

DISTRIBUTION AND LICENSE AGREEMENT

This *Distribution and License Agreement* together with the attached Exhibits (“Agreement”), effective as of this XXth day of September, XXXX (the “Effective Date”) is made by and between “COMPANY NAME HERE”, a “STATE HERE” corporation with its principal place of business at “ADDRESS HERE”, and its successors and assigns (“Licensee”) and “YOUR COMPANY NAME”, a “STATE HERE” corporation with a principal place of business at “YOUR ADDRESS HERE” (“Licensor”).

WHEREAS Licensor is the creator, developer, owner and licensor of certain products more fully described in Exhibit A through Exhibit F (“Licensed Products”), which may incorporate one or more unique designs authored by Licensor (“Licensed Designs”),

WHEREAS Licensee has the capability to manufacture, have made, market, distribute and sell the Licensed Products; and

WHEREAS, under the terms and conditions of this Agreement, Licensor desires to grant to Licensee a license to manufacture or have made, market, distribute and sell the Licensed Product in the geographic area (“Territory”) defined in Exhibit G and to the customers or stores (“Markets”) described in Exhibit H;

THEREFORE, in consideration of the mutual promises contained herein, the parties agree as follows:

1. DEFINITIONS

(a) “Net Sale Price” shall mean the price for which the Licensee sells the Licensed Products.

(b) “Licensed Design” shall mean those designs owned by Licensor and incorporated into one or more Licensed Products, as more fully described in Exhibit A through Exhibit F.

(c) “Licensed Product” or “Licensed Products” shall mean the product(s) identified and described more fully in Exhibit A through Exhibit F. The parties may add to the Licensed Products and Exhibit A through Exhibit F shall be deemed amended accordingly through the approval process set forth in Section 3(a).

2. LICENSE GRANT

(a) Licensor grants to Licensee a non-transferable, exclusive license to manufacture or have manufactured, market, distribute, sell, advertise and promote the Licensed Products to the Markets in the Territory.

(b) Licensor represents that it has the power and authority to grant, and does hereby grant to Licensee a non-exclusive, non-transferable, royalty-free, license in the Territory to

reproduce and display all logos, trademarks, trade names and similar identifying material relating to Licensor (collectively, "Licensor Marks") solely in connection with the promotion, marketing, distribution and sale of the Licensed Products in the Territory; provided, however, that Licensee shall not, other than as specifically provided for in this Agreement, make any use of Licensor Marks without first submitting a sample of such use to Licensor and obtaining its prior written consent, which consent shall not be unreasonably withheld or delayed. The foregoing license shall terminate upon the termination of this Agreement.

3. MANUFACTURING AND MARKETING

(a) Licensee agrees that the Licensed Products shall be manufactured in accordance with Licensor's design and specifications. Licensor agrees to approve or disapprove of the final design of the Licensed Product within seven (7) days of receipt of proposed designs or sample Licensed Products from Licensee. After the seventh day, if Licensee has not received Licensor's written approval or disapproval, approval shall be assumed.

(b) The Licensed Products shall be manufactured, sold, and distributed in accordance with all applicable federal, state, and local laws.

(c) Licensor shall provide press-ready art to Licensee for the Licensed Designs, or if mutually acceptable to the parties, original art that can be made press-ready by Licensee, (collectively, the "Artwork"). Licensor shall bear the risk of any damage to the Artwork during shipment to Licensee.

4. ROYALTY PAYMENTS

(a) Licensee shall pay Licensor a royalty of FIVE (5%) PERCENT on the Net Sale Price of the Licensed Products. However, no royalties shall be payable to Licensor for the "closeout" sale of Licensed Products that have been deleted from Licensee's line of products. Licensor must be notified in writing prior to the "closeout" of a line or products. Any licensed products sold during the "sell-off-period" that are non-liquidation orders are subject to royalties.

(b) No royalties are payable to Licensor for any Licensed Products sold to Licensor by Licensee.

