

# Appendix-15

## MANUFACTURER'S REPRESENTATIVE AGREEMENT

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

### WITNESSETH:

**WHEREAS**, Manufacturer is in the business of manufacturing and marketing certain products including, but not limited to, products bearing properties licensed by third party licensors;

**WHEREAS**, Representative is in the business of consulting with and obtaining and developing licenses for various manufacturers;

**WHEREAS**, Manufacturer would like to retain the services of Representative to seek out and obtain for Manufacturer new licenses for its products.

**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. APPOINTMENT OF REPRESENTATIVE

Manufacturer hereby appoints Representative to act as its exclusive representative during the Term of this Agreement to recommend new licensed properties from third party licensors (the "New Licensed Properties") to Manufacturer and/or its affiliated and related companies for incorporation on Manufacturer's products for sale in the Territory identified in Schedule A attached hereto (the "Licensed Products") as well as to provide general consulting services relative to licensing matters. It is understood and agreed that Representative shall serve as Manufacturer's exclusive representative in its dealing with all third-party licensors except for those licensors listed in Schedule A (the "Excluded Licensors"). It is understood and agreed that Manufacturer shall refer all inquiries from or contacts with third party licensors (except for the Excluded Licensors) concerning licensing matters to Representative.

#### 2. TERM OF AGREEMENT

This Agreement shall commence upon execution by both parties and shall extend for an Initial Term as defined in Exhibit A attached hereto. This Agreement may be automatically renewed for an unlimited number of additional Extended Terms as defined in Exhibit A unless one party provides written notice to the other party at least sixty (60) days prior to the expiration of the then in-effect Term of its intention not to renew the Agreement.

#### 3. DUTIES AND OBLIGATIONS OF PARTIES

A. Representative shall use reasonable efforts during the Term of this Agreement to find and recommend New Licensed Properties to Manufacturer that are suitable for adoption and use by Manufacturer and/or its affiliated or related companies to incorporate on or in association with its products. Any New Licensed Property acquired by Manufacturer or any affiliated or related entity during the Term of this Agreement from a licensor other than an Excluded Licensor shall be deemed a New Licensed Property for purposes of this Agreement and shall be added to Exhibit B attached hereto whether or not recommended by Representative. Moreover, if that Manufacturer should enter into any license agreement with a licensor within one (1) year after termination or expiration of this Agreement based on negotiations initiated by Representative during the Term of this Agreement, any licensed property covered by such license agreement shall also be deemed a New Licensed Property for purposes of this Agreement and shall be added to Exhibit B attached hereto. It is understood that Exhibit B shall be periodically updated during the Term of this Agreement.

B. If that Manufacturer is interested in procuring any New Licensed Property, Representative will assist Manufacturer in scheduling preliminary meetings with the respective licensor(s) of such New Licensed Property,

attend subsequent meetings wherever possible if requested by Manufacturer, and assist Manufacturer wherever possible in obtaining such New Licensed Property.

C. It is understood that Representative has in the past and will continue to work with other manufacturers.

D. Manufacturer shall be solely responsible for all costs and expenses associated with the obtaining of New Licensed Properties from the applicable licensor(s), including any legal fees associated with the drafting and negotiation of any agreement with such licensor.

#### **4. COMPENSATION**

A. In consideration for the services rendered by Representative, Manufacturer agrees to and shall pay Representative, during the Term of this Agreement, a non-refundable, non-creditable monthly retainer fee in the amount recited in Schedule A attached hereto (the "Retainer Fee").

B. In addition to the foregoing Retainer Fee, Manufacturer agrees to pay Representative a Commission on Manufacturer's Net Sales of its licensed products or services bearing the New Licensed Properties or by its affiliated or related companies in accordance with the schedule recited in Schedule A (the "Commission"). The definition of Net Sales with respect to each New Licensed Property shall be governed by such definition provided in the respective license agreement with the applicable licensor.

