



New York • California • Ohio • Indiana

PRODUCT DEVELOPMENT AGREEMENT

This Product Development Agreement ("Agreement"), effective as of _____ ,

is between _____

("Customer") a _____ having its principal office at,

_____ and Universal Packaging Systems, Inc. d/b/a PakLab ("PakLab"), a California corporation with its principal place of business at 6080 Jericho Turnpike, Suite 101, Commack, New York 11725.

I. Research & Development

Whereas, PakLab agrees to develop unique formulations as requested and specified by Customer, according to Good Laboratory Practices; and

Whereas, the proposed Products and pricing are identified in Exhibit A, which is hereby incorporated herein by reference; and

Now Therefore, in consideration of the agreements herein expressed and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

- A. All work under this Agreement shall be undertaken and/or overseen by PakLab's Research and Development Department. However, PakLab shall be permitted, when necessary, to sub-contract work to third parties, provided that said parties agree to the terms of this Agreement and the Nondisclosure Agreement between PakLab and Customer, in writing, prior to undertaking any such work.
- B. PakLab will require Customer to complete a brief for each Product for which PakLab will complete formulation development. Customer must complete each brief prior to commencement of any work by PakLab. The brief for each Product will set forth: specifications, components, packaging, anticipated costs, and claims, as well as any other important issues or factors, ("Product Brief").
- C. PakLab will also require Customer to provide a purchase order that demonstrates that Customer is (i) authorized to initiate the services set forth in this Agreement and (ii) that Customer has authorized payment for the services set forth in this Agreement. Customer and PakLab agree that the issuance of such purchase order is for administrative purposes only. Additional or different terms and conditions contained in any such purchase order will be null and void. No course of prior dealings between the parties and no usage of trade will be relevant to determine the meaning of any purchase order or invoice, or any document in electronic or written form that is signed and delivered by each of the parties for the performance of Services other than this Agreement, which contains the entire understanding of the parties with respect to the matters contained herein and supersedes and replaces in its entirety any and

all prior communications and contemporaneous agreements and understandings, whether oral, written, electronic or implied, if any, between the parties with respect to the subject matter hereof.

D. All payments specified in this Agreement shall be made net 30 days from the date on the invoice.

II. Product Initiation Fee

The Product Initiation Fee for each Product is set forth on Exhibit A, which may be updated from time to time by mutual agreement of the parties.

III. Services Provided

A. Initial Services.

1. PakLab will create and generate samples for Customer and submit for approval. Samples shall include up to six (6) 1 ounce samples.
2. PakLab will make up to three (3) revisions per Product, including changes to Product formulations, based on Customer feedback. These revisions shall include submitting additional samples to Customer. There shall be no charge for making up to three (3) revisions. In the event that Customer requests more than three (3) revisions of Product formulations, such additional revisions will be subject to a fee of \$250.00 per revision. Revisions include but are not limited to revisions to formulations based upon a change of fragrance and extracts.
3. PakLab will provide documentation for Customer approved formulation, which shall take the form of a Regulatory Submission. Such submission shall include: an ingredient listing; a certificate of analysis; stability report; and an MSDS. PakLab shall require Customer's written approval before proceeding with such documentary submission.
4. Upon formulation approval signed by the customer, PakLab will conduct stability testing in glass. The glass stability testing will be based on the following parameters:

a. 3 Month Stability Testing Parameters

	3 CYCLE FREEZE/THAW	5°C	25°C	40°C	50°C
INITIAL	✓				
4 WEEK		✓	✓	✓	✓ (2 weeks)
8 WEEK		✓	✓	✓	
12 WEEK		✓	✓	✓	

b. Stability Tests

VISCOSITY
SPECIFIC GRAVITY
pH
COLOR
ODOR
APPEARANCE
FILL WEIGHT FOR PACKAGE STABILITY
DISPENSING CHECK FOR PACKAGE STABILITY
ASSAY TESTING - INITIALS AND 3 MONTH 40°C (OTC ONLY)
MICRO CHALLENGE - INITIALS AND 3 MONTH 40°C ONLY

B. Additional Services.

The Product Initiation Fee does not include any other Product testing not specifically set forth above. Customer will be solely responsible for coordination and payment of all such Additional Services. The Additional Services and pricing are set forth in Exhibit B and specifically incorporated herein by reference.

PakLab will require a separate purchase order from Customer to commence any Additional Services.

IV. Warranties

- A. PakLab agrees to use its best efforts to create formulations that (i) comply with the Customer's specifications as set forth in the Product Brief and, (ii) fulfill testing parameters outlined in this Agreement. PakLab does not warrant that any formulation work it undertakes will necessarily result in a Product formulation that meets the Product Brief requisites in whole or in part nor will comply with all of the testing parameters. Further, if additional testing beyond that which has been agreed to between the parties is necessary to substantiate a specific requisite in the Product Brief or to verify that a formulation meets all requisites of a Product Brief, PakLab does not make any representations or warranties without the additional testing.
- B. PakLab warrants solely that for a period of twelve (12) months from the date of your receipt, or the stated life of the Product, whichever is the shorter (the "Warranty Period"), Product shall substantially conform to the specifications in effect at the time of manufacture as set forth in the applicable Certificate of Analysis ("Specifications").
- C. Notice of suspected nonconforming Products must be made to PakLab promptly and prior to the end of the Warranty Period. If PakLab determines that the Product does not conform to the Specifications, we will replace the Product at no additional cost to you. This limited warranty shall not extend to anyone

other than you as the original purchaser of the Product, and shall not be effective if PakLab determines, in its sole discretion, that you have altered or misused the Product or have failed to use or store it in accordance with our instructions, including any limited use statement, or if the defect results from neglect or accident. PakLab's sole and exclusive liability and your exclusive remedy with respect to any defective or nonconforming Product shall be the replacement of the Product free of charge, upon the return of the same to us in accordance with our instructions. At our discretion, we may provide a credit or refund. This limited warranty applies to all PakLab sales made domestically or internationally.

D. PakLab makes no warranty whatsoever in regard to products furnished by third parties. Such products are subject to the warranties, if any, of their respective manufacturers to the extent they are transferable or otherwise available to Customer.

E. EXPRESS DISCLAIMER OF WARRANTIES – EXCEPT FOR THE EXPRESS WARRANTIES STATED IN SECTION IVB, ABOVE, ALL PRODUCTS ARE PROVIDED “AS IS” WITHOUT WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, OR STATUTORY, AND PAKLAB EXPRESSLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT. CUSTOMER ACKNOWLEDGES THAT IT HAS RELIED ON NO WARRANTIES NOT EXPRESSLY SET FORTH IN SECTION IVB.

V. Intellectual Property Ownership and Rights

A. All right, title and interest in and to the Intellectual Property (“IP”) with respect to the formulation of the Products shall belong to PakLab or its designee until such time as Customer requests that such IP with respect to a specific formulation for a product (“Product IP”) be transferred to Customer. Customer may seek transfer of the Product IP for one, all or none of the Products, at its sole discretion. In the event of any such Product IP transfer request, the Product IP shall be transferred to Customer provided that: (i) Customer is not in default under this Agreement or any contract manufacturing agreement that might be in force and effect at the time of the request; and (ii) PakLab shall have no obligation to commence transfer of any Product IP until and unless Customer has paid PakLab, in full, for such Product IP.

B. Customer and PakLab agree to negotiate in good faith while attempting to reach a mutually acceptable price for transfer of Product IP.

