

TRADEMARK LICENSE AGREEMENT [1]

Trademark License Agreement	Comments
	<p>[1] “Trademark License Agreement” This is a basic, general trademark license agreement usable by parties in any industry for the sale and/or promotion of goods or services using a mark or marks of the licensor. This agreement slightly favors the Company as licensor, who has the greater need or incentive to draft this license agreement. That said, this agreement contains many provisions that individually may favor one party but together serve both parties.</p>
<p>THIS TRADEMARK LICENSE (this “<u>Agreement</u>”) is made and entered into, with effect as of and from [●], by and between [●] (“Company”), and [●] (“<u>Licensee</u>”). Licensor and Licensee are each referred to herein as a “<u>Party</u>,” and collectively, as the “<u>Parties</u>.”[2]</p>	<p>[2] INTRODUCTORY PARAGRAPH – The first paragraph in the license agreement (“<u>Agreement</u>”) which sets forth the effective date of the Agreement and identifies the parties. Naturally, it is important to identify the parties so the explanation of the roles and obligations of each party below are more clearly explained. The parties and Agreement term could be defined in this paragraph.</p>
<p style="text-align: center;"><u>RECITALS</u> [3]</p> <p>WHEREAS, Licensee desires to license from Company the use of the Licensed Marks (as hereinafter defined), and Company desires to license the use of the Licensed Marks to Licensee; * * * NOW, THEREFORE, in consideration of the premises and mutual covenants in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:</p>	<p>[3] RECITALS - The Recitals state the relevant background and parties’ intentions which in some jurisdictions can be significant when interpreting the terms of the license agreement. It helps the parties and any other stakeholders of the Agreement (or a court) understand the parties’ mutual expectations and the scope and purpose of the Agreement. This particular Agreement contains only one recital, but there could be several. Examples of statements in a recital include (but are not limited to):</p> <ul style="list-style-type: none"> that the Company as licensor desires to have its brand or product/service promoted and/or offered in a certain

	<p>territory or market which the licensee also desires and agrees to help the licensor with;</p> <ul style="list-style-type: none"> • the recital may specify whether the license is for merely promoting the brand or also selling the goods or carrying out the services in the territory; • the recital may reference a larger agreement like a coexistence or settlement agreement between the parties if one of the parties is a junior user of a mark that wants to continue using the mark with the prior mark owner's approval. • If the license is between two subdivisions of a company, or a subsidiary and its parent company, the recital could reference that fact. • The recitals could also contain some definitions in the Agreement. <p>Recitals and introductory language can often be underestimated but it is also important to not rely on the recitals to contain any operative terms of the Agreement that are desired to be enforced.</p>
<p>ARTICLE I DEFINITIONS [4]</p> <p>The following terms, when used in this Agreement with initial capital letters, shall have the respective meanings set forth in this <u>Article I</u>.</p> <p>(a) “<u>Affiliate</u>” shall mean an entity that directly or indirectly controls, is controlled by, or is under common control with, the specified entity (and “control” as used in this definition means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of the entity, whether through the ownership of voting securities, by contract or otherwise) and shall include entities not now in existence if they meet the foregoing test. Such entity shall be deemed to be an Affiliate only so long as such control exists. The Parties stipulate and agree that</p>	<p>[4] DEFINITIONS - As with any agreement, a trademark license agreement can have important terms of art that need to be defined. However, since a trademark license is typically not very technical, there usually does not need to be very many terms defined and oftentimes, these terms may be able to be defined in the recitals or specific pertinent provisions of the license.</p> <p>This Definitions section illustrates some of the typically defined important terms in a trademark license. For instance, since a license usually divides up a market between the licensor and the licensee (or licensees), that market is defined, i.e. geographically, demographically or in any other manner relevant to the particular market for the associated goods/services.</p> <p>It also is important to define precisely what goods/services are associated with the marks claimed by the licensor that are the subject</p>

