



## Copyright License Agreement (Licensee-favorable)

**Document 4038A**

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**[Note: This copyright license agreement is drafted from the Licensee's perspective and is targeted for the United States only.]**

**[NAME OF COMPANY]**

## **COPYRIGHT LICENSE AGREEMENT**

THIS COPYRIGHT LICENSE AGREEMENT (this “**Agreement**”) is entered into by and between [NAME OF LICENSOR], a [\_\_\_\_\_] corporation (the “**Licensor**”), and [NAME OF LICENSEE], a [\_\_\_\_\_] corporation (the “**Licensee**”) (collectively referred to as the “**Parties**”), as of [\_\_\_\_], 20[\_\_\_] (the “**Effective Date**”).

WHEREAS, Licensor is the sole and exclusive owner of the copyrighted material identified more fully in Schedule A attached hereto (the “**Property**”);

WHEREAS, Licensor is the sole and exclusive owner of the copyright registrations identified more fully in Schedule A attached hereto (the “**Copyrights**”);

WHEREAS, Licensor has the power and authority to grant to Licensee the right, privilege and license to use, manufacture and sell those types of products that incorporate or are otherwise based on the Property (the “**Licensed Products**”) and to use the Property on or in association with such Licensed Products;

WHEREAS, Licensee has represented that it has the ability to manufacture, market and distribute the Licensed Products in [DESCRIBE TERRITORY] (the “**Territory**”) and to use the Property on or in association with the Licensed Products;

WHEREAS, Licensee desires to obtain from Licensor a license to use, manufacture, have manufactured and sell Licensed Products in the Territory and to use the Property on or in association with the Licensed Products; and

WHEREAS, both Licensee and Licensor are in agreement with respect to the terms and conditions upon which Licensee shall use, manufacture, have manufactured and sell Licensed Products and to use the Property;

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained in this Agreement, the parties agree as follows.

### **1. License Grant.**

(a) Licensor hereby grants to Licensee for the Term (as defined in Section 2) of this a non-exclusive license (the “**License**”) to use the Property on or in association with the Licensed Products in the Territory as well as on packaging, promotional and advertising material associated therewith.

(b) Licensor hereby grants to Licensee, during the Term, the non-exclusive right and license to use, manufacture, have manufactured, sell, distribute and advertise the Licensed Products in the Territory. The license includes, but is not limited to, a license under any and all

patents and copyrights and any applications therefore which have been filed or may be filed in the future with respect to the Property.

(c) Licensee may grant any sublicenses to any third party with the prior express written consent of the Licensor, which consent shall not be unreasonably withheld or delayed.

**2. Term of the Agreement.** This Agreement and the provisions hereof, except as otherwise provided, shall be in full force and effect commencing the Effective Date and shall extend for an initial term of [ ] years (the “**Term**”). Licensee shall have the right to renew this Agreement for an unlimited number of renewal Terms of [ ] years provided that during the preceding [ ] months, Licensee shall have paid Licensor total royalty income of at least [ ]%.

### **3. Compensation.**

(a) In consideration for the licenses granted hereunder, Licensee agrees to pay to Licensor during the Term a royalty (the “**Royalty**”) in the amount of [ ]% of its direct Net Sales (as defined in Section 3(f)) of Licensed Products.

(b) In addition, in the event that Licensee grants any sub-licenses for the use of the Property within the Territory, Licensee shall pay Licensor [ ]% of the gross income received by Licensee from such sub-licensees.

(c) The Royalty shall be calculated on a quarterly calendar basis (the “**Royalty Period**”) and shall be payable no later than [ ] days after the end of the preceding full calendar quarter.

(d) With each Royalty payment, Licensee shall provide Licensor with a written royalty statement in a form acceptable to Licensor.

[(e) Licensee agrees to pay to Licensor, upon Licensor’s execution of this Agreement, an advance against royalties (the “**Advance**”) in the amount of \$[ ].]

(f) “**Net Sales**” shall mean Licensee’s gross sales (the gross invoice amount billed customers) of Licensed Products, less all discounts and allowances actually given and, further, less any bona fide returns.

(g) Late payments shall incur interest at the then prevailing prime rate from the date such payments were originally due.

**[NOTE: SECTION 3(h) THROUGH SECTION 3(k) ARE USED FOR INTERNATIONAL LICENSES]**

[(h) Licensee shall be responsible for any taxes on revenues received from sublicensing in countries outside the United States, while Licensor shall be responsible for any taxes levied on the receipt of income in the United States. Any taxes foreign to US taxes imposed on fees or royalties payable under this Agreement shall be paid by Licensor or deducted by Licensee from amounts due Licensor hereunder only if such taxes are allowable by the United States as a credit on Licensor’s US income tax return or would be allowable if the particular

circumstance of the Licensor (such as that its profits are insufficient) causes disallowance. If not allowable, such taxes, if any, will be paid by the Licensee. Both parties will cooperate with one another to obtain the benefits of such double taxation agreements as may be applicable hereunder.