C. Representative's right to receive this Commission shall survive termination or expiration of this Agreement for any reason, Representative shall be entitled to continue to receive its full Commission based on those contracts or agreements entered into by Manufacturer with third party licensors during the Term of this Agreement or based on any contracts or agreements entered into by Manufacturer within one (1) year from the date of termination or expiration thereof resulting from presentations or negotiations made by Representative during the Term of this Agreement for which Representative would have received a Commission had the Agreement not been terminated or expired. Representative shall be entitled to such post termination Commission for so long as the Manufacturer continues to sell such licensed products or services under such agreements and any renewals, modifications or extensions thereof.

D. Manufacturer agrees to reimburse for all reasonable expenses incurred by Representative on behalf of Manufacturer, provided that any expenses above \$1000 must be approved in writing by Manufacturer prior to their being incurred.

#### **5. STATEMENTS AND PAYMENTS**

A. The Commission owed Representative shall be calculated on a quarterly calendar basis (the "Commission Period") and shall be payable no later than thirty (30) days after the termination of the preceding full calendar quarter.

B. For each Commission Period, Manufacturer shall provide Representative with a written Commission Statement in a form acceptable to Representative. Such Commission Statement shall be certified as accurate by a duly authorized officer of Manufacturer and shall be broken down on a Property by Property basis. With respect to each of the New Licensed Properties, Manufacturer shall further provide Representative with copies of Manufacturer's royalty statements to the respective licensor. Such Commission Statements shall be furnished to Representative regardless of whether any Licensed Products were sold during the Commission Period or whether any actual Commission was owed.

C. The receipt or acceptance by Representative of any Commission statement or payment shall not prevent Representative from subsequently challenging the validity or accuracy of such statement or payment.

D. All payments due Representative shall be made in United States currency by check drawn on a United States bank, unless otherwise specified by Representative.

E. Late payments shall incur interest at the rate of ONE PERCENT (1%) per month from the date such payments were originally due.

#### **6. RECORD INSPECTION AND AUDIT**

A. Representative shall have the right, upon reasonable notice, to inspect Manufacturer's books and records and all other documents and material in Manufacturer's possession or control with respect to the subject matter of this Agreement. Representative shall have free and full access thereto for such purposes and may make copies thereof and Manufacturer shall fully cooperate with Representative in connection with such inspection.

B. If such inspection reveals an underpayment by Manufacturer of the actual Commission owed Representative, Manufacturer shall pay the difference, plus interest calculated at the rate of ONE PERCENT (1%) per month. If such underpayment be more than ONE THOUSAND UNITED STATES DOLLARS (\$1,000.00) for any Commission Period, Manufacturer shall also reimburse Representative for the cost of such inspection.

C. All books and records relative to Manufacturer's obligations hereunder shall be maintained and made accessible to Representative for inspection at a location in the United States for at least two (2) years after termination of this Agreement.

## **7. INDEMNIFICATION**

Manufacturer hereby agrees to defend, indemnify and hold Representative, its shareholders, directors, officers, employees, Representatives, 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 the manufacture or sale of any Licensed Products based on the New Licensed Properties including, but not limited to, actions for infringement or product liability.

## **8. NOTICES AND PAYMENTS**

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.

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) days period, the breaching party fails to cure such breach.

B. Representative shall have the right to terminate this Agreement for any reason on thirty (30) days written notice to Manufacturer subject to the provisions of this Agreement and, in particular, to the post termination compensation provisions concerning commissions as provided for in paragraph 4.

## **10. JURISDICTION/DISPUTES**

A. This Agreement shall be governed in accordance with the laws of [State].

B. All disputes under this Agreement shall be resolved by litigation in the courts of the State of [State] 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, assigns and successors.

## **12. 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.

## **13. 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.

**14. INDEPENDENT CONTRACTOR**

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

**15. 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.

**MANUFACTURER**

**MANUFACTURER'S REPRESENTATIVE**

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

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

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

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

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

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

**SCHEDULE A**  
**TO MANUFACTURER'S REPRESENTATIVE AGREEMENT**

1. LICENSED PRODUCTS:
2. TERRITORY:
3. TERM:
4. RETAINER FEE:
5. COMMISSION:
6. EXCLUDED LICENSORS: