

LICENSE AGREEMENT

This Agreement is made on this _____ the day of _____ 20__ (“Effective Date”) by and between _____, a California Corporation, with its principal place of business located at _____ (“LICENSEE”) and _____, a _____ having its headquarters at _____ (“LICENSOR”).

In consideration of the mutual promises herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed as follows:

1. **License.** LICENSOR hereby grants to LICENSEE an exclusive license for all intellectual property around the world, including but not limited to, all patents, copyrights and trademarks associated with the _____ (herein referred to as the “Product”). LICENSEE shall have the exclusive right to manufacture, market and distribute the Product; and (2) the right to use the trademarks in the United States and in all foreign countries (the “Territory”) in all channels of trade including, but not limited to, television, internet, retail, mail order and catalog.

2. **Term of the License.** The term of this Agreement is from the Effective Date through April 22, 2011 (“Initial Term”). This contract shall automatically renew for additional one year periods providing LICENSEE achieves certain minimum sales as set forth below in section 3. The term of this Agreement shall remain in full force for indefinite period of time providing LICENSEE achieves certain minimum sales as provided below in section 3.

3. **Termination.**

(a) Termination for Failure to Meet Minimum Purchase Requirement during the Initial Term. LICENSOR has a right of termination in accordance with the notice requirement below if LICENSEE does not produce a commercial and test market it on television by October 1, 2011;

(b) Termination for Failure to Meet Minimum Purchase Requirement After the Initial Term. LICENSOR has a right of termination in accordance with the notice requirement below if LICENSEE fails to purchase the minimums set forth below during any renewal period:

Period	Minimums
Initial Term	100,000 pieces
Period 2	200,000 pieces
Period 3 and thereafter	300,000 pieces

(c) Termination for Material Breach. Upon the material breach by either party of any of its representations, warranties, covenants or agreements contained in this Agreement, the other party may terminate this Agreement upon 30 days written notice setting forth the particulars of such breach. Upon the expiration of such notice period (and any extension thereof to which the parties may mutually agree), 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 have been fully cured to the reasonable satisfaction of the non-breaching party within such 30-day period, then such notice of termination shall be deemed rescinded, and this Agreement shall remain 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.

If LICENSOR terminates this Agreement in accordance with section 3(b), LICENSOR must provide LICENSEE with 30 days written notice. Upon the expiration of such notice

period, this Agreement shall terminate without the need for further action by either party; provided, however, that if within such 30-day period LICENSEE purchases additional quantities of Product Kits sufficient to make up the shortfall, then such notice of termination shall be deemed rescinded, and this Agreement shall remain in full force and effect. Failure by LICENSEE to satisfy the Minimum Purchase Requirement in any Term shall not constitute a breach of this Agreement, and neither party shall have any claim whatsoever against the other arising therefrom or from termination of this Agreement in accordance with this Section 3(b)(including, without limitation, any claim based on delay, lost profits, or loss of opportunity), all such claims having been deemed waived. All purchases of the Product shall be considered cumulative, so that if LICENSEE has purchased in excess of the minimum of units in the first year, then the minimum condition in subsequent periods will be correspondingly reduced to the extent of such excess.

(d) Rights and Duties Upon Expiration or Termination.

(1) Sell-Off Period. For a period not to exceed 180 days following the termination of this Agreement for any reason (the "Sell-Off Period"), LICENSEE may continue to exercise the Retail Distribution Rights on a non-exclusive basis with respect to quantities of the Product then in its inventory or on order ("Remaining Inventory"). The parties' rights and duties hereunder (including, without limitation, those set forth in Section 3 hereof) shall remain in effect with respect to LICENSEE's exercise of the retail distribution rights during the Sell-Off Period.

(2) Survival. Upon the expiration or termination of this Agreement, the parties shall have no further rights or obligations hereunder except pursuant to those provisions hereof which expressly or implicitly are intended to survive the termination of this Agreement.

