

LICENSING AND DISTRIBUTOR AGREEMENT

This Licensing Agreement is made as of the ____ day of _____, 20____, by and between _____, (“Licensor”), and _____ (“Licensee”).

WHEREAS, Licensor has developed a unique system (“Licensor’s System”) which includes a line of unique _____ products, marketing and distribution systems, pricing and cost schedules, and operating procedures, all of which may be changed, improved and further developed by the Licensor from time to time;

WHEREAS, Licensor identifies Licensor’s system by means of certain trademarks, logos, emblems, and indicia of origin including without limitation those listed at Exhibit A attached hereto (“Proprietary Marks”) for use in connection with such system;

WHEREAS, Licensee recognizes the importance to Licensor and to the public of maintaining the distinctive qualities and attributes of products and services identified by the proprietary Marks associated with _____ and is willing to maintain such qualities and attributes;

NOW, THEREFORE, in consideration of the covenant and agreements contained herein and other valuable considerations, the receipt and sufficiency of which is hereby acknowledged, it is agreed by the parties hereto as follows:

1. LICENSE.

- a. Except as stated in paragraph 3 below, Licensor grants to Licensee the exclusive right and privilege to use Licensor’s System and the Proprietary Marks in opening and operating a distributor network (the “Licensed Business”) within the United States of America.
- b. As restricted by paragraph 4 below, Licensee may sublicense the Licensor’s System and Proprietary Marks and the Licensed Business to other distributors and such sublicense shall survive any termination of this License or the rights granted hereunder. Licensor agrees to be bound by the sublicense rights granted by Licensee to sublicensees as regards to Licensor’s System and the Proprietary Marks. In the event of a Termination Event, Licensor shall succeed to all of the licensing rights of Licensee, except Licensee shall continue to have the right to receive income and royalties from those sublicensees, distributors and customers then owned, operated or managed by Licensee or sold to prior to the Termination Event.

2. TERM; TERMINATION.

- a. The License granted hereby **shall be for a period of ____ years / is perpetual and shall be terminated only upon the occurrence of a “Termination Event” as defined below.** For purposes hereof, a “Termination Event” shall occur (i) in the event Licensee shall commence or become subject to, a proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official or seeking judicial or other dissolution (which in the case of an involuntary proceeding, has not been dismissed within 90 days of commencement of the proceeding). (ii)
- b. _____
In the event of the occurrence of a Termination Event, Licensor may terminate this Agreement by written notice to Licensee.

b. Failure to meet any of the following shall trigger a "Termination Event":

1.

2.

3.

3. RETAINED RIGHTS, RESTRICTIONS AND OTHER AGREEMENTS.

a. Licensors retain the right to license and distribute Licensors' System anywhere outside the United States. Nothing in this Agreement shall prevent distributors located in _____ from selling to retail customers located within the United States.

b. Licensors shall also retain the following rights: _____

c. Licensee shall be granted these specific additional rights

d. Licensors agree to obtain and deliver proof of all service marks, trademarks and applications within 60 days of the execution of this document and agree to keep Licensee apprised of all United States Trademark office actions.

4. ASSIGNMENT.

The license granted under this Agreement may not be assigned, in whole or in part, without the consent of Licensors.

5. LICENSOR'S WARRANTIES AND REPRESENTATIONS: INDEMNITY.

Licensors warrant and represents that it is the owner of the Licensors' System and Proprietary Marks and that these marks are free and clear of all encumbrances, that it has the right and authority to convey and grant the license set forth in Section 1 hereof and that Licensee's use of the Licensors' System and Proprietary Marks as contemplated in this Agreement does not infringe on, and are not subject to, any third parties' proprietary rights, except as provided in Section 3 above.

Licensors agree to indemnify, hold harmless and defend Licensee from and against any and all damages, costs and expenses, including reasonable attorneys' fees, incurred in connection with any claim which, if true, would constitute a breach of Licensors' warranties set forth in this Section.

Licensee agrees to indemnify, hold harmless and defend Licensors from and against any and all damages, costs and expenses, including reasonable attorneys' fees, incurred in connection with any third parties claim for negligence, breach of contract or intentional tort against Licensee and Licensors for any claim not pertaining to the use of Proprietary Marks as specified above unless such claims arise from the negligent or willful conduct of Licensors.

6. MISCELLANEOUS.

6.1 Further Assurances. Each of the parties agrees to take or cause to be taken such further actions, and to execute and deliver or to cause to be executed and delivered, such further documents, instruments, statements, assignments, agreements or consents, as may be necessary or as may be reasonably requested in order to fully effectuate the provisions and intent of this Agreement.

6.2 Headings. The headings of this Agreement are solely for convenience of reference and shall be given no effect in the construction or interpretation of this Agreement.

6.3 Entire Agreement. This Agreement contains, and is intended as, a complete statement of all the terms of the arrangements between the parties with respect to the matters provided for, supersedes any previous agreements and understandings between the parties with respect to those matters.

6.4 Choice of Governing Law and Venue. This Agreement shall be governed by, and shall be construed and enforced pursuant to and in accordance with the laws of the State of California and the United States of America, where applicable. Any controversy between the parties hereto, resulting or related to this Agreement shall be adjudicated within the county of Orange, California.

6.5 No Third Party Beneficiary. Nothing contained in this Agreement shall be deemed to create any third party beneficiary status or grant any rights to any person or entity not a party to this Agreement.

6.6 Notices. All notices and other communications under this Agreement shall be in writing and may be given by any of the following methods: (a) personal delivery; (b) facsimile transmission; (c) registered mail, postage prepaid, return receipt requested; or (d) overnight delivery service. Notices shall be sent to the appropriate party at his address set forth below the signature line or to his facsimile number set forth below (or at such other address or facsimile number for the party as shall be specified by notice given pursuant to this provision). All notices and communications under this Section shall be deemed received upon (i) actual receipt thereof by the addressee, (ii) actual delivery thereof to the appropriate address, or (iii) in the case of a facsimile transmission, upon transmission thereof by the sender and issuance by the transmitting machine of a confirmation slip confirming that the number of pages constituting the notice have been transmitted without error. In the case of notices sent by facsimile transmission, the sender shall contemporaneously mail a copy of the notice to the addressee at the addresses provided for above in accordance with clause (c) or (d) above. However, such mailing shall in no way alter the time at which the facsimile notice is deemed received.

6.7 Separability. If any provision of this Agreement is determined to be legally invalid, inoperative or unenforceable, only that particular provision shall be affected, and the determination shall have no effect whatsoever on any other provision of this Agreement, and all other provisions shall remain in full force and effect and fully enforceable.

6.8 Amendment and Waiver. This Agreement may not be amended, modified or supplemented without the written consent or agreement of all parties. No waiver or consent to departures from the provisions hereof shall bind any party who has not given such waiver or consent in writing. No waiver of any provision hereof shall be construed as a continuing waiver or as a waiver of any other provision hereof.

6.9. Binding Effect. This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective legal representatives, heirs, successors and assigns.

6.10 Headings. The section headings of this Agreement are for reference purposes only and are to be given no effect in the construction or interpretation of this Agreement.

6.11 Expenses. In the event of litigation between Licensor and Licensee, the prevailing party shall be entitled to receive reasonable attorneys' fees and costs (including expert witness fees and reasonable attorneys' fees and costs for appeals).

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date first above written.

DATED: _____

LICENSEE

DATED: _____

LICENSOR