<p>Licensee and Company are not Affiliates of one another.</p> <p>(b) “<u>Company Territory</u>” shall mean the geographic area outside the Licensee Territory.</p> <p>(c) “<u>Licensee Territory</u>” shall mean [●].</p> <p>(d) “<u>Licensed Marks</u>” shall mean registered and unregistered trade names, trademarks, and service marks that contain or consist of the words [●], including the marks set forth on <u>Exhibit A</u>.</p> <p>(e) “<u>Licensed Services</u>” shall mean [●].</p> <p>(f) “<u>Merchandise</u>” shall mean goods bearing the Licensed Marks.</p> <p>(g) “<u>Person</u>” shall mean any natural person, joint venture, general or limited partnership, corporation, limited liability company, limited liability partnership, firm, association or organization or other legal entity.</p>	<p>of the Agreement since trademark rights only extend to a particular set of goods/services actually offered by the licensor and used with the mark.</p> <p>And the marks themselves should also be defined, which typically may be on an attached schedule or exhibit since there may be multiple marks and/or multiple variations of the mark or marks involved.</p> <p>These days, it may also be important to define the particular media or forum for using the mark(s) in the promotion of the goods/services or brand, i.e. particular social media; particular websites and whether the websites are set up by the licensor or licensee; other particular media to be employed like internet, radio, TV, streaming services and the like.</p>
<p>ARTICLE II LICENSE GRANT TO LICENSEE [5]</p> <p>Section 2.1 <u>License</u>.</p> <p>Subject to the terms and conditions of this Agreement, Company grants to Licensee an irrevocable, perpetual, paid-up, (a) exclusive (even as to Company) license to use the Licensed Marks in the Licensee Territory in connection with (i) the Licensed Services and (ii) the marketing and advertising of the Licensed Services through the use of signage, stationery, business cards, billboards, pamphlets and reasonably similar methods, (b) non-exclusive license to use the Licensed Marks in connection with the marketing and advertising of the Licensed Services through the use of radio, television and internet commercials worldwide and (c) non-exclusive license to use the Licensed Marks in connection with the sale of Merchandise worldwide. Except as provided in the license, Licensee shall not make any use of the Licensed Marks or any term, phrase or design that is confusingly similar to, or a colorable imitation or translation of, the Licensed Marks,</p>	<p>[5] LICENSE GRANT – This is the crux or central term of the Agreement where the subject of the license and the specific type of license grant is specified, i.e. whether exclusive or non-exclusive, royalty-free or with royalty, etc.,</p> <ul style="list-style-type: none"> • “Exclusive” means that the licensor grants this license to only one licensee in the defined territory or market. However, exclusive can mean either exclusive even to the licensor (only the licensee uses the mark and not the licensor); or “sole” (or “exclusive and sole” in some jurisdictions) meaning that both the licensor and the licensee may use the mark in that defined territory. For clarity, the parties may wish to explicitly set forth whether or not the licensor will use the marks without reliance on the definition of a single word. • “Non-exclusive” means that the licensor may issue this trademark license to multiple licensees. In some cases it may be advisable to ensure that the licensee acknowledges such rights.

or any portion of the Licensed Marks in any manner whatsoever, unless agreed to in writing by Company.

- “Royalty” – like it sounds – the traditional arrangement where the licensee pays a royalty fee to the licensor in consideration for receiving the license.
- “Royalty-free” – the licensee does not need to pay a royalty to the licensor for the use of the mark. Usually the licensee in these licenses might pay some other fee to the licensor such as buying the licensor’s products.

Best practices call for limiting the grant of the license to particular products and markets because the licensor will find it easier to add products or markets later on than remove products and markets initially included in the grant. A non-exclusive license is less risky for the licensor because if a non-exclusive licensee underperforms, the licensor could issue additional licenses to other licensees to enhance the overall performance of all licensees. On the other hand, an exclusive license requires the licensor to essentially “put all of its eggs in one licensee’s basket” and rely more on the performance of that one licensee. This can be mitigated with tools such as minimum royalties and performance milestones. Also, an exclusive licensee may be able to bring an infringement action against an infringer while the non-exclusive licensee cannot.

When drafting a trade mark license agreement, it is particularly important to consider the likely impact of the licensing arrangement on competition in the market for the goods or services to which the mark is to be applied. Consequently, this particular license term is usually specified by the client based upon the particular facts and circumstances of their market for the goods/services at issue.

