

Exclusive Patent Agreement

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This EXCLUSIVE PATENT LICENSE AGREEMENT ("Agreement") with an "*Effective Date*" of _____, 2004, is made by and between _____ ("*Licensor*"), a _____ Corporation having its principal place of business at _____, and _____ ("*Licensee*"), a _____ Corporation having its principal place of business at _____.

WHEREAS, Licensor owns certain Patents and/or other Intellectual Property Rights in _____; and

WHEREAS, Licensee is _____

WHEREAS, Licensor desires to grant and Licensee desires to obtain an exclusive license to make, use, sell, offer for sale, import, export, and otherwise practice and utilize the invention, process, design, plant, or substance claimed in ("*Use*") the Patents and Use the Patents and use other Intellectual Property Rights to Manufacture/Sell the Licensed Products;

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth in this Agreement, Licensor and Licensee, each intending to be legally bound hereby, agree as follows:

1. **Definitions.** Terms with initial capital letters have the meaning set forth in the Section that defines them, whether used in the plural or singular, in any tense or part of speech, and regardless of gender. The term "*including*" means "including, but not limited to", "*or*" includes "and/or".

1.1. ***Affiliate.*** The term "*Affiliate*" means a Person who controls, is controlled by, or is under common control, directly or indirectly with another Person. Persons are considered Affiliates if one of them has the power to direct the affairs or day-to-day operations of the other or if one of them, directly or indirectly, owns or has the power to vote a majority of voting interests of the other, to appoint or cause to be elected a majority of the board of directors, managers, or other

controlling body of the Person, or has a veto or power to reject or approve the resolutions or other directives from that governing body.

1.2. *Field*. The term “*Field*” means _____.

1.3. *Licensed Products*. The term “*Licensed Products*” means products whose Manufacture/Sale would infringe or violate the Patents or other Intellectual Property Rights;

1.4. *Patents*. The term “*Patents*” means the United States Letters Patent number _____, and any divisions, continuations, substitute applications, continuations-in-part, [improvements,] reissues, reexaminations, or extensions [and any corresponding foreign applications and patents].

1.5. *Person*: The term “*Person*” means any natural person, court, agency, governmental body, corporation, partnership, proprietorship, or any other legal entity.

1.6. *Term*: The “*Term*” of this Agreement means the period that begins on the Effective Date and continues for so long as Licensor owns or controls unexpired and not invalidated rights in any of the Patents, unless earlier subjected to cancellation, termination, or rescission.

1.7. *Territory*: means the fifty United States of America.

1.8. *Intellectual Property Rights*. The term “*Intellectual Property Rights*” means rights under the laws of patents, copyrights, mask works, trade secrets, trade dress, trade names, databases, ideas, trademarks, publicity rights, as well as any right created by a law that gives a person, independently of contract, a right to control or preclude another Person’s use or access on the basis of the rights holder’s interest.

2. License Grant. Licensor hereby grants to Licensee an exclusive license to Use the Patents and other Intellectual Property Rights and to Use the Patents and other Intellectual Property Rights to Manufacture/Sell the Licensed Products within the Territory within the Field during the Term of this Agreement. No further or other rights are granted or implied; Licensor reserves all rights and licenses not expressly granted in this Agreement.

3. Licensor Disclosure. Licensor agrees to disclose to Licensee such information that Licensor possesses on the Effective Date and that it reasonably believes, or that Licensee reasonably requests, that relates to the Use of the Patents or Intellectual Property Rights to Manufacture/Sell the Licensed Products. Such disclosures are subject to the duties related to Confidential Information and are otherwise subject to Licensor’s Intellectual Property Rights.

4. Ownership of Intellectual Property Rights.

4.1. Ownership. The Patents and Intellectual Property Rights (including any title, claim, and interest) except as licensed in this Agreement shall, as between Licensor and Licensee, be the property of Licensor. Any other intellectual property rights in the Licensed Products shall, as between Licensor and Licensee, belong to Licensee.

4.2. Improvements. Licensee shall notify Licensor of any innovations, inventions, developments, modifications, or other improvements which reference or are based on one or more claims of the Patents or on the Intellectual Property Rights that Licensee discovers or makes. Any innovations, inventions, developments, modifications, or other improvements to the Patents or the Intellectual Property Rights created by either party shall belong to Licensor, and Licensee will assign ownership of any Intellectual Property Rights it may have in such to Licensor without payment of royalties or further consideration. However, Licensee shall have a license to Use such under the terms and conditions of this Agreement.

4.3. Cooperation. Each party agrees to cooperate, execute any documents, and perform any and all acts reasonably necessary and customary to permit a party to obtain, maintain, or enforce its Intellectual Property Rights as may be permitted under the provisions of any applicable law or agreement, including registrations or Claims that contain the other party's name or the name of Persons associated with the other party.