(c) Licensee shall pay Licensor royalties thirty (30) days after the end of each calendar quarter in which sales of Licensed Products have occurred by check or other mutually agreeable means of payment. Detailed statements, setting out the Net Sale Price of the Licensed Products, the relevant time period, and the calculation of the royalties shall accompany each payment.

5. RECORDKEEPING; AUDIT

(a) Licensee shall maintain accurate books of account and records in accordance with generally accepted accounting principles covering all transactions relating to the licenses granted under this Agreement. Such records shall include, for each Market, the number of units of

Licensed Products sold, the Net Sale Price, the dates of sales, and the computation of the royalties.

(b) No more often than annually, Licensor, or its duly authorized representatives, shall at the Licensor's own expense have the right, upon reasonable notice and during normal business hours, to examine those records in Licensee's possession or control identified in Section 5(a) above that are required to verify the calculation of royalties payable to Licensor under this Agreement, and shall have the right to make copies of such records. Licensee shall maintain all pertinent records for the period of time that includes the date of the final sale by Licensee of any Licensed Product plus two years thereafter. Upon written request to Licensor, Licensor shall send to Licensee a copy of any written report ("Audit Report") summarizing the findings of any audit conducted under this Section 5(b).

(c) If any such examination described in Section 5(b) shall reveal an understatement of Net Sales Price and resulting royalties by Licensee, Licensee shall either pay to Licensor any additional royalty due within thirty (30) days of Licensor's written demand for same, or provide a written response within such thirty (30) day period specifying why Licensee rejects the demand. Licensor's demand must include a reasonably complete discussion in support of Licensor's claimed shortfall, including documentation and a copy of the Audit Report. Prior to commencement of any formal action, the parties agree to negotiate any disputes involving royalty payments or their calculation as provided in Section 18 below.

(d) Licensor and/or its authorized representatives agree to treat all information acquired as the result of any examination pursuant to this Section 5, including Audit Reports, as Confidential Information and subject to the non-disclosure provisions of Section 6 below, provided, however, that Licensor and/or its authorized representatives shall not be prevented from testifying in any court, tribunal, or proceeding in which Licensor seeks to enforce or defend its rights under the terms of this Agreement.

6. CONFIDENTIALITY AND NON-DISCLOSURE

(a) As used in the Agreement, "Confidential Information" means any confidential or proprietary information identified in writing as Confidential or Proprietary or which by its very nature one would naturally assume to be confidential, such as financial statements, pricing information, customer information, or design prototypes, that is disclosed by one party (the "Disclosing Party") to another party (the "Receiving Party"), whether of a technical, business, or other nature (including, without limitation, writings, trade secrets, designs, know-how, software code or scripts, business plans, promotional and marketing activities, customer data, financial data and other business information of the Disclosing Party). The Receiving Party shall keep Confidential Information in confidence during and after the term of this Agreement for as long as the information can be defined as Confidential Information, and, except as expressly provided in this Agreement, shall not disclose it to anyone without the Disclosing Party's prior written consent. The Receiving Party shall not use, or permit others to use Confidential Information for any purpose other than for those purposes described under this Agreement. The Receiving Party shall use its best efforts to avoid disclosure, dissemination or unauthorized use of Confidential Information. The Receiving Party shall limit disclosure of Confidential Information to those of

its employees having a need to know and shall advise such employees of the obligations of this Agreement.

(b) The provisions of Section 6(a) shall not apply to any Confidential Information that (i) is or becomes publicly available without breach of this Agreement; (ii) can be shown by credible documentation to have been known to the Receiving Party at the time of its receipt from the Disclosing party; (iii) is rightfully received from a third party who did not acquire or disclose such information by a wrongful or tortuous act; or (iv) can be shown by credible documentation to have been independently developed by the Receiving Party without reference to any Confidential Information. If the Receiving Party becomes legally obligated to disclose Confidential Information, then the Receiving Party shall give the Disclosing Party prompt written notice. The Receiving Party shall disclose only such information as is legally required and shall use its reasonable efforts to obtain confidential treatment for any Confidential Information that is so disclosed.