In this particular license, the licensor is entrusting the licensee in the particular territory with all of the use of the mark, including in print advertising, exclusive to both other licensees and to the licensor, perpetually and irrevocably, but not

	exclusively with respect to electronic advertising and to worldwide sales. Thus, licensor is still retaining the right to use the mark (or license others to use the mark) in TV and internet advertising as well as in sales of its goods/services overseas.
<p>Section 2.2 <u>Sublicense</u>. [6]</p> <p>Company grants to Licensee the right to sublicense the rights granted under <u>Section 2.1</u> only to its Affiliates. Company also grants to Licensee the right to enter into license agreements with vendors for the purpose of supplying Merchandise to Licensee and to distribute and sell Merchandise on behalf of Licensee.</p>	<p>[6] <u>Sublicense</u>.</p> <p>A trademark license agreement is a personal services contract so a licensee does not ordinarily have a right to issue a sublicense and any sublicense would necessarily require the consent of the licensor. Naturally, there may be times when a sublicense would benefit the licensor and licensee but care should be exercised by the licensor in allowing sublicensing of the licensed trademark rights. If such sublicensed use is not within the trademark owner's control thus ensuring that the sublicenses inure to the benefit of the licensor (like the license), the sublicense(s) may lead to problems with distinctiveness and possible invalidation or unenforceability of the trademark because of a construction of "naked licensing." To avoid this, sublicensing can be prohibited altogether or require that any sublicensing be subject to the same terms or conditions about control as in the original license.</p>
<p>Section 2.3 <u>Domain Name</u>. [7]</p> <p>Company grants Licensee the right to register domain names that contain a Licensed Mark. The Parties shall reasonably coordinate registration of domain names and use of the Licensed Marks on the Internet.</p>	<p>[7] <u>Domain Name</u>.</p> <p>This is a provision inserted to cover one specific and crucial manner of the licensee's use of the mark which clarifies the licensor's control over this particular usage of the licensed mark. Developments in the area of the internet and domain names mean that provisions like this need to be constantly developed and refined. For example, it may be desirable to state that the licensee is prohibited from using or registering the mark as part of new generic top level domains. Provisions like this are recommended in trademark license agreements to provide the licensor with more control over the licensee's use of the mark. Controlling the licensee's use of the licensed mark is the</p>

	<p>whole point of a trademark license and is necessary for the mark owner to avoid an allegation that it abandoned its mark for not adequately controlling its use (the definition of naked licensing).</p> <p>Requiring strict adherence to trademark usage rules stands out as one of the most important provisions of a license agreement. The Licensor may require compliance with its brand manuals and related documents which regulate use of trademarks and related advertising, marketing and promotional materials. Consistent use of trademarks across a licensing program helps ensure that consumers encountering licensed products and services should have the same impression of those products as the products and services offered directly by the licensor.</p> <p>Another area to potentially address in the Agreement is the use of trademarks in social media handles and content, and the disposition of those accounts after termination.</p>
<p>Section 2.4 <u>Reservation and Acknowledgement of Ownership.</u> [8]</p> <p>Licensee acknowledges that the Licensed Marks, including the goodwill attached thereto, are the exclusive property of Company. Any use of the Licensed Marks under this <u>Article II</u> by Licensee shall inure to the benefit of Company. All rights not specifically granted to Licensee hereunder are expressly reserved by Company. License agrees not to register the Licensed Marks or any marks confusingly similar thereto in any jurisdiction and not to oppose any action taken by Company to do so.</p>	<p>[8] <u>Acknowledgement of Ownership.</u></p> <p>This is another essential clause in a trademark license and another reason for a mark owner to ensure a trademark license agreement is prepared for any third-party users of its mark. This clause “documents” and establishes a paper trail that the licensor is the owner of the mark and the licensee’s use of the mark is merely as a licensee which means that by operation of law, the licensee’s use of the mark inures to the benefit of, and is considered a use of, the licensor. Absent this license agreement, the third party user of the mark could claim its use of the mark is creating its own rights in the mark; it could create evidence of use of the mark sufficient for the licensee to register the mark; and the licensor, true mark owner might be hard-pressed to prove the licensee is not the owner of the mark.</p>
<p>Section 2.5 <u>Prohibition on Additional Licensee Use.</u> [9]</p>	<p>[9] <u>Prohibition on Additional Licensee Use.</u></p> <p>ADDITIONAL LICENSE TERMS</p>