(i) All fees payable hereunder shall be based on the official exchange rate on the date on which such payment is due. If, by any reason of any governmental or fiscal restrictions affecting currency convertibility, payment cannot be made in US funds, then Licensee shall take such reasonable actions with respect to the payment due as Licensor shall direct.]

(j) In the event that any payment required to be made to Licensor pursuant to this Agreement cannot be made when due because of the exchange controls of any country in the Territory and such payment remains unpaid for [\_\_\_] months, Licensor may, by notice served to Licensee, elect any of the following alternative methods of handling such payment:

(i) If the currency can be converted into currency other than U.S. Dollars for purposes of foreign remittance, Licensor may elect to receive such payment in any such currencies as it may specify and, in such case, the amount payable in the foreign currency so selected shall be determined by reference to the then existent legal rate of exchange which is most favorable to Licensor.

(ii) Licensor may elect to have payment made to it in the local currency, deposited to the credit of Licensor in a bank account in such country designated by Licensor, in which event Licensee shall furnish to Licensor evidence of such deposit.

(iii) Licensor may elect to receive payment in shares of stock issued by Licensee at such price as Licensor and Licensee may agree to at such time.

(k) All expenses of currency conversion and transmission shall be borne by Licensee and no deduction shall be made from remittances on account of such expenses. Licensee from time to time may prepare all applications, reports or other documents which may be required by the government of the applicable country in order that remittances may be made in accordance with this Agreement.]

#### **4. Audit.**

(a) Licensor shall have the right, upon at least [\_\_\_] days' written notice and no more than once per calendar year, to inspect Licensee's books and records and all other documents and material in the possession of or under the control of Licensee with respect to the subject matter of this Agreement at the place or places where such records are normally retained by Licensee, during Licensee's normal business hours.

(b) All books and records relative to Licensee's obligations hereunder shall be maintained and kept accessible and available to Licensor for inspection for at least [\_\_\_] years after the date to which they pertain.

(c) In the event that an investigation of Licensee's books and records is made, certain confidential and proprietary business information of Licensee may necessarily be made available

to the person or persons conducting such investigation. It is agreed that such information shall be retained in confidence by Licensor and shall not be used by Licensor or disclosed to any third party for a period of [ ] years from the date of disclosure without the prior express written permission of Licensee unless required by law. It is understood and agreed, however, that such information may be used in any proceeding based on Licensee's failure to pay its actual Royalty obligation.

## **5. Warranties and Obligations.**

(a) Licensor represents and warrants that it has the right and power to grant the licenses granted hereunder and that there are no other agreements with any other party in conflict herewith.

(b) Licensor represents and warrants that the Property does not infringe any valid right of any third party. Specifically, Licensor represents and warrants that the Property has not been adapted from any other work, nor has material from any other work been copied and used in the Property. In addition, Licensor represents and warrants that no part of the Property is defamatory or otherwise violates the privacy or publicity rights of any third party.

(c) Licensor further represents and warrants that the Property is not in the public domain, and there are no pending claims of ownership against the Property or the Copyrights.

## **6. Notices, Quality Control and Samples.**

(a) The licenses granted hereunder are conditioned upon Licensee's full and complete compliance with the marking provisions of the patent, trademark and copyright laws of the United States.

(b) The Licensed Products, as well as all promotional, packaging and advertising material relative thereto, shall include all appropriate legal notices as required by Licensor.

(c) The Licensed Products shall be of a high quality which is at least equal to comparable products manufactured and marketed by Licensee and in conformity with a standard sample approved by Licensor.

(d) At least once during each calendar year, Licensee shall submit to Licensor, for approval, [ ] samples of the Licensed Products.

## **7. Patents, Trademarks and Copyrights.**

(a) Licensor shall seek, obtain and, during the Term, maintain in its own name and at its own expense, appropriate patent, trademark or copyright protection for the Property. Licensor shall take appropriate action to prevent the Property from becoming part of the public domain.

(b) In the event that Licensor does not seek or obtain patent, trademark or copyright protection for a particular item for which Licensee believes such protection is necessary, Licensee shall have the right to seek such protection in the name of Licensor and setoff all costs associated with seeking and maintaining such protection against the Royalties owed Licensor.

(c) The parties agree to execute any documents reasonably requested by the other party to effect any of the above provisions.

(d) Licensee agrees that its use of the Property and the Copyrights inures to the benefit of Licensor and that the Licensee shall not acquire any rights in the Property or the Copyrights.