3. Compensation. LICENSEE shall pay LICENSOR, royalty compensation equal to two percent (2%) of all "Gross Direct Response Sales Revenue" and "International Sales"; and four percent (4%) of all "Retail Sales Revenues".

3.1 Definition of Gross Direct Response Sales Revenue. LICENSEE and LICENSOR agree that "Gross Direct Response Sales Revenue" shall mean the actual cash collections from any and all television and website sales including up-sells or multiple orders of the product as a result of the Commercial, excluding shipping and handling charges and applicable sales taxes attributable to the sale of the product and less returns, charge backs cancellations and fallout, on all domestic and international television sales.

3.2 Definition of Retail Sales Revenue. LICENSEE and LICENSOR agree that "Retail Sales Revenue" shall mean all cash collections from any and all sales of the Product at wholesale or directly to retailers, including sales to domestic distributors for purposes of marketing the Product through retail, internet and mail orders, print orders, credit card syndication or any other form of transaction, excluding shipping and handling charges and applicable sales taxes attributable to the sale of the product and less returns, charge backs cancellations and fallout.

3.3 Definition of International Sales. LICENSEE and LICENSOR agree that "International Sales" shall mean all cash collections from any and all sales of the product that are sublicensed to international distributors for distribution in any market outside of the United States on an FOB basis.

3.4 Payment of Royalties. LICENSEE shall make all royalty payments required by Section 3 within thirty (30) days following the month in which the monies are collected from all applicable receivables from Sales. LICENSEE agrees to deliver with each such royalty compensation payment a written royalty report setting forth a description of the amount of the Product sold, the monies collected for the preceding month, and a cumulative total for the preceding months.

3.5 Audit Rights: LICENSOR shall have the right to audit relevant financial records of LICENSEE to substantiate the number of Products sold by LICENSEE in any period provided that this right shall be exercised upon thirty (30) days prior notice and occasioned only once per calendar year, and shall be restricted to only the previous one (1) year period.

4. Exclusivity. The rights granted to LICENSEE hereunder shall be exclusive to LICENSEE. Without limiting the generality of the foregoing sentence, so long as the rights granted hereunder are held exclusively by LICENSEE, LICENSOR shall not, without LICENSEE's prior written consent: (i) directly or indirectly, either by itself or in participation with any other person or entity, engage or otherwise assist in the marketing, advertising, distribution and or sale of the Product, or any Competing Product (defined below), via any means or media within the Territory, (ii) sub-license the patent or trademark or otherwise grant the right to any other person or entity to engage in the marketing, advertising, distribution or sale of the Product or any Competing Product in any consumer channel of distribution via any means or media within the Territory, and/or (iii) sell the Product or any Competing Product to any other person or entity for distribution sale or resale in any consumer channel of distribution via any means or media, within the Territory.

5. Manufacture. LICENSOR agrees to provide LICENSEE with all manufacturing expertise and shall introduce LICENSEE to all of their manufacturing contacts. LICENSEE, at its sole option, may source the Product through a third party at any time during this Agreement.

6. Production. LICENSEE shall be responsible for payment of all production and related costs for the production of a two minute commercial or any derivation thereof. LICENSEE shall be the sole rights holder of all rights associated with the commercial, including copyrights to the commercial and any trademarks that LICENSEE owns and associates with the Product ("LICENSEE Materials"). LICENSOR shall provide LICENSEE with all existing footage, print, art work and studies that LICENSOR may own or control. The Parties acknowledge that LICENSEE shall only be authorized to use LICENSEE Materials in connection with the Product during the term of this Agreement and that should LICENSOR desires to acquire certain of the LICENSEE Materials from LICENSEE at the termination of this Agreement, the Parties shall negotiate and enter into a separate contract for any such items. LICENSEE has sole discretion to determine the use of the Materials in its Marketing Plan. LICENSOR shall provide LICENSEE with any other materials which are reasonably requested by LICENSEE and consistent with the scope of this Agreement.