<p>Licensee shall not make any new uses of the Licensed Marks for the Licensed Services outside the Licensee Territory, or license or permit such use, except as agreed to in writing by Company, which shall not be unreasonably withheld.</p> <p style="text-align: center;">ARTICLE III ADDITIONAL LICENSE TERMS</p> <p>Section 3.1 <u>No Challenge</u>.</p> <p>At no time during the term of this Agreement will Licensee, directly or indirectly, challenge or assist others to challenge the validity of the Licensed Marks, or Company's ownership thereof.</p> <p>Section 3.2 <u>Additional Licensed Marks</u>.</p> <p>If Licensee is interested in using additional trademarks of Company, Licensee shall provide a written request to Company and Company may, in its sole discretion, amend the list of Licensed Marks to include such additional trademarks.</p> <p>Section 3.3 <u>Right to Modify Licensed Marks</u>.</p> <p>Subject to the terms and conditions of this Agreement, Licensee shall have the right to combine the Licensed Marks with other names, words, and logos with the written approval of Company (which may be withheld at its sole discretion). Upon approval, such modified Licensed Marks shall be deemed Licensed Marks hereunder.</p> <p>Section 3.4 <u>Other Trademarks</u>.</p> <p>Subject to Section 8 above, each Party shall have the right (but not the obligation) to develop, adopt, and acquire trademarks, designs or other indicia of origin other than the Licensed Marks and to pursue and obtain trademark protection therefor, to the extent that each Party deems desirable.</p>	<p>* * *</p> <p>These are additional provisions intended to contain the licensee's use of the mark and further maintain control of that use by the licensor. As with most agreements, it is desirable to anticipate any possible consequences or outcomes of the Agreement and to address those consequences or outcomes that might have legal significance with appropriate language, if possible:</p> <ul style="list-style-type: none"> • No Challenge – the licensee agrees that it will not challenge the licensor's claim of ownership in the mark. <hr/> <ul style="list-style-type: none"> • Additional Licensed Marks – providing for the licensee to license additional marks of the licensor. • Right to Modify Licensed Marks and Other Trademarks - addressing the situations in which the licensee combines the licensed mark(s) with other names, logos or words, or desires to create new marks and allocating the parties' rights in those new marks.
<p style="text-align: center;">ARTICLE IV PROSECUTION AND MAINTENANCE [10]</p> <p>Company shall have the initial right to engage in, and shall be responsible for, the prosecution</p>	<p>[10] PROSECUTION AND MAINTENANCE</p> <p>It is in both parties' interests that the marks being licensed are federally registered and in</p>