5. Patent Marking. Licensee shall permanently and legibly mark each Licensed Product or the packaging of each Licensed Product with the number(s) of the Patents in a manner compliant with applicable law and that is reasonably acceptable to Licensor.

6. Underwriters Laboratories. Licensee, at its sole cost, shall obtain any Underwriter's Laboratories (or other authorization) and apply the UL (or other marking) required for the Manufacture/Sale of the Licensed Products.

7. Compliance with Laws. Licensee shall Use the Patents and Intellectual Property Rights and Manufacture/Sell the Licensed Products in compliance with all applicable laws, and at its sole cost, obtain any permits, licenses, inspections, file any applications or reports, and pay any taxes, fees, charges, interest, penalties, governmental assessments, or other costs associated with the Use of the Patents or Intellectual Property Rights, Manufacture/Sale of the Licensed Products, or the transactions or other matters arising out of or related to this Agreement. Licensee shall Indemnify Licensor and its Indemnified Persons against any third party claims related to violations of this Section.

8. Efforts to Exploit Patent. Licensee shall use commercially reasonable efforts to develop, design, create, manufacture ("*Manufacture*"), market, import, export, sell, offer for sale, and distribute ("*Sell*") (collectively, "*Manufacture/Sell*") the Licensed Products. Thus, throughout the term of this Agreement, Licensee shall have an effective, ongoing, and active: research, development, manufacturing, marketing, and sales program directed to Manufacture/Sell the Licensed Products.

9. Royalties.

9.1. Payment. Royalties shall be paid in accordance with the Royalty Schedule (Attachment A) and payable within thirty (30) days after the end of [each semi-annual period, one that ends on the last day of June for the previous six month period, and a period that ends on the last day of December for the previous six month period.][the applicable calendar month]. Royalties paid are not refundable due a subsequent finding of invalidity of any Patent or Intellectual Property Right.

9.2. Royalty Report. Each payment sum shall be accompanied by a written report setting forth in reasonable detail: (1) the number of units of the Licensed Products Manufactured, the number Sold, and the number returned or destroyed; (2) each applicable element of the Net Selling Price; and (3) the basis of calculation of the royalties.

9.3. Interest. In addition to other remedies available to Licensor, all royalties which are overdue shall bear an annual interest at a rate equal to the lesser of [one and one-half percent (1 1/2%) per month] [four per cent (4%) above the prime rate published in the Wall Street Journal (or another national newspaper if the Wall Street Journal does not provide such information)], or the highest rate permitted by applicable law, calculated each 30th day from the date such royalty was overdue and assessed on the balance then due.

9.4. Net Selling Price. *Net Selling Price* shall mean the [gross consideration at which Licensee invoices the Sale of] [gross consideration received by Licensee from] the Sales of the Licensed Products to customers who are not affiliates of Licensee, minus the value of any value-added features present on the product which are not covered by Use of the Patents or Intellectual Property Rights, less any finance or interest charges, delivery and shipping charges, taxes, duties, or governmental fees of any kind (including tariffs), returns, and any and all credits, discounts, and allowances. [Sales commissions [, bad debts and reserves,] and other selling expenses not set forth above shall not be deducted from the gross [selling price][revenue] in calculating the Net Selling Price.] The gross [selling price][revenue] of products with value-added features will be the gross [selling price][revenue] of the equivalent product that does not have the value-added features.

10. Records and Audits. Licensee shall maintain complete and accurate books and records from which the information required in the periodic reports and from which the payments due hereunder can be determined, as well as the accounting practices used to produce such books and records. Such books and records shall be kept for a period of no less than six (6) years and shall be available for inspection by Licensor during the normal business day upon ten (10) business days written Notice. [Licensor shall have the right to have Licensee's books and records audited only by an accounting firm or representative of its selection reasonably acceptable to Licensee.]. [Any audit shall not be more frequent than annually]. Books and records shall be deemed to be Confidential Information.] Licensee shall pay any underpayments, plus interest from the date the royalty should have been paid. Licensor shall pay for the cost of such audit, however, in the event that such an audit determines that Licensee underpaid the amount of royalties due Licensor by more than five per cent (5%), the Licensee shall also pay the costs of the audit.

11. Manufacturing Sublicense. Licensee shall retain the right, subject to written reasonable objection from Licensor, to designate any sub-manufacturer(s) of its choosing and to sub-license the Patents or Intellectual Property Rights to that sub-manufacturer for the sole purpose of Manufacturing the Licensed Products (or portions of the Licensed Products for use by Licensee in finishing the Licensed Product) solely for Licensee, provided the Licensee obtains from each such sub-manufacturer an agreement to abide by the terms of this Agreement, including a written confidentiality agreement that obligates the sub-manufacturer to protect information deemed to be Confidential Information under this Agreement to at least the requirements contained in this Agreement. Other than the foregoing, without the prior written approval of Licensor, Licensee