

# Appendix-11

## LICENSING AGENT AGREEMENT

THIS AGREEMENT is made this \_\_\_\_ day of \_\_\_\_\_, by and between \_\_\_\_\_ with offices at \_\_\_\_\_ (the "Owner") and \_\_\_\_\_ with offices at \_\_\_\_\_ (the "Agent").

### WITNESSETH:

**WHEREAS**, the Owner is in the business of and has developed certain trademarks, brands, designs, artwork, and intellectual property identified more fully in the attached Schedule A (the "Property");

**WHEREAS**, the Owner is desirous of retaining the services of an experienced licensing agent to commercialize or otherwise license the Property to third party Manufacturers (the "Manufacturer") for a line of Licensed Products bearing the Property (the "Licensed Products"); and

**WHEREAS**, Agent is willing to represent the Owner with respect to commercialization of the Property;

**NOW, THEREFORE**, in consideration of the promises and agreements set forth herein, the parties, each intending to be legally bound hereby, do promise and agree as follows:

### 1. AGENT GRANT

A. The Owner hereby grants to Agent, during the Term of this Agreement, the exclusive right (to the exclusion of others as well as the Owner representing itself) to represent the Owner in the countries identified in Schedule A attached hereto (the "Territory") with respect to the commercialization or licensing of the Property to Manufacturers.

B. With respect to agreements with Manufacturers, Owner hereby empowers Agent to negotiate the terms of such agreements within the parameters agreed upon between Agent and Owner prior to the commencement of such negotiations and to present such agreements to Owner for execution. All such agreements shall be in the name of Owner. Owner may not unreasonably refuse to execute an agreement presented by Agent.

C. If the Owner is approached directly by a Manufacturer within the Territory during the Term of this Agreement, it shall refer such Manufacturer to Agent. Owner agrees that during the Term of this Agreement, it will not negotiate with any other person or entity within the Territory to represent it in any capacity in connection with the manufacture or sale of the Property.

### 2. TERM OF THE AGREEMENT

This Agreement and the provisions hereof, except as otherwise provided, shall be in full force and effect commencing on the date of execution by both parties and shall extend for an Initial Term as recited in Schedule A attached hereto (the "Term"). This Agreement shall be automatically renewed for additional "Extended Terms" as provided for in Schedule A unless either party notifies the other in writing of its intention not to renew the Agreement, such notification to be provided at least sixty (60) days prior to the expiration of the then in-effect Term.

### 3. DUTIES AND OBLIGATIONS

A. Subject to the conditions herein specified, Agent shall use reasonable efforts during the Term of this Agreement to find and conclude business arrangements with licensees for the Property that are advantageous to the Owner and, thereafter, to reasonably service such arrangements during the term thereof. In furtherance of Agent's duties as herein specified, Agent will:

1. Periodically meet and confer with the Owner to discuss the state of the merchandising industry;

2. Develop a merchandising plan for the Property in the Territory and provide a copy of same to Owner within thirty (30) days of the date of execution of this Agreement by both parties;
3. Implement the merchandising plan by contacting those prospective licensees best able to produce licensed products of the type and quality for the Property;
4. Negotiate all agreements with third party licensees in the name of the Owner and subject to the approval of the Owner;
5. Provide record keeping and billing services to the licensees as reasonably requested by Owner and monitor and oversee the licensing program with such third-party licensees to ensure that the licenses, royalties, minimums, and sales reports are promptly submitted;
6. Make appropriate recommendations to the Owner with respect to seeking and maintaining appropriate intellectual property protection for the Property; and
7. Investigate all potential infringements of Owner's intellectual property rights in the Territory and report to the Owner.

B. In addition to the foregoing, Agent shall be responsible for the enforcement of the quality control provisions of the third party license agreements which shall include periodic inspection of all Licensed Products.

C. The Agent shall engage in other such activities as the parties may mutually agree and, in general, use its best efforts consistent with sound business practices to maximize revenue generated from the exploitation of the rights granted hereunder and to enhance the value and reputation of the Property.

D. While the Agent is empowered to propose all necessary art, design, editorial, and other related approvals for the creation of the Licensed Products as well as to enforce the appropriately high standard of quality for all such Licensed Products created and produced pursuant to licensing and promotional agreements entered into pursuant to this Agreement, the Owner retains the right to grant final approval on art, design, and editorial matters. The Agent agrees to submit to the Owner, for final approval, drafts, prototypes and finished samples of all Licensed Products and any advertising, promotional and packaging material related to said Licensed Products. Owner will respond to the Agent regarding approval within ten (10) business days after receipt of such samples. Failure to respond within said period shall be deemed disapproval.

E. Agent shall oversee the payment by the licensees of all royalties and other payments due under this Agreement.

F. It is understood that the Owner may have concepts and properties other than the Property and such concepts and properties do not form part of this Agreement.

G. The Owner recognizes that Agent performs similar services for its other clients and that the Owner's retention of the Agent is subject to such understanding.

H. The Owner shall be solely responsible for all costs and expenses associated with the protection of the Property, including the costs for obtaining and maintaining patent, trademark, and copyright protection.