## **8. Termination.**

(a) This Agreement may be terminated by either party upon [ ] days' written notice to the other party in the event of a breach of a material provision of this Agreement by the other party, provided that, during such [ ]-day period, the breaching party fails to cure such breach.

(b) Licensee shall have the right to terminate this Agreement at any time on [ ] days' written notice to Licensor. In such event, all moneys paid to Licensor shall be deemed non-refundable and Licensee shall be relieved of any further obligations hereunder.

## **9. Post-Termination Rights.**

(a) Not less than [ ] days prior to the expiration of this Agreement or immediately upon termination thereof, Licensee shall provide Licensor with a complete schedule of all inventory of Licensed Products then on hand as well as all work in progress (the "**Inventory**").

(b) Upon expiration or termination of this Agreement, except for reason of a breach of Licensee's duty to comply with the quality control or legal notice marking requirements, Licensee shall be entitled, for an additional period of [ ] months and on a nonexclusive basis, to continue to sell such Inventory. Such sales shall be made subject to all of the provisions of this Agreement and to an accounting for and the payment of a Royalty thereon. Such accounting and payment shall be due and paid within [ ] days after the end of such [ ]-month period.

(c) Upon the expiration or termination of this Agreement, all of the rights of Licensee under this Agreement shall forthwith terminate and immediately revert to Licensor, and Licensee shall immediately discontinue all use of the Property and the like, at no cost whatsoever to Licensor, except as set forth in Section 9(b) of this Agreement.

**10. Goodwill.** Licensee recognizes the value of the good will associated with the Property and acknowledges that the Property and all rights therein, including the good will pertaining thereto, belong exclusively to Licensor.

## **11. Infringement.**

(a) Licensor shall be obligated, at its own cost and expense, to institute and prosecute lawsuits against third persons for infringement of the rights licensed in this Agreement.

(b) If Licensor does not institute an infringement suit within [ ] days after Licensee's written request that it do so, Licensee may institute and prosecute such lawsuit. Any lawsuit shall be prosecuted solely at the cost and expense of the party bringing suit and all sums recovered in any such lawsuits, whether by judgment, settlement or otherwise, in excess of the

amount of reasonable attorneys' fees and other out of pocket expenses of such suit, shall be divided equally between the parties.

(c) Upon request of the party bringing the lawsuit, the other party shall execute all papers, testify on all matters, and otherwise cooperate in every way necessary and desirable for the prosecution of any such lawsuit. The party bringing suit shall reimburse the other party for the expenses incurred as a result of such cooperation.

**12. Indemnity.** Licensors agree to defend and indemnify Licensee, its officers, directors, agents and employees against all costs, expenses and losses (including reasonable attorneys' fees and costs) incurred through claims of third parties against Licensee challenging the authenticity of the originally submitted Property or alleging that Licensee's use of the Property infringes the rights of another.

**13. Insurance.** Licensee shall, throughout the Term, obtain and maintain at its own cost and expense from a qualified insurance company licensed to do business in [STATE], standard product liability insurance naming Licensors as an additional named insured. Such policy shall provide protection against any and all claims, demands and causes of action arising out of any defects or failure to perform, alleged or otherwise, of the Licensed Products or any material used in connection therewith or any use thereof. The amount of coverage shall be as specified in Schedule A attached hereto. The policy shall provide for [ ] days' notice to Licensors from the insurer by registered or certified mail, return receipt requested, in the event of any modification, cancellation or termination thereof. Licensee agrees to use its best efforts to furnish Licensors a certificate of insurance evidencing same within [ ] days after execution of this Agreement.

**14. Force Majeure.** It is understood and agreed that in the event of an act of the government, or war conditions, or fire, flood or labor trouble in the factory of Licensee or in the factory of those manufacturing parts necessary for the manufacture of the Licensed Products, preventing the performance by Licensee of the provisions of this Agreement, then such nonperformance by Licensee shall not be considered as grounds for breach of this Agreement and such nonperformance shall be excused while the conditions herein prevail and for [ ] months thereafter.

**15. No Joint Venture.** Nothing contained herein shall constitute this arrangement to be employment, a joint venture or a partnership.

**16. Assignability.** This Agreement and the licenses granted hereunder may not be assigned by any act of Licensee or by operation of law unless in connection with a transfer of substantially all of the assets of Licensee or with the consent of Licensors, which consent shall not be unreasonably withheld or delayed.

**[17. Governing Language.** This Agreement is in the English language. No translation of this Agreement into any language other than English shall be considered in the interpretation thereof and in the event that any translation of this Agreement is in conflict with the English-language version, the English-language version shall govern.]

**18. Miscellaneous.**

18.1 Governing Law. This Agreement will be construed in accordance with and governed by the laws of the [\_\_\_\_], without giving effect to the conflict of law principles of the [\_\_\_\_].

18.2 Successors and Assigns. Except as otherwise expressly provided in this Agreement, this Agreement will be binding on, and will inure to the benefit of, the successors and permitted assigns of the parties to this Agreement. Nothing in this Agreement is intended to confer upon any party other than the parties hereto or their respective successors and assigns any rights or obligations under or by reason of this Agreement, except as expressly provided in this Agreement.

18.3 Notices. All notices and other communications required or permitted hereunder will be in writing and will be delivered by hand or sent by overnight courier, fax or e-mail to:

if to Licensor:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

fax: \_\_\_\_\_

e-mail: \_\_\_\_\_

Attention: \_\_\_\_\_

if to Licensee:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

fax: \_\_\_\_\_

e-mail: \_\_\_\_\_

Attention: \_\_\_\_\_

Each party may furnish an address substituting for the address given above by giving notice to the other parties in the manner prescribed by this Section 18.3. All notices and other communications will be deemed to have been given upon actual receipt by (or tender to and rejection by) the intended recipient or any other person at the specified address of the intended recipient.

**18.4 Jurisdiction; Venue.**

(a) Each party hereby irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of any [STATE] state court sitting in the County of [NAME] or any federal court of the United States of America sitting in the District of [\_\_\_\_], and any appellate court from any such court, in any suit action or proceeding arising out of or relating to this Agreement, or for recognition or enforcement of any judgment, and each party hereby irrevocably and unconditionally agrees that all claims in respect of any such suit, action



or proceeding may be heard and determined in such [STATE] state Court or, to the extent permitted by law, in such federal court.

(b) Each party hereby irrevocably and unconditionally waives, to the fullest extent it may legally do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement in [STATE] state court sitting in the County of [NAME] or any federal court sitting in the District of [\_\_\_\_\_]. Each party hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such suit, action or proceeding in any such court and further waives the right to object, with respect to such suit, action or proceeding, that such court does not have jurisdiction over such party.

18.5 Waiver of Jury Trial. Each party waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect of any action, suit or proceeding arising out of or relating to this Agreement.

18.6 Severability. In the event that any provision of this Agreement is held to be unenforceable under applicable law, this Agreement will continue in full force and effect without such provision and will be enforceable in accordance with its terms.

18.7 Construction. The titles of the sections of this Agreement are for convenience of reference only and are not to be considered in construing this Agreement. Unless the context of this Agreement clearly requires otherwise: (a) references to the plural include the singular, the singular the plural, and the part the whole, (b) references to one gender include all genders, (c) “or” has the inclusive meaning frequently identified with the phrase “and/or,” (d) “including” has the inclusive meaning frequently identified with the phrase “including but not limited to” or “including without limitation,” and (e) references to “hereunder,” “herein” or “hereof” relate to this Agreement as a whole. Any reference in this Agreement to any statute, rule, regulation or agreement, including this Agreement, shall be deemed to include such statute, rule, regulation or agreement as it may be modified, varied, amended or supplemented from time to time.

18.8 Entire Agreement. This Agreement embodies the entire agreement and understanding between the parties hereto with respect to the subject matter of this Agreement and supersedes all prior or contemporaneous agreements and understanding other than this Agreement relating to the subject matter hereof.

18.9 Amendment and Waiver. This Agreement may be amended only by a written agreement executed by the parties hereto. No provision of this Agreement may be waived except by a written document executed by the party entitled to the benefits of the provision. No waiver of a provision will be deemed to be or will constitute a waiver of any other provision of this Agreement. A waiver will be effective only in the specific instance and for the purpose for which it was given, and will not constitute a continuing waiver.

18.10 Counterparts. This Agreement may be in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one instrument.

*[The remainder of this page has been intentionally left blank.]*



IN WITNESS WHEREOF, the undersigned have executed this Copyright License Agreement as of the date first written above.

LICENSOR

[NAME OF LICENSOR]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

LICENSEE

[NAME OF LICENSEE]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**SCHEDULE A**

1. **Property.** The following Property is included in this Agreement:

<u>Property Name</u>	<u>Description of Property</u>

2. **Copyrights.** The following Copyrights are included in this Agreement:

<u>Copyright Name</u>	<u>Registration Number</u>

3. **Licensed Products.** The following Licensed Products are included in this Agreement:

<u>License Products</u>	<u>Description / Registration Number</u>

4. **Product Liability Insurance.** \$[\_\_\_\_\_] combined single limit, for each single occurrence for bodily injury and/or for property damage.