(c) All Confidential Information of a Disclosing Party shall remain the exclusive property of the Disclosing Party, and the Receiving Party shall acquire no rights, by license or otherwise to use the Confidential Information except as expressly provided by this Agreement.

(d) The Receiving Party acknowledges that disclosure or use of Confidential Information in violation of this Agreement could cause irreparable harm to the Disclosing Party for which monetary damages may be difficult to ascertain or inadequate as a remedy. The Receiving Party therefore agrees that the Disclosing Party shall have the right, in addition to its other rights and remedies, to seek and obtain injunctive relief for any violation of this Section 6.

7. WARRANTIES AND INDEMNITY

(a) Licensor hereby represents and warrants that the Licensed Products, Licensed Designs, and Licensor Marks are original and authored by Licensor, that Licensor is their sole and exclusive owner, that the Licensed Designs and Licensed Products do not infringe upon the works of other artists, that Licensor has the right to grant the licenses under this Agreement, and that the use, manufacture and sale by Licensee of the Licensed Designs and/or Licensed Products shall not violate the copyright, trademark, trade dress, or other rights of third parties and shall not provide the basis for any claim that the use of the Licensed Designs and/or use, sale or manufacture of the Licensed Products by the Licensee violates any rights of others. Licensor agrees to indemnify, defend, and hold harmless Licensee, its successors and assigns, against any actions, claims, suits, proceedings losses, damages, costs, liabilities, reasonable attorney fees, and other direct and reasonable expenses which Licensee may suffer, incur, or pay by reason of, or arising out of, any breach by Licensor of the representations and warranties in this Agreement. Licensor shall have no obligation under this Section unless: (i) Licensee promptly notifies Licensor of such claim; (ii) Licensor has sole control of its defense and settlement; and (iii) Licensee provides Licensor with reasonable assistance in its defense and settlement (provided however, any settlement shall be subject to Licensee's approval which shall not be unreasonably withheld or delayed).

(b) The parties warrant and represent to each other that each has the right to enter into this Agreement with the other.

(c) Licensee agrees to obtain and maintain during the term of this Agreement at its own expense product liability insurance from a recognized insurance company providing an amount equal to that which Licensee has for other articles which it presently manufactures, distributes, and sells, such insurance being applicable to any claims, liabilities, damages, costs, or expenses arising out of any alleged defects in the Licensed Products being sold by Licensee.

(d) Licensee agrees to notify Licensor in writing of any suspected infringements of the Licensed Designs or the Licensed Products and shall inform the Licensor of any evidence of such infringements. The sole right to institute a suit of infringement rests with Licensor. Licensee agrees to reasonably cooperate with Licensor, at Licensor's expense, in all respects, including furnishing employees of Licensee to testify when requested by Licensor or making available any records, papers, information, specimens, or the like.

8. TERM; TERMINATION AND SELL-OFF PERIOD.

(a) The "Term" of this Agreement shall commence as of the Effective Date and shall remain in full force and effect for approximately 15 months until 31 December 2007. At the end of the Term, if not earlier terminated as provided under this Section 8, this Agreement may be renewed at Licensee's option for a "Renewal Term" commencing 1 January 2008 and ending until 31 December 2008. To exercise its option to renew, Licensee shall give written notice of the same to Licensor no less than 180 days prior to expiration of the initial Term. No advance payment of any kind shall be due from Licensee in order to exercise such renewal right. The date when this Agreement expires or terminates for any reason as provided under this Section 8 shall be referred to as the "Termination Date".

(b) For a period beginning with the Termination Date and continuing for six (6) months thereafter ("Sell-off Period"), regardless of the reason for termination, Licensee shall have the right to dispose of all of its existing inventory of Licensed Products on hand as of the Termination Date. During the Sell-off Period, no royalties shall be payable to Licensor for the sale of Licensed Products that must be liquidated (sold at or below cost). Licensor must be notified in writing prior to the "closeout" or Termination of a Licensed Line or Licensed Products. Any licensed products sold during the "sell-off-period" that are non-liquidation orders are subject to royalties.