#### **4. COMPENSATION**

A. In consideration for the services rendered by Agent, the Owner agrees to and shall pay Agent a Retainer Fee in the amount of and in accordance with the terms recited in Schedule A attached

hereto. Such Retainer Fee is non-refundable and non-creditable against any other compensation owed Agent under this Agreement.

B. In addition to the Retainer Fee, Owner agrees to pay Agent a Commission in the amount recited in Schedule A attached hereto based on the Net Revenues received by the Agent from the Manufacturers based on the Manufacturer's sales or other use of Licensed Products bearing the Property.

C. "Net Revenues" shall include all income received by Agent (prior to the deduction of Agent's commission) from such third party Manufacturer within the Territory pursuant to any contract or agreement for the sale, lease, license or other disposition of the Property resulting directly from the efforts of Agent including, but not limited to, advances, royalties, guarantees, fees and payments (whether in cash, barter or other form of consideration) less any payments made or expenses incurred by Agent for or on behalf of the Owner with the prior approval of Owner.

D. After termination or expiration of this Agreement for any reason, Agent shall be entitled to continue to receive its full Commission based on those contracts or agreements entered into by Owner with Manufacturers in the Territory during the Term of this Agreement or within one (1) year from the date of termination or expiration of this Agreement resulting from presentations made or negotiations conducted by Agent during the Term of this Agreement for which Agent would have received a Commission had the Agreement not been terminated or expired. Agent shall be entitled to such post-termination Commission for so long as the Owner continues to receive revenues under such agreement with a Manufacturer as well as from any renewals, modifications, continuations or extensions thereof.

## **5. WARRANTIES AND INDEMNIFICATIONS**

A. The Owner represent and warrant that it is the owner of all rights in and to the Property, that it has the right and power to license and/or sell such Property, that the use of the Property on the Licensed Products shall not infringe upon the rights of any third party, and that it has not granted anyone else the right or authority to act for it in a manner which would conflict with Agent.

B. The Owner hereby agree to defend, indemnify and hold Agent, its shareholders, directors, officers, employees, agents, parent companies, subsidiaries, and affiliates, harmless from and against any and all claims, liabilities, judgments, penalties, and taxes, civil and criminal, and all costs, expenses (including, without limitation, reasonable attorneys' fees) incurred in connection therewith, which any of them may incur or to which any of them may be subjected, arising out of or relating to a breach of the Owner' representations and warranties. During the pendency of any indemnified claim against Agent, Agent shall have the right to withhold any monies then owed Owner to help defray any costs or expenses that Owner may incur as a result of such claim.

C. Agent hereby agrees to defend, indemnify and hold the Owner, their shareholders, directors, officers, employees, agents, parent companies, subsidiaries, and affiliates, harmless from and against any and all claims, liabilities, judgments, penalties, and taxes, civil and criminal, and all costs, expenses (including, without limitation, reasonable attorneys' fees) incurred in connection therewith, which any of them may incur or to which any of them may be subjected, arising out of or relating to any action by Agent.

## **6. STATEMENTS AND PAYMENTS**

A. Owner agrees that Agent shall receive all royalty reports and collect all royalties and payments from the Manufacturers both during and after termination or expiration of this Agreement. Such royalties and payments shall be deposited in an account which the parties mutually agree upon. Agent shall remit all royalties, inclusive of copies of all royalty reports, less Agent's Commissions, on a quarterly basis based on revenues received by Agent during the previous calendar quarter. Such payments and statements reflecting the basis for such payments shall be made within forty-five (45) days after the close of each calendar quarter.

B. Agent agrees to keep accurate books of account and records at its principal place of business covering all transactions relating to the agreements with the Manufacturers. Owner or its designee shall have the right, at all reasonable hours of the day and upon at least ten (10) business days' notice, to examine Owners books and records as they relate to the subject matter of this Agreement only. Such examination shall occur at the place where the Owner maintains such records.

C. All books and records pertaining to the obligations of the Agent hereunder shall be maintained and kept accessible and available to Agent for inspection for at least three (3) years after the date to which they pertain.

## **7. NOTICE AND PAYMENT**

A. Any notice required to be given under this Agreement shall be in writing and delivered personally to the other designated party at the above stated address or mailed by certified, registered or Express mail, return receipt requested or by Federal Express and/or UPS.

B. Either party may change the address to which notice or payment is to be sent by written notice to the other under any provision of this paragraph.

## **8. TERMINATION**

A. This Agreement may be terminated by either party upon thirty (30) 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 the thirty (30) days period, the breaching party fails to cure such breach.

B. The Owner shall have the right to terminate this Agreement immediately in the event that the Agent fails to enter into at least \_\_\_ license agreements with third parties with \_\_\_\_\_ months after execution of this Agreement and generates at least \$ \_\_\_\_\_ of licensing revenue from such third parties within \_\_\_\_\_ months after execution of this Agreement.

C. If Agent is unable to meet its obligations when they become due or make an assignment for the benefit of its creditors, Owner shall have the right to either immediately terminate this Agreement, or alternatively, convert it to a non-exclusive agreement.