C. After Customer pays PakLab the Product IP price, PakLab shall thereafter promptly effect the transfer of all right, title and interest in and to such Product IP to Customer after Customer pays the Product IP costs. Customer will be solely responsible for all documents and other tasks necessary to undertake the transfer, as well as all costs, including attorneys fees, registration fees and transfer taxes, associated therewith. PakLab agrees on behalf of its designee and itself that its authorized representative will execute said documents in a reasonable time frame, and undertake such other actions as may reasonably be requested by Customer, so long as Customer pays any expenses or costs pursuant to sub-paragraph I below.

- D. Until such time as all ownership rights for a given formulation are transferred from PakLab to Customer, **and** (i) a Contract Manufacturing Agreement is in full force and effect between Customer and PakLab for the Product(s) that are the subject of this Agreement, **and** (ii) Customer is not in breach of any payment obligations under the Contract Manufacturing Agreement, PakLab or its designee shall grant an exclusive worldwide royalty-free license to Customer for the use of the formulations in the Products that are the subject of this Agreement. Customer shall not be permitted to assign any rights under such license to any third party.
- E. The parties agree to provide reasonable assistance to each other for the purposes of registering, renewing and transferring intellectual property rights arising under or related to this Agreement and/or the Contract Manufacturing Agreement. However, except as specifically provided for in this Agreement, each party will be responsible for its own out-of-pocket costs associated with registering, renewing and/or transferring intellectual property rights, including but not limited to government fees, attorneys fees and charges by third parties.

VI. No Third Party Payments

- A. PakLab represents and warrants that no third party has received any payment from PakLab of any nature including a "finder's fee", commission, sales incentive or otherwise as a result of Customer entering into this Agreement with PakLab or into any Contract Manufacturing Agreement or other contract with PakLab contemplated by, or in connection with this Agreement.

VII. General Provisions

- A. Independent Contractor. PakLab is an independent contractor and not an agent, employee, partner, joint venture partner, subsidiary or an affiliated entity of Customer. No party shall incur any debts or make any commitments on behalf of the other, except to and only to the extent, if at all, specifically provided in this Agreement.
- B. Force Majeure. Except as otherwise provided herein, neither party shall be liable to the other for any Loss or failure to perform resulting from any act of God, fire, flood, explosion or other natural disaster, actions or impositions by Federal, state or local authorities, strike, labor dispute, vandalism, riot, commotion, act of public enemies, blockage or embargo or any other cause beyond the reasonable control of such party. Upon the occurrence of any such event that results in, or will result in, a delay or failure to perform, the party whose performance is delayed or prevented shall be relieved from fulfilling its obligations under this Agreement during the period of such force majeure event and shall immediately provide written notice to the other party of such occurrence and the anticipated effect of such occurrence. The party whose performance is affected shall use its best efforts to minimize disruptions in its performance and shall resume full performance of its obligations under this Agreement as soon as possible.

C. Notices. Any notice or other communication required or permitted to be given hereunder shall be in writing and mailed (by certified mail, return receipt requested, postage prepaid) to the following addresses:

If to Customer: _____

If to PakLab:

PakLab
14570 Monte Vista Avenue
Chino, California 91710
Attn: Peter Belinsky

With a copy to:

PakLab
981 Joseph E. Lowery Boulevard, NW
Suite 100
Atlanta, Georgia 30318-5268
Attention: Corporate Law Department

- D. Successors and Assigns. This Agreement shall be binding on and shall inure to the benefit of the parties and their respective successors in interest and assigns. Neither party shall assign its rights or obligations under this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld.
- E. Severability. Any term or provision of this Agreement which is invalid or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction. If any provision of this Agreement is so broad as to be unenforceable, the provision shall be interpreted to be only as broad as is enforceable.
- F. Entire Agreement and Conflict. This Agreement, the Product Brief, and the Nondisclosure Agreement and any other document and any other documents incorporated by reference, constitute the entire Agreement and supersede any previous agreement, whether written or oral, between the parties relating to the subject matter of this Agreement. In the event of any conflict, the terms and conditions of this Agreement shall prevail over the terms and conditions of any purchase order or other shipping, delivery, receiving, billing or other document used directly or indirectly by either party in performing this Agreement.