<p>of applications for registration and maintenance of registrations for the Licensed Marks, and Licensee shall cooperate with such prosecution and maintenance efforts. If Company fails to prosecute or maintain a Licensed Mark, Licensee shall have the right to engage in prosecution and maintenance of such Licensed Mark, and Company shall cooperate with such prosecution and maintenance efforts. The Parties shall share the reasonable fees and expenses of the prosecution and maintenance of the Licensed Marks on a pro rata basis.</p>	<p>the event that the parties develop a new mark, or find a licensed mark is not registered, it is a good idea to specify how the parties will allocate the cost and responsibility to register the mark. However, it is important to understand that only the owner/licensor of a mark is permitted to apply to register the mark in the U.S. Patent and Trademark Office. Thus, any provision of this sort should recognize that fact, and perhaps merely address the allocation of costs of the registration application between the licensor and licensee. It is not typical to give the licensee any prosecution rights.</p>
<p>ARTICLE V QUALITY CONTROL [11] Section 5.1 <u>Quality</u>. The Parties recognize the importance of uniformity of the goods and services offered in connection with the Licensed Marks and maintenance of the high quality of such goods and services. Licensee agrees that it will offer goods and services in connection with the Licensed Marks strictly in accordance with quality standards that are substantially equivalent to or stricter than those standards used by Company for the goods and services offered by it in connection with the Licensed Marks. All uses of the Licensed Marks and all business conducted under the Licensed Marks shall be in a manner consistent with the image, reputation, and prestige of a first-class establishment and shall be in conformance with applicable law. No Party shall make use of any of the Licensed Marks in any manner that does or may reasonably be expected to reflect negatively upon or materially adversely affect the Licensed Marks.</p> <p>Section 5.2 <u>Trademark Usage</u>. The manner of use and display of the Licensed Marks shall conform to the standards set by and be under the control of Company in accordance with the style guide attached hereto as <u>Exhibit B</u>, as amended from time to time.</p>	<p>[11] QUALITY CONTROL This is probably the single most important provision in any trademark license and, again, the main reason for a trademark license because a mark owner that allows others to use its mark without any control over that use can be said to have abandoned its rights in that mark. The principle behind this is that a mark serves the consumer by allowing the consumer to identify the source of a product or service and if the mark is used by multiple sources, or fails to uniformly identify a single source of the goods/services, then the mark is no longer serving consumers as an identifier of a single source of the goods/services. A license without quality control is not a license, but rather a “naked license” subject to invalidation.</p> <p>In the US, the licensee does not necessarily have to produce the highest quality goods, just goods that meet the quality standards of the licensor. A trademark can be an indicator of less than stellar quality. The license agreement must define quality control standards, either in the document itself or by reference to other documents that the parties may exchange throughout the course of their relationship, such as purchase orders or product specifications.</p>

<p>Section 5.3 <u>Samples</u>.</p> <p>At the reasonable request of Company and at the expense of Licensee, Licensee shall provide Company with copies, photographs or representative samples of advertising copy, promotional materials or other materials bearing the Licensed Marks.</p> <p>Section 5.4 <u>Inspection</u>.</p> <p>During the term of this Agreement, Company shall have the right, upon reasonable notice and during regular business hours, to inspect Licensee's operations under the Licensed Marks to ensure that the quality standards for the Licensed Marks are being maintained.</p> <p>Section 5.5 <u>Notices</u>.</p> <p>Appropriate trademark notices and symbols shall be placed on any marketing, advertising, promotional or other materials incorporating the Licensed Marks, with information to be included in such notices and symbols to be obtained from Company.</p>	<p>The agreement must also establish opportunities for the licensor to inspect the quality of the products and have some remedy against inadequate quality, typically rejection of products and termination of the license.</p> <p>The actual exercise of control under the license may not be strictly necessary to be able to evidence that control has been exercised. That said, a conservative approach would have the licensor actually exercise and document control (such as through product or premises inspections). This quality control rule also applies to the use of a mark between related companies and intra-company divisions and, therefore, licenses between divisions, subsidiaries and related companies of a mark owner are advisable to avoid an allegation of abandonment for naked licensing.</p>
<p>ARTICLE VI INFRINGEMENT [12]</p> <p>Each Party shall promptly notify the other Party of any infringement of the Licensed Marks. If a Party files an infringement suit, the non-filing Party shall, at the filing Party's request, join the filing Party in such action to redress and/or prevent such infringement and to provide reasonable cooperation in connection therewith. In such an action, the Party filing the suit shall control the proceedings and the Parties shall allocate fees, expenses, and recovery as follows:</p> <ol style="list-style-type: none"> i. if the alleged infringement occurs in the Company Territory, Company shall be responsible for the fees and expenses and enjoy the recovery, if any; ii. if the alleged infringement occurs in the Licensee Territory, Licensee shall be responsible for the fees and expenses and enjoy the recovery, if any; or iii. if the alleged infringement occurs in both the Licensee Territory and the Company Territory, the Parties shall share the reasonable fees and expenses, 	<p>[12] INFRINGEMENT</p> <p>Both licensee and licensor have an interest in finding and enforcing against unauthorized trademark use. The licensee does not want the unauthorized products to divert from its sales.</p> <p>The licensor needs to worry about product quality and brand reputation (and the allegation of abandonment by naked licensing). Licensors will not want to give the licensee the option to bring any action with respect to the trademarks on its own as the licensor likely desires to make all legal decisions relating to the trademarks. Thus, parties tend to fight over these provisions a lot, even though they may be seldom invoked, because they can have large financial implications. Consequently, specifying in detail how each party should proceed if desiring to enforce against alleged infringement is a good idea. Generally speaking, non-exclusive licensees do not have standing to bring an infringement</p>