## **9. EFFECT OF TERMINATION**

A. Upon termination or expiration of this Agreement as it relates to the Property, all rights granted to Agent relative to the Property shall forthwith revert to the Owner who shall be free to contract with others to commercialize such Property subject to the provisions of this Agreement subject to the post-termination provisions of this Agreement. Agent shall, thereafter, refrain from further efforts to commercialize the Property.

B. Upon termination or expiration of this Agreement, Owner may request that Agent provide it within sixty (60) days of such notice with a complete schedule of all prospective Manufacturers contacted on behalf of the Owner relative to the Property as well as returning all materials relating to the Property.

## **10. JURISDICTION/DISPUTES**

This Agreement shall be governed in accordance with the laws of [State]. All disputes under this Agreement shall be resolved by litigation in the courts of the State of [State], including the federal courts therein and the parties all consent to the jurisdiction of such courts, agree to accept service of process by mail, and hereby waive any jurisdictional or venue defenses otherwise available to it.

## **11. AGREEMENT BINDING ON SUCCESSORS**

The provisions of the Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their heirs, administrators, successors and assigns.

## **12. ASSIGNABILITY**

A. Neither party may assign this Agreement or the rights and obligations thereunder to any third party without the prior express written approval of the other party which shall not be unreasonably withheld.

B. If at any time during the Term of this Agreement, the Owner intends to sell, assign, transfer or abandon some or all its rights in the Property, it shall provide Agent with written notice to such effect at least thirty (30) days prior to the actual sale, assignment, transfer or abandonment of the Property. Upon receipt of such notice, the parties shall promptly meet and negotiate an arrangement under which this Agreement shall be assigned to and assumed by the acquiring party who will agree to assume all obligations thereunder with the Owner agreeing to guarantee the acquiring party's performance thereof. If the acquiring party does not intend to receive an assignment of the Agreement and/or the Owner is unwilling to guarantee the acquiring party's performance thereof, the Owner and Agent shall agree to a termination of the Agent Agreement. In such event, the parties will negotiate in good faith a mutually acceptable termination package for the Agent in an amount to be mutually agreed upon between the Parties to compensate the Agent for lost potential revenues caused by such termination. If the Parties are unable to mutually agree to what constitutes fair compensation, the Parties agree to binding arbitration before a single arbitrator under the then current rules of the American Arbitration Association in the AAA office closest to the Agent.

**13. WAIVER**

No waiver by either party of any default shall be deemed as a waiver of prior or subsequent default of the same of other provisions of this Agreement.

**14. SEVERABILITY**

If any term, clause or provision hereof is held invalid or unenforceable by a court of competent jurisdiction, such invalidity shall not affect the validity or operation of any other term, clause or provision and such invalid term, clause or provision shall be deemed to be severed from the Agreement.

**15. INDEPENDENT CONTRACTOR**

Agent shall be deemed an independent contractor, and nothing contained herein shall constitute this arrangement to be employment, a joint venture or a partnership. Agent shall be solely responsible for and shall hold the Owner harmless for all claims for taxes, fees or costs, including but not limited to withholding, income tax, FICA, workman's compensation.

**16. INTEGRATION**

This Agreement constitutes the entire understanding of the parties, and revokes and supersedes all prior agreements between the parties and is intended as a final expression of their Agreement. It shall not be modified or amended except in writing signed by the parties hereto and specifically referring to this Agreement. This Agreement shall take precedence over any other documents which may conflict with this Agreement.

**IN WITNESS WHEREOF**, the parties hereto, intending to be legally bound hereby, have each caused to be affixed hereto its or his/her hand and seal the day indicated.

**OWNER**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**AGENT**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## TO LICENSING AGENT AGREEMENT

1. Property & Trademark notice:
2. Territory:
3. Term:
4. Retainer Fee:
5. Commission:
6. Additional Services:

# Appendix-12

## SUB-AGENT AGREEMENT

**THIS AGREEMENT** is entered into this \_\_\_\_ day of \_\_\_\_\_ by and between \_\_\_\_\_ with offices at \_\_\_\_\_ (the "Agent") and \_\_\_\_\_, with offices at \_\_\_\_\_ (the "Sub-Agent").

### WITNESSETH:

**WHEREAS**, Agent, pursuant to an agent agreement dated \_\_\_\_\_ between \_\_\_\_\_ (the "Owner") and the Agent (the "Agent Agreement"), the Property Owner has granted certain rights to the Agent to develop and conduct a licensing program for the property described in Schedule A attached hereto (the "Property");

**WHEREAS**, Agent would like to retain the services of Sub-Agent to commercialize or license the Property to third-party licensees in the Sub-Agent's territory as defined in Schedule A (the "Territory") for a line of licensed products (the "Licensed Products"); and

**WHEREAS**, Sub-Agent is willing to represent the Agent in such Territory with respect to the licensing of the Property within the Territory.

**NOW, THEREFORE**, in consideration of the promises and agreements set forth herein, the parties, each intending to be legally bound hereby, do promise and agree as follows.

