

LICENSE and DISTRIBUTION AGREEMENT

This **License and Distribution Agreement** (the "**Agreement**") is made and entered into by and between **LICENSEE**, a California corporation having a place of address ("**LICENSEE**") and **LICENSOR** whose registered office is at address ("**LICENSOR**"), collectively referred to as "**Parties**" and individually as "**Party**."

R E C I T A L S

WHEREAS, **LICENSOR** is the sole owner of a certain intellectual property related to **PRODUCT**; and

WHEREAS, **LICENSOR** desires that such intellectual property be manufactured, marketed, packaged and distributed for commercialization; and

WHEREAS, **LICENSEE** has represented that it has certain manufacturing, marketing, distribution, and financial capabilities, and that it shall commit itself to a thorough and diligent program of commercialization of **LICENSOR**'s intellectual property; and

WHEREAS, **LICENSOR** is willing to grant to **LICENSEE**, and **LICENSEE** is willing to accept, a license to **LICENSOR**'s intellectual property, upon the terms and conditions set forth below.

NOW THEREFORE, in consideration of the mutual covenants and premises contained in this Agreement, the receipt and sufficiency of which is acknowledged, the Parties agree as follows:

ARTICLE I – DEFINITIONS

- 1.01 "**LICENSED TECHNOLOGY**" shall mean any and all inventions, materials, know-how, technology, formulas, ideas, **TRADEMARKS** or discoveries conceived or reduced to practice relating to **LICENSOR**'s **PRODUCT**.
- 1.02 "**PATENT RIGHTS**" shall mean each patent application filed for protection of **LICENSED TECHNOLOGY**; each patent issuing from the foregoing applications; each divisional, continuation, or continuation-in-part application of the foregoing applications; each equivalent patent application in each country which claims priority under such applications; each patent issuing from the foregoing applications; and each extension or reissue of such patents.
- 1.03 "**LICENSED PRODUCT**" or "**LICENSED PRODUCTS**" shall mean any product or process manufactured that is within the scope of any **LICENSED TECHNOLOGY** or **PATENT RIGHTS**.
- 1.04 "**EFFECTIVE DATE**" shall mean the date this Agreement has been executed by the last Party.

- 1.05 “TRADEMARKS” shall mean the trademarks, service marks and trade names listed on Exhibit A.
- 1.06 “TERRITORY” shall mean that LICENSEE has an EXCLUSIVE license to manufacture, modify, improve or change the design and function as LICENSEE sees fit, sell, market, distribute, offer for sale, import, export, advertise, and promote the LICENSED PRODUCTS world-wide.
- 1.07 “NET SALES REVENUE” means the actual invoiced receipts (sales quantity multiplied by Licensee’s selling price) from customers for Licensed Products sold and payment therefore received by Licensee, less “ALLOWABLE DEDUCTIONS”. NET SALES REVENUE does not include charges for transportation of Licensed Products or sales taxes, or any applicable goods and services tax or other value added or similar tax.
- 1.08 “ALLOWABLE DEDUCTIONS” means: customer returns, customer bill-backs or adjustments, defective goods, third party commissions, cash discounts or volume discounts (i.e. a lower initial selling price given solely in exchange for the purchase of Licensed Products over a specified volume level).

ARTICLE II - LICENSE GRANT

- 2.01 **License Grant.** LICENSOR grants to LICENSEE a royalty-bearing, exclusive license and right under LICENSED TECHNOLOGY and PATENT RIGHTS to make, have made, use, offer for sale, sell, and sublicense the LICENSED PRODUCTS in the TERRITORY, and to bring suit in its own name, or if required by law, jointly with LICENSOR, for infringement of the LICENSED PRODUCTS and to collect damages, profits, and awards of whatever nature recoverable for such infringement for the term of this Agreement.
- 2.02 **Manufacture.** Notwithstanding the grant in paragraph 2.01, LICENSOR acknowledges and agrees to the manufacture and exporting of the LICENSED PRODUCTS from LICENSEE’s place of business to the TERRITORY.
- 2.03 **Exclusivity.** The rights granted in paragraph 2.01 shall be exclusive to LICENSEE in the TERRITORY for as long as the exclusivity remains in force, LICENSOR agrees not to market, sell, offer for sale or license the LICENSED PRODUCTS in the TERRITORY without permission from LICENSEE.
- 2.04 **Trademarks.** LICENSOR hereby grants LICENSEE the exclusive right to use the Trademarks solely in connection with the rights granted herein for the LICENSED PRODUCTS. LICENSEE may select, own and use its own trademark on LICENSED PRODUCTS if it chooses. However, nothing herein shall be construed as granting to LICENSEE any license or other right under any other trade name, trademark, or service mark owned or licensed by LICENSOR that is not listed in Exhibit A. Conversely, LICENSOR shall have no rights to trade names, trademarks, or service marks owned by LICENSEE. Should LICENSEE elect to use any of the trademarks, trade names or service marks owned by LICENSOR and relating to the LICENSED PRODUCTS, LICENSEE acknowledges that any and all goodwill associated with such use shall inure to the sole

benefit of LICENSOR and LICENSEE shall have no rights (except for what is granted herein) in such trademarks.