- G. Amendment. This Agreement may not be amended or modified in any respect, except by writing made and executed in the same manner as this Agreement. No provisions of this Agreement shall be waived by any act, omission or knowledge of a parties except by an instrument in writing expressly waiving such provisions and executed by the party against whom such waiver is claimed. No waiver of any default under or breach of this Agreement shall operate as a waiver of any other or subsequent default or breach.
- H. Construction. This Agreement has been submitted to the scrutiny of, and has been negotiated by, all parties hereto and their counsel, and shall be given a fair and reasonable interpretation in accordance with the terms hereof, without consideration or weight being given to its having been drafted by any party hereto or its counsel.
- I. Headings. The headings of this Agreement are for convenience only and shall be of no force or effect in construing or interpreting any of the provisions of this Agreement.
- J. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. An executed agreement which is transmitted by facsimile or via email shall be deemed an original Agreement.
- K. Governing Law; Arbitration. This Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to conflict of law principles. Except for the enforcement of either party's intellectual property rights, where injunctive and other equitable remedies shall be available from any court of competent jurisdiction, all disputes, claims and other matters in controversy arising directly or indirectly out of or related to this Agreement, or the breach hereof, whether contractual or non-contractual, shall be determined by arbitration, according to the commercial arbitration provisions of the American Arbitration Association ("AAA"). Persons eligible to be selected as arbitrators shall be limited to attorneys who have been in practice at least ten (10) years specializing in corporate matters, who have had both training and experience as arbitrators and who have had no prior relationship or business dealings with either Customer or PakLab or their respective directors and officers. The arbitration shall be conducted in using the English language. The U.S. Federal Arbitration Act (the "FAA") shall apply to the construction and interpretation of this agreement to arbitrate. The arbitrator shall base the award on applicable law and judicial precedent and, unless both parties agree otherwise, shall include in such award the findings of fact and conclusions of law upon which the award is based and may include equitable relief. Judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction. The arbitrator shall award recovery of reasonable attorneys' fees and costs to the prevailing party. The arbitrators' resolution of the dispute shall be final and binding, except that any party can appeal to the federal courts of the United States of America to vacate and remand, or modify or correct the arbitration award for any of the grounds specified in the FAA or if the arbitrator committed prejudicial error in the application of substantive law to the established facts. The procedures specified in this Section K shall be the sole and exclusive procedures for resolution of disputes; provided, however, that nothing contained herein shall preclude any party from filing a judicial proceeding seeking equitable or injunctive relief. Should either party find it necessary to seek a remedy in a court, and such action is permissible under this provision, the parties agree that jurisdiction and venue for such an action shall lie exclusively

with a state or federal court with jurisdiction and venue over Chino, California, unless all such courts refuse to exercise jurisdiction and venue over said proceeding.

PAKLAB

BY : _____
SIGNATURE

NAME

TITLE

CUSTOMER

BY : _____

SIGNATURE

NAME

TITLE

EXHIBIT A

ADDENDUM TO PRODUCT DEVELOPMENT AGREEMENT

This _____ Addendum is attached to and incorporated into that certain Product Development Agreement _____ previously executed by and between _____ ("Customer") and Universal Packaging Systems, Inc. d/b/a PakLab, ("PakLab").

It is mutually understood and agreed by and between the undersigned contracting parties that the following services or additional services and pricing shall amend and update the Agreement :

Section IA shall be amended such that the items listed below shall include the following list of Products.

Development List :

PRODUCTS TO BE DEVELOPED :

1. _____
2. _____
3. _____
4. _____
5. _____

Section II shall be amended such that the prices listed below shall apply to the products listed above in this Contract Amendment.

Product Initiation Fee :

PRODUCT :	PRICE (\$ USD) :
1. _____	_____
2. _____	_____
3. _____	_____
4. _____	_____
5. _____	_____