(c) If either party:

- (i) Terminates or suspends its business;
- (ii) Shall be adjudicated bankrupt or have an involuntary bankruptcy petition filed against it;
- (iii) Shall have filed a voluntary petition in bankruptcy,
- (iv) Has a receiver appointed for it; or
- (v) Makes an assignment for the benefit of creditors of all, or substantially all of its assets,

Then the other party may, at its option and within thirty (30) days after the occurrence of any of the above events (i) through (v), terminate this Agreement.

(d) Either party may terminate this Agreement upon the other party's material breach of this Agreement, if such breach shall not have been cured within thirty (30) days after written notice thereof shall have been given. The breaching party shall reimburse the non-breaching party for all reasonable costs incurred by the non-breaching party (including attorneys' fees) in collecting amounts due hereunder.

(e) Nothing contained in this Agreement shall require Licensee to keep any Licensed Products in its line or listed in its catalog.

(f) Within thirty (30) days of the Termination Date and upon the written request of Licensor, Licensee shall either return any Artwork or Licensed Designs to Licensor. Licensee's responsibility for any damage to, or loss of, the Artwork shall terminate upon Licensee's delivery of the Artwork to the transporter or carrier of Licensee's choice. In the event that the Artwork is damaged in a material way or lost prior to delivery to the transporter or carrier referenced above, Licensee's total liability to Licensor for such damage or loss shall be limited to the sum of two hundred dollars (\$200.00) for each original Artwork or Licensed Design that suffers such damage or loss.

9. GOVERNING LAW

This Agreement shall be governed by, and interpreted under, the laws of the State of "LICENSEE'S STATE HERE", without reference to its principles governing conflicts of law, except as to copyright and trademark matters which shall be governed by the laws of the United States and any applicable international conventions. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

10. COMPLETE AGREEMENT; MODIFICATION; WAIVER

This Agreement, together with all Exhibits, constitutes the entire understanding between the parties with respect to the subject matter of this Agreement and supersedes any prior discussions, proposals or agreements on this topic. Neither party makes any representations to the other party except as expressly set forth in this Agreement. This Agreement shall not be deemed or construed to be modified, amended, or waived, either in whole, or in part, except by written agreement of both parties to this Agreement. No failure or delay by either party in exercising any right, power or remedy under this Agreement, except as specifically provided, shall operate as a waiver of any such right, power or remedy.

11. SEVERABILITY

If any provision or provisions of this Agreement shall be held to be illegal, invalid or unenforceable, then the validity, legality and enforceability of any remaining provisions shall not in any way be affected or impaired.

12. FORCE MAJEURE

Neither party shall be liable under the Agreement for failure to perform any obligations if such failure is attributable to an act of God, terrorism (or the credible threat of same), the inability to obtain necessary governmental approvals or licenses, fire, casualty, labor disputes, or other similar causes beyond the reasonable control of the respective parties.

13. COMPLIANCE WITH LAWS

The parties shall comply with all applicable federal, provincial, state, and local statutes, ordinances, rules and regulations, including, without limitation, the rules and regulations under the U.S. Export Administration Act and the U.S. Foreign Corrupt Trade Practices Act, as they may be amended from time to time. Without limiting the foregoing, Licensee agrees not to export, re-export, or transfer directly or indirectly the Licensed Product to any country for which the United States government or the government of the location of export requires exporters to obtain an export license or other government approval at the time of export, re-export or transfer, unless prior written authorization is obtained from Licensor and the appropriate governmental agencies.

14. ASSIGNMENT

Neither party shall have the right to assign or otherwise transfer its rights or obligations, in whole or in part, under this Agreement except with the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed. If all of the assets or shares of Licensee are sold, or a part thereof which includes this license, and the Licensee is not in breach of this Agreement, then the Agreement may be transferred to such purchaser so long as said purchaser assumes all obligations of Licensee under this Agreement. The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties and their successors and permitted assigns.