ARTICLE III –SUBLICENSES

- 3.01 **Sublicenses.** LICENSEE may grant sublicenses to persons, firms or corporations under such conditions as it may arrange, as consistent with this Agreement for the manufacture, sale and distribution of LICENSED PRODUCTS, as long as each such sublicense is not adverse to the public policies of LICENSOR or the TERRITORY. Where the LICENSEE grants any such sub-licenses, any royalties payable for such sub-license shall be equitably apportioned between the LICENSEE and the LICENSOR.
- 3.03 **Reporting.** LICENSEE shall notify LICENSOR of the grant of sublicense to a third party and upon request, shall provide LICENSOR with copies of each sublicensee’s Agreement.

ARTICLE IV – LICENSEE RESPONSIBILITIES

- 4.01 **Legal Compliance.** LICENSEE must comply with all applicable federal, state and local laws and regulations in its exercise of all rights granted to it by LICENSOR under this Agreement.
- 4.02 **Product Safety.** If either PARTY becomes aware of information that reasonably supports a conclusion that a hazard may exist in any LICENSED PRODUCT that could cause death or bodily injury to any person, animal or property damage (a "Hazard"), the Party becoming aware of this information will promptly notify the other of the potential Hazard. Whenever possible, notification to the other party will precede notice to any governmental agency, unless otherwise required by law. The Parties will promptly exchange all relevant data and then, promptly review and discuss the information, tests, and conclusions relating to the alleged Hazard, including the basis for any action, including a recall, regarding the Hazard. Each Party will, on request, provide to the other reasonable assistance in (a) determining how best to deal with the Hazard; and (b) preparing for and making any presentation before any governmental agency which may have jurisdiction over Hazards involving the LICENSED PRODUCTS.
- 4.03 **Quality Control.** LICENSEE understands that the LICENSED TECHNOLOGY licensed herein are valuable to LICENSOR and therefore, certain quality control measures must be followed to ensure LICENSOR’s continued enjoyment of such rights. LICENSOR shall have the right to inspect, review and approve of all packaging, marketing, and, advertising materials, as well as the finished packaged LICENSED PRODUCT, (collectively “Materials”) manufactured by LICENSEE for the sale and distribution of the LICENSED PRODUCT. Upon request, LICENSEE shall provide the Materials to LICENSOR for inspection.
- 4.04 **Pricing.** LICENSEE shall determine its own resale prices for the LICENSED PRODUCTS. All charges for taxes, levies, duties or fees of any type, insurance, transportation, rigging, packing, and placing of LICENSED PRODUCTS shall be borne by LICENSEE.

ARTICLE V- PAYMENTS

- 5.01 **Royalty.** In consideration for the rights granted herein, LICENSEE agrees to pay a 6.5% royalty on cost of sale to LICENSOR for each LICENSED PRODUCT sold or otherwise disposed of for profit (“Royalty”).
- 5.02 **Reporting.** Within thirty (30) days of the close of each calendar quarter, LICENSEE will provide an electronic reporting of all Royalties due for LICENSOR for the reporting quarter (“Report”). For each LICENSED PRODUCT, the Report shall include the total number of LICENSED PRODUCTS sold by LICENSEE and the total amount of Royalty due for the reporting period.
- 5.03 **Payment.** At the time of the Report, LICENSEE shall calculate the Royalty due and submit the payment to LICENSOR via wire transfer to a banking institution, which will be provided to LICENSEE.

ARTICLE VI – PATENTS

- 6.01 **Patent Filing and Prosecution.** LICENSOR may, in its sole discretion, proceed in filing one or more patent applications for LICENSED TECHNOLOGY, the number and scope of such applications to be determined solely by LICENSOR in consultation with LICENSOR’s selected patent counsel and additional inventors (if any). LICENSOR shall have complete control of all patent prosecution under the PATENT RIGHTS.
- 6.02 **Patent Costs.** LICENSOR shall bear all costs related to prosecution of the PATENT RIGHTS. Upon issuance of any patent under the PATENT RIGHTS, LICENSOR agrees to bear all maintenance costs to keep the patents in force.
- 6.03 **Information.** LICENSOR shall disclose to LICENSEE the complete texts of all patent applications filed by LICENSOR under PATENT RIGHTS as well as all information received concerning office actions, the institution or possible institution of any interference, opposition, re-examination, reissue, revocation, nullification or any other official proceeding involving PATENT RIGHTS. LICENSOR shall provide to LICENSEE the opportunity to provide input to the development of each patent application and any official proceedings thereafter.