7. Samples and Proprietary Information. LICENSOR agrees to provide LICENSEE with 10 samples of the Product free of charge which shall be used for the direct response media test. In addition, LICENSOR shall provide LICENSEE with all Confidential Information (as defined herein) relating to the marketing and distribution of the product including, but not limited to, marketing strategy, customer testimonials, media reports and sales data.

8. Relationship. The parties stipulate and agree that their relationship is that of independent, contracting entities and that nothing in this Agreement will be construed to constitute either party as a partner, employee, subsidiary, affiliate, joint venture, or agent of the other.

9. LICENSEE's Obligation to Manufacture and Sell. Any other provision of this Agreement notwithstanding, either party may terminate the license and this Agreement if LICENSEE has not manufactured and offered the Product for sale by December 31, 2011. Termination of the license and the Agreement under the terms of this paragraph will require ten days notice to the other party by mail or fax.

10. Indemnification. LICENSEE will indemnify and hold LICENSOR harmless from and against any and all claims, lawsuits, costs (including reasonable attorney's fees and expenses), liabilities, damages, fines, settlements or other expense incurred by or asserted against LICENSOR arising from LICENSEE's breach of any of the representations, warranties or covenants in this Agreement or LICENSEE's own negligence or the negligence of its employees, subcontractors, agents or others acting on its behalf. LICENSEE will carry product liability insurance covering these risks for a minimum amount of \$2,000,000 (two million dollars), with LICENSOR named as an additional insured.

LICENSOR will indemnify and hold LICENSEE harmless from and against any and all claims, lawsuits, costs (including reasonable attorney's fees and expenses), liabilities, damages, fines, settlements or other expense incurred by or asserted against LICENSEE arising from LICENSOR's breach of any of the representations, warranties or covenants in this Agreement or from LICENSOR's own negligence or the negligence of its employees, subcontractors, agents or others acting on its behalf.

11. Representations and Warranties. LICENSOR represents and warrants to LICENSEE that as of the date hereof:

(a) Power and Authorization. It has all requisite power and authority (corporate and otherwise) to enter into and perform its obligations under this Agreement, and has duly authorized by all necessary action the execution and delivery hereof by the officer or individual whose name is signed on its behalf below;

(b) No Conflict. Its execution and delivery of this Agreement and the performance of its obligations hereunder, do not and will not conflict with or result in a breach of or a default under its organizational instruments or any other agreement, instrument, order, law, or regulation applicable to it or by which it may be bound; and

(c) Enforceability. This Agreement has been duly and validly executed and delivered by it and constitutes its valid and legally binding obligation, enforceable in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, or other laws of general application relating to or affecting the enforcement of creditors' rights and except as enforcement is subject to general equitable principles.

(d) Intellectual Property. LICENSOR owns or otherwise controls or shall own or otherwise control all right, title and interest in and to LICENSOR's Intellectual Property, which constitutes and shall constitute all of the intellectual property and other proprietary rights relating to the manufacture, marketing, distribution and sale of the Product;

(e) 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 of any person or entity as of the effective date of the execution of this agreement;

(f) 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

(g) Applicable Copyrights, Patents, Trademarks, approvals and Licenses. LICENSOR will at the time of execution of this Agreement, and thereafter, provide LICENSEE with copies of any and all copyright applications and registrations, patent applications and registrations, and trademark applications and registrations. Any and all other agreements and instruments relating to the Product 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.