and recovery, if any, on a pro rata basis.	action on behalf of the licensor against a third party.
<p align="center">ARTICLE VII TERM AND TERMINATION [13]</p> <p>Section 7.1 <u>Term</u>. This Agreement shall become effective on the Effective Date and shall continue for a perpetual term, unless earlier terminated solely as provided in <u>Sections 7.2</u> and <u>7.3</u>.</p> <p>Section 7.2 <u>Termination by Company</u>. This Agreement may be terminated by Company in the event of a breach of any of the provisions of this Agreement by Licensee and such breach or default has not been cured within ninety (90) days after notice has been given by Company (such notice to specify the nature and the extent of such breach or default).</p> <p>Section 7.3 <u>Termination by Licensee</u>. This Agreement may be terminated by Licensee (1) upon Licensee' election, for any reason or no reason in Licensee' sole and absolute discretion by providing written notice to Company of such election; or (2) in the event of a breach of any of the provisions of this Agreement by Company and such breach or default has not been cured within ninety (90) days after notice has been given by Licensee (such notice to specify the nature and the extent of such breach or default).</p>	<p>[13] TERM AND TERMINATION As with any agreement, it is a good idea for the parties to agree on a way out of the agreement, if necessary. This is particularly true in a trademark license where the identity of the licensee and their conduct could reflect poorly on the licensor. Even in the case where a trademark license is mutually desired for the entire foreseeable future, it is still a good idea to set an expiration date on the Agreement with perhaps a provision for automatic renewal. For some licenses, it may be desirable for the parties to identify which provisions of the agreement would, if breached, be considered material. These would be included in the provision for the avoidance of future disputes on the issue. For instance, the licensor will want to characterize breaches of quality control, trademark use, and confidentiality as material. Bankruptcy of the licensee is often a popular ground for termination of the license among licensors since bankruptcy laws may prevent the licensee from performing its obligations under the license or the licensor from enforcing the license provisions. Additional termination triggers which may be included if acting for the Licensor include termination upon: (i) licensee challenging the licensor's ownership of the Trade-marks; and/or (ii) there being a change of control of the licensee (or the licensee being acquired by a competitor of the Licensor).</p>
<p align="center">ARTICLE VIII DUTIES UPON TERMINATION [14]</p> <p>Licensee shall undertake the following upon termination of this Agreement: (i) cease using the Licensed Marks or any term, phrase or design that is confusingly similar to, or a colorable imitation or translation of, the Licensed Marks, or any portion of the Licensed Marks in any manner whatsoever, including in</p>	<p>[14] DUTIES UPON TERMINATION It is useful to specify exactly what happens to the licensed marks at the end of a license agreement in order to clearly enumerate the licensee's obligations to stop using the licensed mark(s) and to ensure that the licensee no longer uses the licensed mark or anything that could be considered an infringement of that mark. Holdover</p>