### 1. SUB-AGENT APPOINTMENT

A. Agent hereby appoints the Sub-Agent, for the Term of this Agreement, its exclusive representative in the Territory for commercializing or licensing the Property to third-party licensees, subject to the approval of Agent and the Owner.

B. In this regard, Sub-Agent shall be authorized to present, negotiate, and conclude licensing arrangements with third-party licensees using a form agreement approved by Agent and Owner and pursuant to terms and conditions previously approved by Agent and Owner.

C. All third-party license agreements shall be in the name of Owner and shall be signed by Owner, although Sub-Agent shall be a party to all such agreements as agent for Owner. All payments from third parties shall be directed to Sub-Agent.

D. It is understood and agreed that this Agreement shall relate only to the enumerated Property and to no other properties owned or controlled by Agent and/or Owner. Agent and Owner shall be free to commercialize such other properties to the exclusion of Sub-Agent.

E. Agent agrees not to retain the services of any third party to represent Agent with respect to the Property in the Territory. However, Agent may retain the services of other subagents with respect to merchandising of the Property in countries outside the Territory.

F. Sub-Agent agrees to refrain from licensing the Property to third party licensees who intend or are likely to sell the Licensed Products outside the Territory.

### 2. TERM OF THE AGREEMENT

This Agreement and the provisions hereof, except as otherwise provided, shall be in full force and effect commencing on the date of execution by both parties and shall extend for a Term as recited in Schedule A attached hereto (the "Term").

### 3. DUTIES AND OBLIGATIONS OF PARTIES

A. Subject to the conditions herein specified, Sub-Agent shall use reasonable efforts during the Term of this Agreement to find and conclude business arrangements with licensees for the Property

that are advantageous to Agent and Owner and, thereafter, to reasonably service such arrangements during the term thereof. In furtherance of Sub-Agent's duties as herein specified, Sub-Agent will:

1. Periodically meet and confer with Agent to discuss the state of the merchandising industry;
2. Develop a merchandising plan for the Property in the Territory and provide a copy of same to Agent within thirty (30) days of the date of execution of this Agreement by both parties;
3. Implement the merchandising plan by contacting those prospective licensees best able to produce licensed products of the type and quality for the Property;
4. Negotiate all agreements with third party licensees in the name of the Owner and subject to the approval of Agent and Owner;
5. Provide record keeping and billing services to the licensees as reasonably requested by Agent and monitor and oversee the licensing program with such third-party licensees to ensure that the licenses, royalties, minimums, and sales reports are promptly submitted;
6. Remit all Advances paid by licensees within ten (10) days after receipt thereof and all other payments made by licensees within twenty (20) days of receipt thereof. All payment shall be made in U.S. Dollars by wire transfer.
7. Make appropriate recommendations to the Agent with respect to seeking and maintaining appropriate intellectual property protection for the Property; and
8. Investigate all potential infringements of Owner's intellectual property rights in the Territory and report to Agent.

B. In addition to the foregoing, Sub-Agent shall be responsible for the enforcement of the quality control provisions of the third party license agreements which shall include periodic inspection of all Licensed Products and conducting personal visits to the third-party licensees' manufacturing facilities to ensure that the quality control provisions of the license agreements with the licensees are being complied with. Sub-Agent shall submit to Agent a written report after each of said reviews and visits.

C. Sub-Agent shall engage in other such activities as the parties may mutually agree and, in general, use its best efforts consistent with sound business practices to maximize revenue generated from the exploitation of the rights granted hereunder and to enhance the value and reputation of the Property.

D. While Sub-Agent is empowered to propose all necessary art, design, editorial, and other related approvals for the creation of the Licensed Products as well as to enforce the appropriately high standard of quality for all such Licensed Products created and produced pursuant to licensing and promotional agreements entered into pursuant to this Agreement, Agent retains the right to grant final approval on art, design, and editorial matters. Sub-Agent agrees to submit to Agent, for final approval, drafts, prototypes and finished samples of all Licensed Products and all advertising, promotional and packaging material related to said Licensed Products. Agent will respond to Sub-Agent regarding approval within thirty (30) business days after receipt of such samples. Failure to respond within said period shall be deemed disapproval.

E. Sub-Agent shall oversee the payment by the licensees of all royalties and other payments due under this Agreement. If necessary, Sub-Agent shall conduct periodic royalty investigations of the licensee's books and records to ensure that all payments have been made. The cost of such royalty investigations shall be borne by the Sub-Agent. However, any recoveries received as a result of such royalty investigation shall be applied against the cost of conducting such investigation. The



Sub-Agent shall provide the Owner and the Agent with copies of any reports rendered as a result of such investigations.

F. It is understood that Agent and Owner may have concepts and properties other than the Property and such concepts and properties do not form part of this Agreement.

G. Agent recognizes that Sub-Agent performs similar services for its other clients and that Agent's retention of Sub-Agent is subject to such understanding.

H. Agent and Owner shall be solely responsible for all costs and expenses associated with the protection of the Property, including the costs for obtaining and maintaining patent, trademark, and copyright protection.

#### **4. LICENSE AGREEMENTS**

A. All proposed license agreements presented by Sub-Agent under this Agreement shall be subject to the express written approval of Agent and Owner, such approval not to be unreasonably withheld. It is understood that Sub-Agent will submit all such proposed agreements to Owner through Agent for consideration, approval, and execution and Agent will, thereupon, advise Sub-Agent within thirty (30) business days after receipt of the proposed agreement as to whether Agent and Owner agree or disagree to the terms thereof and whether Owner will execute same. Failure to act within said thirty (30) day period shall be deemed a disapproval of any such agreement. No agreement shall be binding on Agent or Owner until signed by Owner.

B. All such license agreements with third-party licensees shall be between Owner and the third-party licensee presented by Sub-Agent. The basic form license agreement that is to be used by Sub-Agent in negotiating license agreements with third-party licensees has been deemed approved by Agent and Owner as in form only -- all prospective licenses, even if in this form, must be submitted for approval by Agent and Owner. All additions, deletions and changes to this basic agreement shall be subject to the absolute, unfettered express written approval of Agent and Owner and notification of approval or disapproval shall be provided to Sub-Agent within ten (10) business days after receipt of same by Agent. The lack of response from Agent within such ten (10) day period shall be deemed a disapproval of any proposed addition, deletion and/or change.

#### **5. COMPENSATION**

A. In consideration for the services rendered by Sub-Agent, Agent agrees to and shall pay Sub-Agent, during the Term of this Agreement, a commission in the amount recited in Schedule A attached hereto (the "Commission").

B. In addition to the Commission recited in Schedule A, Agent agrees to reimburse Sub-Agent for all reasonable expenses incurred on behalf of Agent, provided that such expenses have been previously approved by Agent.

C. Agent further agrees to pay Sub-Agent, during the Term of this Agreement, a Subagent Fee in the amount recited in Schedule A attached hereto.

D. "Gross Revenues" shall include all income generated as a result of any commercialization, sale, or licensing of the Property in the Territory (prior to deduction of Sub-Agent's Commission) from such third-party licensee(s), due solely to the efforts of Sub-Agent.

E. In the event that this Agreement should expire or terminate for reasons other than a breach of any provision herein by Sub-Agent, Sub-Agent shall be entitled to post-termination compensation based on gross income received by Owner from any third-party license agreement, for the life of such third party agreement, entered into through Sub-Agent during the Term of this Agreement and for which Sub-Agent would have received compensation had this Agreement not expired, subject to the schedule recited in Schedule A attached hereto.

F. Sub-Agent shall not be entitled to any post-termination compensation if this Agreement is expressly terminated by Agent in the event of a material breach by Sub-Agent of the terms of this Agreement. Sub-Agent shall not be entitled to such post-termination compensation for any other agreements subsequently entered into by Agent or Owner.

G. All payments due hereunder shall be made in United States currency drawn on a United States bank, unless otherwise specified between the parties.

H. All fees payable hereunder shall be based on the official exchange rate on the date on which such payment is due and Sub-Agent shall provide detailed conversion calculations with every payment submitted hereunder. If, by any reason of any governmental or fiscal restrictions affecting the convertibility, payment cannot be made in U.S. funds, then Sub-Agent shall take such reasonable actions with respect to the payment due as Agent shall direct.

## **6. WARRANTIES AND INDEMNIFICATIONS**

A. Agent represents and warrants that it has the right and power to enter into this agreement and, further, that it has not granted anyone else the right or authority to act for it in a manner that would conflict with Sub-Agent.

B. Agent hereby agrees to defend, indemnify, and hold Sub-Agent, its shareholders, directors, officers, employees, agents, parent companies, subsidiaries and affiliates, harmless from and against any and all claims, liabilities, judgments, penalties, and taxes, civil and criminal, and all costs and expenses (including, without limitation, reasonable attorney's fees) incurred in connection therewith, which any of them may incur or to which any of them may be subjected, arising out of or relating to a breach of Agent's representation and warranty or of any actions or inactions of Agent.

C. Sub-Agent hereby agrees to defend, indemnify, and hold Agent and any of its related entities harmless from and against any and all claims, liabilities, judgments, penalties, and taxes, civil and criminal, and all costs and expenses (including, without limitation, reasonable attorney's fees) arising out of or relating to a breach of Sub-Agent's representation and warranty or that may arise out of any action or inaction by Sub-Agent, other than as it may relate to Agent's warranty, as above stated.

D. Sub-Agent hereby agrees to comply with all laws and regulations in each country in the Territory.

## **7. STATEMENTS AND PAYMENTS**

A. All payments from licensees based on agreements for the Property shall be paid directly to Owner. Within thirty (30) days after receipt by Agent of its commission from Owner, Agent shall transmit to Sub-Agent its Commission.

B. Agent agrees to keep accurate books of accounts and records at its principal place of business covering all transactions relating to the agreements with the licensees. Sub-Agent, through an independent certified public accountant acceptable to Owner, shall have the right, at all reasonable hours of the day and upon at least five (5) days' written notice, to examine Agent's books and records as they relate to the subject matter of this Agreement only. Such examination shall occur at the place where Agent maintains such records.

C. All books and records pertaining to the obligations of Sub-Agent hereunder shall be maintained and kept accessible and available to Agent for inspection for at least three (3) years after the date to which they pertain.

## **8. NOTICES**

A. Any notice required to be given under this Agreement shall be in writing and delivered personally to the other designated party at the above-stated address or mailed by certified or registered mail, return receipt requested, or delivered by a recognized national overnight courier service.

B. Either party may change the address to which notice or payment is to be sent by written notice to the other under any provision of this paragraph.

## **9. TERMINATION**

A. This Agreement may be terminated by either party upon thirty (30) 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 the thirty (30) day period, the breaching party fails to cure such breach.

B. Agent shall have the right to terminate this Agreement immediately if Sub-Agent fails to enter into at least \_\_\_\_ license agreements with third parties with \_\_\_\_\_ months after execution of this Agreement and generates at least \_\_\_\_\_ of licensing revenue from such third parties within \_\_\_\_\_ months after execution of this Agreement.

C. The Agent shall have the right to immediately terminate this Agreement if the Sub-Agent should be unable to meet its obligations when they become due, make an assignment for the benefit of its creditors or should there be a change in the existing management of Sub-Agent.

D. This Agreement shall terminate automatically if the Agent Agreement between Agent and Owner shall terminate or expire.

E. If this Agreement shall terminate or expire, Sub-Agent shall turn over to Agent all records relating to each license entered into under this Agreement. All rights granted to Sub-Agent shall revert to Agent and Sub-Agent shall refrain from any further use of the Property.

## **10. JURISDICTION AND DISPUTES**

This Agreement will be governed by and construed and enforced in accordance with the laws of [State] without regard to conflicts of law principles. All disputes under this Agreement shall be resolved by the courts of the state of [State], including the United States District Court for the District of [State]. The parties all consent to the jurisdiction of such courts, agree to accept service of process by mail, and hereby waive any jurisdictional or venue defenses otherwise available to it.

## **11. SUBORDINATION**

The parties recognize that Agent's rights with respect to the Property are governed exclusively by the Agent Agreement. In the event there are conflicts between the Agent Agreement and this Agreement, the provisions of the Agent Agreement shall govern.

## **12. AGREEMENT BINDING ON SUCCESSORS**

The provisions of the Agreement shall be binding on and shall inure to the benefit of the parties hereto, their heirs, assigns, and successors.

## **13. WAIVER**

No waiver by either party of any default shall be deemed as a waiver of prior or subsequent default of the same or other provisions of this Agreement.

## **14. SEVERABILITY**

If any term, clause, or provision hereof is held invalid or unenforceable by a court of competent jurisdiction, such invalidity shall not affect the validity or operation of any other term, clause, or provision and such invalid term, clause, or provision shall be deemed to be severed from the Agreement.

## **15. INDEPENDENT CONTRACTOR**

Sub-Agent shall be deemed an independent contractor and nothing contained herein shall constitute this arrangement to be employment, a joint venture, or a partnership. Sub-Agent shall be solely responsible for and shall hold Agent harmless for any and all claims for taxes, fees, or costs, including but not limited to withholding, income tax, FICA, and workmen's compensation.

**16. ASSIGNABILITY**

This agreement and the rights and obligations thereof are personal to Sub-Agent and shall not be assigned by any act of Sub-Agent or by operation of law unless in connection with a transfer of substantially all the assets of Sub-Agent or with the consent of Agent and Owner.

**17. GOVERNMENTAL APPROVAL**

Sub-Agent agrees to submit copies of this Agreement to any governmental agency in any country in the Territory where approval of this Agreement is necessary, and agrees to promptly prosecute any such application diligently. This Agreement shall become effective in such country or countries only upon receipt of appropriate approval from the applicable governmental agency.

**18. 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 version shall govern.

**19. BLOCKED CURRENCY**

A. If any payment required to be made to Owner pursuant to this Agreement cannot be made when due because of the exchange control of any country in the Territory and such payment remains unpaid for twelve (12) months, Agent and/or Owner may, by notice served to Sub-Agent, elect any of the following alternative methods of handling such payment:

1. If the currency can be converted into currency other than U.S. Dollars for purposes of foreign remittance, Owner 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 Owner.
2. Owner may elect to have payment made to it in the local currency, deposited to the credit of Owner in a bank account in such country designated by Owner, in which event Sub-Agent shall furnish to Owner evidence of such deposit.

B. All expenses of currency conversion and transmission shall be borne by Sub-Agent and no deduction shall be made from remittances on account of such expense. Sub-Agent 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.

**20. INTEGRATION**

This Agreement constitutes the entire understanding of the parties, and revokes and supersedes all prior agreements between the parties and is intended as a final expression of their Agreement. It shall not be modified or amended except in writing signed by the parties hereto and specifically referring to this Agreement. This Agreement shall take precedence over any other documents that may conflict with this Agreement.

**IN WITNESS WHEREOF**, the parties hereto, intending to be legally bound hereby, have each caused to be affixed hereto its or his/her hand and seal the day indicated.

**AGENT**

By: \_\_\_\_\_

Title: \_\_\_\_\_

**SUB-AGENT**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**SCHEDULE A**  
**To Sub-Agent Agreement**

1. Licensed Property:
2. Territory:
3. Term:
4. Commission:
5. Sub-agent Fee:
6. Post Termination Compensation:

# Appendix-13

## CONSULTING AGREEMENT

**THIS AGREEMENT** is made as of this \_\_\_ day of \_\_\_\_\_ by and between \_\_\_\_\_, residing at \_\_\_\_\_ ("CONSULTANT") and \_\_\_\_\_, a \_\_\_\_\_ corporation with offices at \_\_\_\_\_ ("COMPANY").

**WHEREAS**, CONSULTANT possess certain technical expertise in the field of \_\_\_\_\_ and the creation and development of \_\_\_\_\_ (the "Field");

**WHEREAS**, COMPANY desires to engage CONSULTANT to perform certain professional consulting services as hereinafter defined in the Field; and

**WHEREAS**, CONSULTANT is willing and able to provide such consulting services to COMPANY in the Field.

**NOW, THEREFORE**, in consideration of the premises and of the mutual promises and covenants herein contained, the parties hereto agree as follows:

### WITNESSETH

#### **1. Retention and Duties of the Consultant**

A. COMPANY hereby retains the services of CONSULTANT to provide professional consulting services to COMPANY in the Field during the Term of this Agreement. In this regard, CONSULTANT shall advise and assist COMPANY in conjunction with issues relating to the Field.

B. CONSULTANT is an independent contractor and not an employee of COMPANY. Unless otherwise expressly agreed to in writing, CONSULTANT shall not be entitled to or eligible for any benefits or programs otherwise given by COMPANY to its employees.

#### **2. Consulting Term.**

A. The consulting period shall extend from \_\_\_\_\_ through and including \_\_\_\_\_ (the "Term") unless sooner terminated as provided herein.

B. COMPANY shall have the option of renewing the subject Agreement for an additional six (6) month period (the "Extended Term") on the same terms and conditions as provided for herein by providing CONSULTANT written notice of its intention to renew this Agreement at least sixty (60) days prior to the expiration of the Term.

#### **3. Obligations of Consultant**

A. Utilizing its own facilities and equipment, CONSULTANT shall be responsible for performing all the assignments and duties as outlined by COMPANY in accordance with a time schedule to be mutually agreed to between the parties. It is, however, anticipated that CONSULTANT will devote at least thirty (30) hours per week during the Term to the services required of him hereunder. Upon agreement from time to time between COMPANY and CONSULTANT, CONSULTANT'S hours may be varied to suit the mutual convenience of CONSULTANT and COMPANY. CONSULTANT shall regularly meet with and advise COMPANY on technical matters in the Field as well as regularly suggest solutions to any problems in connection with COMPANY'S programs as they may develop.

#### **4. Compensation.**

A. In full consideration for the services being rendered by CONSULTANT hereunder, COMPANY agrees to pay CONSULTANT during the Term of this Agreement a consulting fee in the amount of \_\_\_\_\_ (\$ \_\_\_\_\_) per month (the "Consulting Fee"). The Consulting Fee shall be paid monthly within ten (10) days after the conclusion of each month.

B. CONSULTANT shall be responsible for all ordinary and reasonable expenses which it may incur in connection with this project. COMPANY agrees, however, to reimburse CONSULTANT for all reasonable and necessary travel and material expenses previously approved in writing by COMPANY.

C. If CONSULTANT completes all of its work assigned by COMPANY to the sole and complete satisfaction of COMPANY on or before \_\_\_\_\_, COMPANY agrees to pay CONSULTANT a bonus in the amount of \_\_\_\_\_ (\$\_\_\_\_\_) (the "Bonus") which shall be due and payable within ten (10) days after the completion of such work assignments. The Bonus shall be separate from and in addition to the Consulting Fee.

#### **5. Confidential Information.**

A. CONSULTANT recognizes that during the course of its retention during the Consulting Term, it may have occasion to review and receive confidential or proprietary information or material from COMPANY including information relating to inventions, patent, trademark and copyright applications, improvements, know-how, specifications, drawings, cost data, process flow diagrams, bills, ideas and/or any other written material referring to same (the "Confidential Information").

B. CONSULTANT covenants and agrees that both during and after termination of this Agreement, it and its employees, affiliates and subsidiaries will retain such Confidential Information in confidence pursuant to the following terms and conditions:

1. CONSULTANT agrees to maintain in confidence any such Confidential Information disclosed by COMPANY relating to the above described Property which was not previously known to CONSULTANT or to the public, or which was not in the public domain prior to such disclosure.

2. Such Confidential Information shall be maintained in confidence by CONSULTANT unless or until: (a) it shall have been made public by an act or omission of a party other than CONSULTANT; (b) CONSULTANT receives such Confidential Information from an unrelated third party on a non-confidential basis; or (c) the passage of five (5) years from the date of disclosure, whichever shall first occur.

3. Upon request, CONSULTANT agrees to promptly return to COMPANY any other materials obtained from or through COMPANY, including all memoranda, drawings, patent, trademark and copyright applications, specifications and process or flow diagrams including any copies, notes or memoranda made by CONSULTANT which, in any way, relates to the Field or the Confidential Information disclosed or transmitted to CONSULTANT by COMPANY.

4. CONSULTANT agrees that it will not, without first obtaining the prior written permission of COMPANY: (a) directly or indirectly utilize such Confidential Information in its business; (b) manufacture and/or sell any product which is based in whole or in part on such Confidential Information; or (c) disclose such Confidential Information to any third party.

C. CONSULTANT shall not originate any publicity, news release, or other public announcement, written or oral, relating to this Agreement, to any amendment hereto or to performance hereunder, without the prior written approval of COMPANY.

#### **6. Non-Competition.**

CONSULTANT shall not during the Term of this Agreement render any services, directly or indirectly, to any entity engaged in the creation, design, development and/or marketing of video games. Moreover, CONSULTANT shall not, or for a period of one (1) year after the termination or expiration thereof, render any services, directly or indirectly, to any entity engaged in the creation, design, development and/or marketing of video games utilizing technology of the type licensed by the General Technology Company to COMPANY for the Game.

#### **7. Inventions.**

A. Any inventions, improvements, or ideas made or conceived by CONSULTANT in connection with and during the performance of services hereunder and related to the business of COMPANY and for six (6) months thereafter, shall be considered the sole and exclusive property of COMPANY. As part of the services to be performed hereunder, CONSULTANT shall keep written notebook records of his work, properly witnessed for

use as invention records, and shall submit such records to COMPANY when requested or at the termination of CONSULTANT'S services hereunder. CONSULTANT shall not reproduce any portion of such notebook records without the prior express written consent of COMPANY. CONSULTANT shall promptly and fully report all such inventions to COMPANY.

B. Any work performed by the CONSULTANT under this Agreement shall be considered a Work for Hire as defined in the United States Copyright laws and shall be owned by and for the express benefit of COMPANY. In the event it should be established that such work does not qualify as a Work for Hire, CONSULTANT agrees to and does hereby assign to COMPANY all its right, title and interest in such work product including, but not limited to, all intellectual property and other proprietary rights. Both during the Term of this Agreement and thereafter, CONSULTANT shall fully cooperate with COMPANY in the protection and enforcement of any intellectual property rights which may derive because of the services performed by CONSULTANT under the terms of this Agreement. This shall include executing, acknowledging and delivering to COMPANY all documents or papers which may be necessary to enable COMPANY to publish or protect said inventions, improvements, and ideas.

#### **8. Termination.**

A. Either party may terminate this Agreement on ten (10) days written notice to the other party in the event of a breach of any material provision of this Agreement by the other party, provided that, during the ten (10) days period, the breaching party fails to cure such breach or, should the breach not be curable within said ten (10) day period, the breaching party has not initiated steps to cure such breach.

B. Either party shall have the right to terminate this Agreement for any reason and at any time on thirty (30) days written notice to the other party, such termination to become effective at the end of such thirty (30) day period.

C. In the event of the death or disability of CONSULTANT to complete its assignments thereunder, the COMPANY shall have the right to immediately terminate this Agreement and be relieved of any further obligations hereunder.

D. Unless otherwise indicated, all covenants and obligations of the parties relative to In the event of a termination or expiration of this Agreement, all covenants and obligations of the parties shall expressly survive termination.

#### **9. Jurisdiction and Disputes.**

This Agreement shall be governed by the laws of New York and all disputes hereunder shall be resolved in the applicable state or federal courts of New York. The parties consent to the jurisdiction of such courts, agree to accept service of process by mail, and waive any jurisdictional or venue defenses otherwise available.

#### **10. Agreement Binding on Successors.**

This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their heirs, administrators, successors and assigns.

#### **11. Assignability**

This Agreement is personal to CONSULTANT and may not be assigned by any act of CONSULTANT or by operation of law unless in connection with a transfer of substantially all the assets of CONSULTANT or with the consent of COMPANY.

#### **12. Waiver**

No waiver by either party of any default shall be deemed as a waiver of any prior or subsequent default of the same or other provisions of this Agreement.

#### **13. Severability**

If any provision hereof is held invalid or unenforceable by a court of competent jurisdiction, such invalidity shall not affect the validity or operation of any other provision and such invalid provision shall be deemed to be severed from the Agreement.



**14. Integration**

This Agreement constitutes the entire understanding of the parties, and revokes and supersedes all prior agreements between the parties and is intended as a final expression of their Agreement. It shall not be modified or amended except in writing signed by the parties hereto and specifically referring to this Agreement. This Agreement shall take precedence over any other documents which may be in conflict therewith.

**IN WITNESS WHEREOF**, the parties hereto, intending to be legally bound hereby, have each caused to be affixed hereto its or his/her hand and seal the day indicated.

**COMPANY** \_\_\_\_\_ **CONSULTANT** \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