ARTICLE VII – TERM AND TERMINATION

- 7.01 **Term.** This Agreement shall have a two (2) years term beginning from the Effective Date and will automatically renew for successive two years terms unless either Party provides notification at least ninety (90) days prior to the anniversary renewal date.
- 7.02 **Termination.** Either Party may terminate the Agreement: (i) if there is a material breach to the Agreement and remains uncured after a thirty (30) day period notice; (ii) if LICENSEE as an entity is dissolved or no longer exists as an operating company; (iii) after

the initial two year term, if either party elects to terminate with or without cause upon at least ninety (90) days notification to the other party; or (iv) immediately if by operation of law.

- 7.03 **Matters Surviving Termination.** All accrued obligations and claims, including financial obligations (if any) and claims or causes of action for breach of this Agreement, shall survive termination of this Agreement. Obligations of confidentiality shall survive termination of this Agreement. This section controls in the case of a conflict with any other section of this Agreement.

ARTICLE VIII - INDEMNIFICATION AND REPRESENTATION

- 8.01 **TERRITORY Indemnification.** LICENSOR shall at all times during the term of this Agreement, and thereafter as specified herein, indemnify, defend, and hold harmless LICENSEE against any claim, proceeding, demand, liability or expense (including legal expense and reasonable attorneys' fees) which relates to injury to persons or to property, any action brought by a third party alleging infringement of intellectual property rights, or against any other claim, proceeding, demand, expense, and liability of any kind whatsoever resulting from the production, manufacture, sale, commercial use, lease, consumption, or advertisement of the LICENSED PRODUCTS in the TERRITORY or arising from any obligation of LICENSOR under this Agreement.
- 8.02 **INDEMNIFICATION.** LICENSEE shall indemnify and hold harmless LICENSOR, and its affiliated companies and their officers and directors, shareholders, employees, licensees, agents, and successors, from and against any and all claims, damages, judgments, awards, settlements, investigations, costs, and reasonable attorney fees resulting from any defect in "the Product." LICENSOR shall give LICENSEE prompt written notice of any claim or action of the foregoing nature, and may defend the claim or action through counsel chosen by LICENSEE. LICENSOR shall give LICENSEE immediate notice of any claims, suits or actions instituted against LICENSOR for which indemnification is provided under this Agreement and shall provide LICENSEE with such information and opportunity for consultation as may be reasonably requested by LICENSEE (or its insurer). LICENSEE may, at any time thereafter, notify LICENSOR of its intent to fully indemnify it without reservation and may thereupon control the defense of the matter and at LICENSEE's sole discretion accept any compromise or settlement of any claim or action against LICENSOR. If, after receipt of such notice from LICENSOR, LICENSOR chooses to engage counsel in addition to the defense provided by LICENSEE, it shall do so at its own cost and expense. No claim or action shall be finally settled by LICENSOR as long as LICENSEE is proceeding to investigate a claim or is defending a claim or action.
- 8.03 **Representation.** LICENSOR represents that it owns and has title to the LICENSED TECHNOLOGY and has the full right and power to grant the licenses set forth in Article II, and that there are no outstanding agreements, assignments, or encumbrances inconsistent with the provisions of this Agreement.

ARTICLE IX – NOTICES

9.01 **Notices.** Payments (if any), notices, or other communications required by this Agreement shall be sufficiently made or given if hand-delivered in person, mailed by First Class United States mail or commercial carrier (e.g., FedEx, UPS, etc.) to the last address below:

If to LICENSOR:

If to LICENSEE:

ARTICLE X - MISCELLANEOUS PROVISIONS

- 10.01 **Confidential Information.** LICENSEE acknowledges that LICENSOR has confidential and proprietary information in the LICENSED TECHNOLOGY and LICENSED PRODUCTS and agrees not to disclose such information unless it is generally known or by operation of law. LICENSOR acknowledges that LICENSEE may have a need to disclose confidential information regarding the LICENSED PRODUCTS to sublicensees for commercialization, manufacture and distribution.
- 10.02 **Assignment of this Agreement.** This Agreement, with the rights and privileges it creates, is assignable only with the written consent of both Parties.
- 10.03 **Entire Agreement.** This Agreement contains the entire understanding of the Parties with respect to LICENSED TECHNOLOGY, and supersedes all other written and oral agreements between the Parties. It may be modified only by a written amendment signed by the Parties.
- 10.04 **Governing Law.** This Agreement shall be construed under the laws of California and the Parties agree to the jurisdiction of California, or the Licensor's selection, for any legal proceedings.
- 10.05 **Headings.** Headings appear solely for convenience of reference. Such headings are not part of, and shall not be used to construe, this Agreement.
- 10.06 **No Waiver; Severability.** If any provision of this Agreement shall be held to be invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. No waiver of any breach of this Agreement shall constitute a waiver of any other breach of the same or other provision of this Agreement and no waiver shall be effective unless made in writing.

SIGNATURES TO FOLLOW

The Parties have caused this Agreement to become effective as of the date last executed below.

By: _____
Title: _____
Date: _____

By: _____
Title: _____
Date: _____

By: _____
Title: _____
Date: _____

SAMPLE

EXHIBITS TO FOLLOW

SAMPLE

EXHIBIT A
“TRADEMARKS”

SAMPLE