<p>any domain names; (ii) promptly destroy all stationery, printed matter, signs and advertising material containing the Licensed Marks; and (iii) sell remaining Merchandise bearing the Licensed Marks within six (6) months of such termination.</p>	<p>licensees are a major risk to trademark owners.</p>
<p style="text-align: center;">ARTICLE IX DISCLAIMER OF WARRANTY [15]</p> <p>EXCEPT FOR THE WARRANTIES EXPRESSLY SET FORTH HEREIN, EACH PARTY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, WITH REGARD TO THE LICENSED MARKS AND THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE.</p> <p style="text-align: center;">ARTICLE X WARRANTIES</p> <p>Section 10.1 <u>By Company</u>.</p> <p>Company hereby represents and warrants that (i) it has all rights, title and interests in the Licensed Marks; (ii) it has the right to grant the licenses in <u>Article II</u>, and (iii) it is not party to any agreement with any third party that conflicts with any term of this Agreement or would prevent Company from fulfilling its obligations hereunder.</p> <p style="text-align: center;">ARTICLE XI LIMITATION OF LIABILITY</p> <p>NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY SPECIAL, CONSEQUENTIAL, EXEMPLARY OR INCIDENTAL DAMAGES (INCLUDING LOST PROFITS) ARISING FROM ANY CLAIM RELATING TO THIS AGREEMENT OR RESULTING FROM THE USE OF THE LICENSED MARKS, WHETHER THE CLAIM FOR SUCH DAMAGES IS BASED ON WARRANTY, CONTRACT OR OTHERWISE, EVEN IF AN AUTHORIZED REPRESENTATIVE OF SUCH PARTY IS</p>	<p>[15] DISCLAIMER OF WARRANTY, WARRANTIES, LIMITATION OF LIABILITY, INDEMNIFICATION</p> <p>Since a trademark license is essentially a property owner sharing its IP with a third party and that third party interacts with other third parties, there are natural third party liability exposures such as a licensor's exposure to a product liability claim against its licensee for the licensee's use of the licensor's mark(s) on the licensee's allegedly defective products; and the licensee's exposure to a trademark infringement action if the licensor did not maintain or accurately represent its good title in the licensed mark. Consequently, it is advisable that the parties specify some allocation of their foreseeable liability, if possible, or merely state that each party bears the full extent of their liability for the enumerated, foreseeable liability exposures.</p> <p>Similarly, indemnification provisions are useful for specifying when one party needs to hold the other harmless and for what.</p>

ADVISED OF THE POSSIBILITY OR
LIKELIHOOD OF SAME.

ARTICLE XII INDEMNIFICATION

Section 12.1 Company Indemnification.

Company agrees to defend, indemnify and hold harmless Licensee, its Affiliates, and its and their shareholders, directors, officers, employees, agents and assignees and shall pay all losses, damages, fees, expenses or costs (including reasonable attorneys' fees) incurred by them based upon any third party claim, demand, suit or proceeding caused by (i) Company's breach of this Agreement or (ii) the conduct of Company's or Company's Affiliates' (excluding any Affiliates of Licensee) businesses under the Licensed Marks.

Section 12.2 Licensee Indemnification.

Licensee agrees to defend, indemnify and hold harmless Company, its Affiliates, and its and their shareholders, directors, officers, employees, agents and assignees and shall pay all losses, damages, fees, expenses or costs (including reasonable attorneys' fees) incurred by them based upon any third party claim, demand, suit or proceeding caused by (i) Licensee's breach of this Agreement or (ii) the conduct of Licensee's or Licensee's Affiliates' (excluding any Affiliates of Company) businesses under the Licensed Marks.

Section 12.3 Indemnification Process.

The Party seeking indemnification shall promptly notify the indemnifying Party of any claim, demand, suit or proceeding under this Article XII, and the indemnifying Party, upon written request by the indemnified Party, shall promptly defend and continue the defense of such claim, demand, suit or proceeding at the indemnifying Party's expense. The indemnified Party agrees to provide reasonable cooperation to the indemnifying Party, at the indemnifying Party's expense, in the defense or settlement of any such claim, demand, suit

