one hand, and **LICENSEE**, a California limited liability company ("Licensee"), on the other hand.

1. **Grant of License from Licensor to Licensee.** Licensor grants to Licensee the exclusive right, license and privilege during the Term (defined in Section 14) and throughout the **World** (the "Territory") to make, have made, manufacture, import, export, use, market, distribute, sell, advertise, promote and otherwise exploit products which are covered by the intellectual property rights owned by Licensor and identified in Exhibit A of this Agreement, (the "Product" or "Products") and all improvements, line extensions and modifications thereof, by any and all means and media, in any and all markets, using any and all intellectual property to include patents, trademarks, and copyrights and any and all existing promotional materials and urls owned now or in the future by Licensor relating to the Products (collectively, "Licensor's Intellectual Property").

2. **Third Party Contract Manufacturer.** Licensee intends and is authorized to manufacture the Product by contract with a third party manufacturer. Initially, the manufacturer may be the factory or factories currently being used by Licensor to manufacture the product that Licensor is selling, but Licensee may elect to manufacture the Product through its own sourcing channels for any reason. Licensor will provide the manufacturing and packaging specifications of the Product, and all related know-how, necessary to manufacture the Product to Licensee and the third party manufacturer.

3. **Quality Control.** Licensee shall adhere to any reasonable requests and directions of Licensor relating to the maintenance of the quality of the Product and/or any improvement to the Product made by Licensee and manufactured pursuant to the terms of this Agreement.

4. **Consultation on Marketing Plans.** Licensee will confer with Licensor from time to time with respect to Licensee's plans and ideas for distribution of the Product, and Licensee shall take into consideration the advice and ideas of Licensor with respect thereto.

5. **Quality Reports and Claims Substantiation to be Provided to Licensee.** Licensor will provide to Licensee copies of all reports in Licensor's possession or control relating to the quality of the Product, its efficacy and safety, and the bases and substantiation for the claims made about the Product, to include all studies, before and after test results, and testimonials.

6. **Products to be Supplied by Licensor.** Promptly following execution of this Agreement, Licensor will provide to Licensee fifty (50) samples of the Product, at no cost. Samples will be used for marketing research and Product testing. In addition, upon the placement of a purchase order by Licensee, Licensor will provide to Licensee an

additional up to 1,000 samples of the Product at the current manufactured price of approximately \$1.84/unit FOB Licensor's domestic warehouse. Thereafter, Licensee may purchase from Licensor additional quantities of the Product that exist in Licensor's inventory.

7. **Royalty to Licensor.**

7.1 **Amount of Royalty.** Licensee shall pay Licensor a royalty equal to four percent (4%) of Licensee's Net Sales of the Product to brick and mortar retailers in the United States and two percent (2%) of Licensee's Net Sales through all other channels of trade and media including direct response television advertising, radio, sales through the internet, print, catalog, and sales made to international distributors ("Royalty"). Net Sales shall mean proceeds received by Licensee from sales of the Product excluding any sales and use taxes and shipping and handling charges received from customers and less actual refunds, returns, credits, chargebacks, credit card fees, sales commissions, mark-downs, discounts, and other allowances to customers taken in the ordinary course of business such as allowances for new store openings, special pricing offers, contributions to advertising, and slotting and retail display. No Royalty will be paid on units purchased for Test Marketing (hereafter defined in Section 9) of the Product during the Initial Term and the First Extension Period (hereafter defined in Section 14).

7.2 **Reporting and Remittances; Review of Licensee's Books.** All Royalties shall be paid to Licensor on a calendar quarter basis and within 30 days of the close of the quarter. Each payment of Royalties made by Licensee to Licensor shall be accompanied by an accounting statement setting forth the calculation of the amount of Royalty shown thereby to be due to Licensor for the applicable shipments.

Licensor shall have the right to review the books and records of Licensee that pertain to the sale of the Products on reasonable advance notice and at reasonable intervals but not to exceed two times in each calendar year. If the review reveals a shortage in the amount due to Licensor that is in excess of 10% of its entitlement for a one-year period, then Licensee will pay the actual, out-of-pocket third party costs of the review not to exceed \$2,500.

8. **Non-Compete.** During the Term of this Agreement, Licensor shall not throughout the Territory directly or indirectly, either alone or in participation with any other person or entity, engage in or be involved with importing, exporting, manufacturing, marketing or distributing the Product, any other product similar in design, composition, content or function to the Product, including one made of different materials, other than as provided for herein.

During the Initial Term and the First Extension Period, Licensor may continue to sell the Product to:

- its existing customers, and

- in direct response to consumers by means of Licensor's existing websites.

Following the First Extension Period, Licensor shall direct all its sales from its existing websites to the website of Licensee, and shall assign to Licensee the right to use the existing websites.

If Licensee elects to continue marketing the Product after the First Extension Period, upon Licensee's request Licensor will turn over all existing accounts and distributors to Licensee, and Licensee will manage and sell to those customers and Licensor shall cease all further sales of the Product. Licensor will provide copies of any contracts it has with such companies for Licensee's review and approval as a condition predicate to Licensee assuming any obligations that Licensor may have to such companies.