15. RELATIONSHIP OF THE PARTIES

The relationship established between the parties by this Agreement is that of licensor and licensee and each party shall be and act as an independent contractor and not as agent or partner of, or joint venturer with, the other party for any purpose. Nothing contained in this Agreement shall in any way constitute agreement by that party or that party's employees or agents to be employees or agents of the other party, and neither party by virtue of this Agreement shall have any right, power or authority to act or create any obligation, express or implied, on behalf of the other party.

16. OBLIGATIONS OF THE PARTIES

(a) Licensor agrees neither to act nor omit an act, nor suffer to do anything, which shall limit or infringe or bar the right of Licensee to make, have made, use or sell the Licensed Products or use the Licensed Designs, Licensor Marks, or copyrights on the Licensed Products so long as Licensee is not in default of this Agreement.

(b) Licensee shall not be permitted to, and shall not use the Licensor Marks or the copyright on any product other than the Licensed Products and in conjunction with Licensed Designs without the written consent of the Licensor.

17. NOTICE

All notices, requests, demands, and other communications required under this Agreement shall be in writing and shall be sent, postage prepaid by registered or certified mail, return receipt requested, by nationally recognized commercial courier, or by the messenger to addresses set forth below or as they may be changed by prior written notice so delivered. Unless this Agreement specifies otherwise, any such notice shall be deemed given on the date hand delivered or on the date of receipt if sent, electronic mail, commercial courier or regular mail (a return receipt serving as conclusive evidence of such receipt).

Licensor:

Licensee:

YOUR COMPANY NAME
YOUR ADDRESS
YOUR ADDRESS
P: XXX-XXX-XXXX

LICENSEE COMPANY NAME
LICENSEE ADDRESS
LICENSEE ADDRESS
P: XXX-XXX-XXXX

18. DISPUTE RESOLUTION

The parties shall attempt in good faith to resolve any disputes, claims, or counterclaims arising out of or relating to this Agreement (“Dispute”) promptly by negotiation. Any party may give the other party written notice of any Dispute not resolved in the normal course of business. Representatives of both parties (“Representatives”) shall meet at a mutually acceptable time and place within ten (10) days after receipt of such notice by the receiving party, and thereafter, as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the Dispute. If the matter has not been resolved within thirty (30) days from the referral of the Dispute to the Representatives, or if no meeting of the Representatives has taken place within fifteen (15) days after such referral, either party may initiate any other action as permitted under this Agreement. If a party intends to be accompanied at a meeting by an attorney, the other party shall be given at least three (3) days prior notice of such intention and may also be accompanied by an attorney. From the date a notice of Dispute is received by the receiving party, all applicable statutes of limitations and defenses based upon the passage of time shall be tolled. The parties shall take such action, if any, required to effectuate such tolling. All negotiations pursuant to this clause are confidential and shall be treated as compromise and

settlement negotiations for purposes of the Federal Rules of Evidence and any applicable state rules of evidence.

19. ARBITRATION

All Disputes that cannot be resolved under the procedures outlined in Section 18 above shall be finally settled by arbitration. The arbitration shall be held in "CITY AND STATE HERE", and shall be conducted in accordance with the rules of the American Arbitration Association, before a panel of three arbitrators selected in accordance with those rules. Judgment upon the award rendered may be entered in any court having jurisdiction, or application may be made to such court for a judicial acceptance of the award and an order of enforcement.

20. SURVIVAL

The parties' obligations under Sections 5-22 shall survive the termination of this Agreement.

21. HEADINGS

Paragraph headings herein are for convenience only and shall not be construed as part of this Agreement.

22. COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be taken together and deemed to be one instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date set forth on the first page of this Agreement.

LICENSOR:
YOUR COMPANY HERE

LICENSEE:
LICENSEE COMPANY HERE

By: _____

By: _____

Its: _____

Its: _____

Date: _____

Date: _____

Exhibit A

NAME OF PRODUCT ARTWORK

Licensed Products

Exhibit G

Territory

WORLDWIDE

Exhibit H

Markets