<p>or proceeding. If the indemnifying Party fails to undertake and continue such defense, the indemnified Party shall have the right (but not the obligation) to make and continue such defense as it considers appropriate, and the expenses and costs thereof, including but not limited to attorneys' fees, out-of-pocket costs and the costs of an appeal and bond thereof, together with the amounts of any judgment rendered against the indemnified Party shall be paid by the indemnifying Party upon demand. Nothing herein shall prevent the indemnified Party from defending, if it so desires in its own discretion, any such claim, demand, suit or proceeding at its own expense through its own counsel, notwithstanding that the defense thereof may have been undertaken by the indemnifying Party.</p>	
<p>ARTICLE XIII GENERAL [16] Section 13.1 <u>Entire Agreement</u>. This Agreement and the Exhibits attached hereto and incorporated herein by this reference contain the entire agreement between the Parties hereto with respect to the subject matter hereof and supersede any previous understandings or agreements, whether written or oral, in respect of such subject matter. This Agreement may not be amended orally, but may be amended only by a written instrument signed by the Parties hereto referring specifically to the amendment to be made and indicating that it is amending this Agreement.</p> <p>Section 13.2 <u>Governing Law; Jurisdiction</u>. This Agreement shall be governed by and construed in accordance with the laws of State of Illinois, without giving effect to principles of conflicts of laws. Each of the Parties hereby irrevocably submits to the jurisdiction of the United States District Court for the Northern District of Illinois or the Illinois State Courts for Cook County, Illinois. However each Party may seek injunctive relief in any court of competent jurisdiction without posting bond or other security.</p>	<p>[16] GENERAL</p> <p>This section contains the usual general boilerplate provisions of any agreement. Care should be taken to select the applicable jurisdiction and governing law if pertinent to the parties and any enforcement of the Agreement.</p> <p>The parties may want to consider agreeing to a less formal dispute resolution system instead of or prior to any litigation in order to preserve a more positive and everlasting commercial relationship between the parties, and to save significant amounts of time and money, when compared with litigation or arbitration. If the license involves multiple countries or parties in different countries, it may be preferable to select arbitration as a method of dispute resolution.</p> <p><u>Survival</u> It is also important and common to identify here any provisions of the Agreement that survive the Agreement, i.e. any confidentiality and noncompete clauses, the clause to not challenge the licensor's ownership of the mark and the term(s) requiring the licensee to cease all use of the mark after the Agreement is terminated and</p>

Section 13.3 No Waiver.

No waiver or delay in enforcement of any breach of any term, covenant or condition of this Agreement shall be construed as a waiver of any preceding or succeeding breach of any other term, covenant or condition of this Agreement.

Section 13.4 Severability.

The illegality, invalidity, or unenforceability of any provision or term of this Agreement for any reason whatsoever shall not affect the validity of any other provisions or term of this Agreement and the illegal, invalid, or unenforceable provision or term shall be reformed to the extent necessary to render such provision or term valid and enforceable and to reflect the intent of the Parties to the maximum extent possible under the applicable law.

Section 13.5 Relationship of Parties.

Company and Licensee are independent contractors and not an agent or partner of the other, and neither shall enter into any agreement or incur or commit the other in any manner without the prior consent of the other Party.

Section 13.6 Further Assurances.

The Parties agrees to execute such other documents and take all such actions as the Parties determine are reasonable to effect the terms of this Agreement.

Section 13.7 Survival.

The rights and obligations pursuant to Articles VIII, XI and XII shall survive the termination of this Agreement for any reason.

Section 13.8 Assignment.

Neither Party may assign or transfer this Agreement (or any rights and licenses hereunder) without the prior written consent of the other Party (which shall not be unreasonably withheld).

to surrender any materials or packaging using the mark to avoid the licensee becoming a holdover licensee.

Section 13.9 Notices.

Any notice required or permitted to be given hereunder shall be in writing and shall be served upon the other by express carrier and shall be considered delivered two (2) business days after deposit with the express carrier, whether or not the addressee signs for such. Such notices may alternatively be made by email transmission (with confirmed receipt), facsimile transmission, or by express mail with confirmation by express carrier. Any notice to Licensee shall be addressed to: [●] or such other individual(s) or address(es) as may be designated by Licensee. Any notice to Company shall be addressed to: [●] or such other individual(s) or address(es) as may be designated by Company.

Section 13.10 Headings.

The headings to the Articles, Sections, Subsections and Exhibits contained herein are for identification purposes only and are not to be construed as part of this Agreement. Unless otherwise stated, all references in this Agreement to Articles, Sections, Subsections and Exhibits refer to Articles, Sections, Subsections and Exhibits of this Agreement.

Section 13.11 Counterparts.

This Agreement may be executed in one or more counterparts, any one of which need not contain the signatures of more than one Party, but all of which, taken together, shall constitute one and the same agreement. Signatures of the Parties transmitted by facsimile or by electronic transmission shall be treated in all manner and respects as an original agreement or instrument.

* * * * *

IN WITNESS WHEREOF, the Parties hereto, by their duly authorized representatives, have executed this Agreement as of the dates indicated below.

LICENSOR

Signature_____

Name_____

Title_____

Date_____

LICENSEE

Signature_____

Name_____

Title_____

Date_____