Licensor also agrees to not discuss, during the Initial Term and the First Extension Period, with other marketing companies the prospect of marketing the Products.

9. **Test Marketing.** Licensee will conduct test marketing of the Products, at its own expense, at such times, with such frequency, in such markets, and through such media as Licensee, in its sole judgment, may determine ("Test Marketing"). This Test Marketing may include but is not limited to market research, formal and informal focus groups, presentation to industry professionals, etc. Licensee shall evaluate the results of the Test Marketing and determine, in its sole judgment, whether Test Marketing has been successful. Such determination shall be based on volume of Products sold, ratio of advertising costs to sales revenues, and such other factors as Licensee shall deem relevant.

10. **Licensee's Marketing Activities.** Licensee will engage in such marketing activities to promote the Product as it deems appropriate, and Licensee may, through its employees, agents and/or independent contractors, produce a short or long form direct response television commercial ("the Commercial") which will describe, display and promote the benefits to be derived from the use of the Product and offer the Product for sale to the general public, and Licensee may choose to use such names and trademarks to market the Product as Licensee deems appropriate.

11. **Advertising and Distribution Costs.** Licensee shall bear all costs incurred in connection with the advertising, marketing and distribution of the Products by Licensee, including the costs of purchasing media, order processing, payment processing, order fulfillment and customer service.

12. **Enforcement of Intellectual Property Rights.** Licensor may at its expense enforce Licensor's rights in Licensor's Intellectual Property related to the Products against infringement thereof. If Licensee requests Licensor to enforce such rights and Licensor declines to do so, Licensee shall have the right (but shall not be required) to enforce such rights, and may do so in Licensor's name. The party enforcing the rights shall be responsible for its own legal fees and expenses incurred in such enforcement efforts, but shall first be reimbursed for such expenditures from any recovery obtained. All monies

recovered in excess of such expenditures shall be paid to the parties in proportion to their actual loss to the extent of such loss, and any amount remaining shall be shared equally by Licensee and by Licensor. The parties shall cooperate and fully inform each other of the status of any such enforcement efforts undertaken by either of them.

13. **Licensor's Representations, Warranties and Covenants.** Licensor represents, warrants and covenants to Licensee that:

(a) **Licensor's Intellectual Property.** Licensor owns Licensor's Intellectual Property identified on Exhibit A, all of which are valid and currently in effect, all maintenance fees having been paid with respect thereto, and none of which are subject to any liens or encumbrances of any kind or nature, and all of which constitutes and shall constitute all of the intellectual property and other proprietary rights necessary or appropriate for the manufacture, marketing, distribution and sale of the Products;

(b) **No Infringement.** Neither the granting of the rights and privileges granted hereunder nor the exercise thereof by Licensee in accordance with the terms of this Agreement will infringe or otherwise violate the intellectual property or other proprietary rights, or any contractual rights, of any person or entity;

(c) **No Adverse Claims.** Licensor has not been and is not, as of the date of this Agreement, a party to any litigation enforcing or defending Licensor's rights in, to or with respect to the Products or any of Licensor's Intellectual Property, and is not aware of any claims or demands made or threatened by any person or entity involving the validity of Licensor's rights in, to or with respect to the Products or any of Licensor's Intellectual Property; and

(d) **Applicable Patents, Copyrights, Trademarks and Licenses.** Licensor will at the time of execution of this Agreement, and thereafter, provide Licensee with copies of all patents, patent applications, abstracts of all copyright registrations, copyright applications, trademark registrations, trademark applications, licenses and other agreements and instruments relating to the Products and Licensor's Intellectual Property (and all amendments, supplements, and modifications thereof) which are now in existence or which Licensor shall obtain, file or enter into during the Term of this Agreement. Licensor will not transfer ownership of Licensor's Intellectual Property to any other person or entity without informing such transferee of this license and assuring that the transfer is subordinate to and subject to this license and that the transferee will not disturb the rights of Licensee hereunder in a manner not specifically authorized by this Agreement.

14. **Term.** Unless sooner terminated in accordance with the provisions of Section 15, this Agreement shall remain in full force through the earlier of (referred to herein as the "Initial Term"):

(i) sixty (60) days following the receipt by Licensee of a sufficient quantity of the Product, agreed to be fifty (50) product samples, to commence conducting Test Marketing, or

(ii) December 31, 2011, which date will be extended by two days for each day after October 30, 2011 that the Licensor fails to deliver to Licensee the units required for the Test Marketing.

This Agreement shall then be automatically extended for an additional 90 days from the end of the Initial Term plus the time it takes to obtain delivery (referred to herein as the "First Extension Period") should Licensee place a purchase order during the Initial Term for at least 1,000 units of the Product from Licensor.

This Agreement shall then be automatically extended for additional, successive one-year periods (the "Annual Extension Periods", which together with the Initial Term and the First Extension Period are herein referred to as the "Term") provided that Licensee has:

- (i) during the First Extension Period produced and commenced Test Marketing a Commercial for the Product, and
- (ii) during the first and each subsequent Annual Extension Period paid, or accrued for payment and made payment within 31 days following the end of such Annual Extension Period, Royalties of at least \$50,000 (Fifty Thousand Dollars) on the basis of sales of the Product.

Notwithstanding the foregoing minimums, if Licensee fails to achieve the minimum sales to accrue the Royalties needed to extend the Term, it may make up the shortfall each period by payment of cash for the difference that is non-refundable but will be creditable against future Royalties that may be owing.

Payments of Royalties shall be considered cumulative, so that if Licensee has paid in excess of the minimum Royalties condition in one period, the minimum Royalties condition in the subsequent periods will be correspondingly reduced to the extent of such excess.

Licensee is not obligated to meet the minimums but must do so if it desires to continue to maintain the right to sell the Product. Licensee shall have the right to market the Product, and the Term of this Agreement shall continue, for so long as Licensee is meeting the aforesaid minimum Royalty conditions, absence any other basis for termination.

15. **Termination.**

15.1 **Termination Events.**

(a) **Election by Licensee not to Proceed.** If Licensee determines at any time during the Term that it does not intend to continue with marketing of the Products, then

Licensee shall promptly notify Licensor and this Agreement, subject to the provisions of Section 15.3, shall terminate on Licensor's receipt of such notice.

(b) **Early Termination for Failure to Produce and Test Market Infomercial.** This Agreement shall automatically terminate if Licensee does not produce and commence Test Marketing a Commercial promoting the Product on or before the end of the First Extension Period unless the delay is beyond Licensee's reasonable control.

(c) **Termination Upon Breach.** Either party may terminate this Agreement upon 45 days written notice to the other party upon the material breach by the other party of any of its material representations, warranties, covenants or agreements contained in this Agreement. Upon the expiration of such notice period, this Agreement shall terminate without the need for further action by either party; provided, however, that if the breach upon which such notice of termination is based shall:

(i) have been fully cured to the reasonable satisfaction of the nonbreaching party within such 45 day period, or

(ii) not be capable of cure within such 45 days, but can be cured within a reasonable time thereafter, and the breaching party is taking reasonable steps to effect such a cure and it is in fact cured within 75 days, or

(iii) not be capable of cure, but the breaching party has tendered to the non-breaching party an amount of money which reasonably reimburses the non-breaching party for any direct loss or expense incurred as a consequence of such breach,

then such notice of termination shall be deemed rescinded, and this Agreement shall be deemed reinstated and in full force and effect. Such right of termination shall be in addition to such other rights and remedies as the terminating party may have under applicable law.

15.2 **Obligations Deemed Fulfilled in the Event of Early Termination.** Any early termination pursuant to Section 15.1(a) or (b) of this Agreement shall not be viewed to be a breach of this Agreement. Unless either of the parties has separately breached a commitment made elsewhere in this Agreement, such parties shall be deemed to have fulfilled all of their obligations hereunder, except those which by their nature survive the termination of the Term (e.g. warranties and representations, payment obligations, confidentiality and indemnifications, etc.).

15.3 **Limited Sales Rights After Termination.** Following the expiration or termination of this Agreement, Licensee shall retain non-exclusive rights to advertise, market, and sell the Products in the same manner as provided for in this Agreement until it has sold all of its existing inventory of the Product and any Product for which it has placed a purchase order or for which it has entered into an agreement of sale.

16. **Insurance.** Licensee will name Licensor as additional insureds on Licensee's commercial general liability insurance policy, which will include products liability coverage commencing with the first sale of Products during the First Extension Period and continuing for one year after termination or expiration of this Agreement.

17. **Governing Law; Arbitration.** This Agreement shall be governed by and construed in accordance with the internal laws of the State of California without regard to conflict of laws principles. All disputes relating to or arising out of this Agreement shall be resolved in or near California. The parties agree that all disputes arising out of or related to this Agreement shall be resolved by final, mandatory, binding arbitration, with one arbitrator regardless of the amount of money that may be in dispute, each side to pay its own costs including attorney fees and the costs of the arbitrator.

18. **Full Execution Required; Counterparts; Facsimiles.** This Agreement shall not become effective unless and until fully executed by all proposed parties hereto. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, and all of which together shall constitute one and the same Agreement. This Agreement may be executed and delivered by electronic facsimile (including scanning) transmission with the same force and effect as if it were executed and delivered by the parties simultaneously in the presence of one another, and signatures on a facsimile copy hereof shall be deemed authorized original signatures.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed on the date last written below.

LICENSOR

LICENSEE

By: _____

Exhibit A
Licensor's Intellectual Property

1. Registered trademark 999999, issued June 11, 2011.
2. Common law trademark.
3. U. S. Patent Pending No. 9999999
4. Copyrighted packaging designs and advertising and collateral materials.

SAMPLE