LICENSEE represents and warrants to LICENSOR that as of the date hereof:

(a) Power and Authorization. It has all requisite power and authority (corporate and otherwise) to enter into and perform its obligations under this Agreement, and has duly authorized by all necessary action the execution and delivery hereof by the officer or individual whose name is signed on its behalf below;

(h) No Conflict. Its execution and delivery of this Agreement and the performance of its obligations hereunder, do not and will not conflict with or result in a breach of or a default under its organizational instruments or any other agreement, instrument, order, law, or regulation applicable to it or by which it may be bound; and

(i) Enforceability. This Agreement has been duly and validly executed and delivered by it and constitutes its valid and legally binding obligation, enforceable in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, or other laws of general application relating to or affecting the enforcement of creditors' rights and except as enforcement is subject to general equitable principles.

12. Assignments. Neither LICENSOR nor LICENSEE may assign any of its rights or obligations hereunder without the prior written consent of the other party to this Agreement, provided however that in the event of the sale of LICENSEE or of LICENSOR, or of substantially all the assets of LICENSEE or LICENSOR, the agreement of the other party to an assignment in favor of the buyer will not be unreasonably withheld.

13. Confidentiality. All information and documentation related to the manufacture and sale of the Product, including but not limited to information regarding discussions held between LICENSOR and LICENSEE regarding products, programs, marketing, advertising and promotional plans for programs, are considered to be competitively sensitive, confidential, proprietary information ("Confidential Information"). Confidential information will be held in strict confidence and will not during the term of this agreement or thereafter be disclosed to any third party, directly or indirectly, without the prior written consent of LICENSOR and of LICENSEE. This obligation will not apply to information already in the public domain, information required to be disclosed pursuant to applicable law, a court order, or a judicial proceeding, information that is disclosed to the public through no fault of either LICENSEE or LICENSOR or their agents acting on their behalf, or information that is disclosed by a third party not under confidentiality obligation. The provisions of this section will survive termination of this agreement.

14. Notices. All notices, requests, instructions, consents and other communications to be given pursuant to this Agreement shall be in writing and shall be delivered either in person or by U.S. Postal Service or reliable overnight courier service. Notices may also be transmitted by facsimile or electronic mail, provided that proper arrangements are made in advance to facilitate such communications and provide for their security and verification. Notices shall be sent to the following addresses:

If to LICENSOR:

If to LICENSEE:

Each party may by written notice given to the other(s) in accordance with this Agreement change the address to which notices to such party are to be delivered. Notices shall be deemed received (i) on the same day if delivered in person or by same-day courier, facsimile or electronic mail, (ii) on the next business day if delivered by overnight mail or courier, or (iii) on the date indicated on the return receipt, or if there is no such receipt, on the seventh business day if delivered by postal service, postage prepaid.

15. Entire Understanding. This Agreement constitutes and contains the entire understanding between the parties with respect to its subject matter and supersedes all prior agreements, whether oral or written. No representation or affirmation of fact, course of prior dealings, promise or usage of the trade will be binding on the parties, except as explicitly provided herein.

16. Relationship. The parties stipulate and agree that their relationship is that of independent, contracting entities and that nothing in this Agreement will be construed to constitute either party as a partner,

employee, subsidiary, affiliate, joint venture, or agent of the other.

17. Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the internal substantive and procedural laws of the California without regard to conflict of laws principles. The sole and exclusive venue for all disputes arising out of or relating in any way to this Agreement shall be California. The parties consent to the personal jurisdiction and venue of such courts and further consent that any process, notice of motion or other application to either such court or a judge thereof may be served outside the state of California by registered or certified mail or by personal service, provided that a reasonable time for appearance is allowed.

18. Duly Authorized Representatives. Counterparts. The persons whose signatures follow below represent and warrant that they are duly constituted in the offices shown with full authority to execute this Agreement as an act of the company that each represents. This Agreement has been executed in two identical counterparts, one of which has been retained by each of the parties.

Accepted and Agreed to, as of the date first written above.

By and on behalf of LICENSEE, _____ and all of its subsidiaries and affiliates.

_____ **Title:** _____ **Date:** _____

By and on behalf of LICENSOR _____ and all of its subsidiaries and affiliates.

_____ **Title:** _____ **Date:** _____

