

**Sample Distribution and Licensing Agreement**

**[Annotation by Leo Gureff and Daniel Jacob]**

<b>Agreement</b>	<b>Remarks</b>
<p>This Distribution and Licensing Agreement (the “<i>Agreement</i>”) is made and entered this <u>st</u> day of _____, 2016 (the “<i>Effective Date</i>”) by and between _____, a corporation to be organized and exist under the laws of _____ (“<i>Licensor</i>”) and _____, a _____ corporation (“<i>Company</i>” and collectively with Licensor, the “<i>Parties</i>” and each, a “<i>Party</i>”). [1]</p>	<p>[1] The framework of the license and distribution is critical as well as the State under which the individual companies were formed. This must be kept in mind throughout the various provisions of the agreement.</p> <p>Specifying the identities of the involved parties ensures that all parties know Licensor and Company (Licensee). This allows for the parties to verify who owns the claimed invention (licensor) and who intends to commercialize the claimed invention (licensee). An alternative to the term “Company” could be “Licensee.”</p>
<p align="center"><b><u>WITNESSETH:</u></b></p> <p>WHEREAS, Licensor is engaged, <i>inter alia</i>, in the development, licensing, and distribution of certain Products, as defined herein, and is willing to enter into the Agreement with Company on the terms and conditions set forth herein; [2]</p> <p>WHEREAS, Company wishes to become Licensor’s authorized distributor, and Licensor appoints Company as its licensee and Company with the right, <i>inter alia</i>, to distribute Products to End Users under the terms and conditions of this Agreement; [3]</p> <p>NOW, THEREFORE, in consideration of the mutual agreements hereinafter contained, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending legally to be bound hereby, agree as follows:[4]</p>	<p>[2] This establishes that Licensor has the intention to grant license and distribution rights of the claimed invention to the licensee conditioned upon Licensee’s acceptance of the terms. But the “Reps and Warranties” section of the agreement set forth the Licensor’s rights to enter into the agreement.</p> <p>[3] This spells out the intent of the Licensee and Licensor to grant both license and distribution rights of the claimed invention.</p> <p>[4] Courts have relied on the terms “intending to be legally bound” to find enforceable obligations in the absence of consideration.</p>
<p><b>1. <u>Defined Terms; Rules of Construction.</u></b></p> <p>1.1 Below is a list of Exhibits attached hereto and incorporated herein. [5]</p>	<p>[5] Exhibits incorporated to the agreement ensure the needs and preferences of the parties are more clearly spelled out. An agreement that is</p>

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EXHIBIT A	LICENSOR SOFTWARE AND PRODUCTS	customizable can be tailored for the parties. This serves to
EXHIBIT B	COMPANY AND ITS AFFILIATES MARKS	ensure a meeting of the minds AND POLICIES regarding important details
EXHIBIT C	TERRITORY	(i.e. the claimed invention, use of trademarks, defined
EXHIBIT D	END USER LICENSE AGREEMENT	territories, EULA's). Such Exhibits are useful when there
EXHIBIT E	SERVICE AND SUPPORT	is a generic set of terms used for all licensees.
EXHIBIT F	DEFINITION OF TERMS	
EXHIBIT G	PARTIES ADDITIONAL OBLIGATIONS	
EXHIBIT H	PROPRIETARYNOTICES; TRADEMARKS.	
1.2	Any reference to any federal, state, local, or foreign law will be deemed also to refer to Law as amended and all rules and regulations promulgated thereunder, unless the context requires otherwise. Words "include," "includes," and "including" will be deemed to be followed by "without limitation." Pronouns in masculine, feminine, and neuter genders will be construed to include any other gender, and words in the singular form will be construed to include the plural and vice versa, unless the context otherwise requires. The words "this Agreement," "herein," "hereof," "hereby," "hereunder," and words of similar import refer to this Agreement as a whole and not to any particular subdivision unless expressly so limited.[6]	[6] Some courts have used the words listed as restrictive limitations that can restrict the meaning of a preceding noun or unintentionally limit the scope of an agreement; this provision ensures that in case of ambiguity the unrestricted meaning should be applied.
1.3	All capitalized defined terms shall have the meaning set forth in <u>Exhibit F</u> attached hereto.	
<b>2. License and Appointment of Company.</b>	<b>2.1</b> <u>Appointment of Company.</u> Subject to the terms and conditions set forth herein, Licensor hereby appoints Company as an independent distributor of Products [7] in the Territory and grants the following rights (the " <b>License</b> ") and Company hereby accepts such License:	[7] The definition of Product may be limited to a specific list of software packages with specific version numbers listed on an exhibit, or may be more broadly defined by a descriptive definition of products that are licensed. In this sample agreement, both techniques are used where software packages by name are listed on Exhibit A and a definition of "Products" is included to cover adaptations and various current and future versions of the listed
a)	<i>a non-exclusive</i> [8] non-transferable [9] license to use, copy, exhibit, reproduce, bundle, co-brand, rebrand, market, distribute, advertise, and sublicense the Products [10] directly, through Company's web and mobile portals applications, Company's mobile applications, including Company's mobile applications in Company's app store accounts (e.g. iTunes or GooglePlay), and social applications in Company's social network accounts and	

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<p>OEM carriers, to End Users in any form, including, without limitation, HTML5 format in electronic online or mobile media throughout the Territory during the Term of this Agreement as pursuant to the terms hereof; [11]</p>	
<p>b) the right to use, reproduce, publish, perform and display the Licensor Marks: (i) on the Company web sites in connection with the posting of hyperlinks to the Products; and (ii) in connection with the development, use, reproduction in promotional and marketing materials and electronic and printed advertising, publicity, press releases, newsletters and mailings about the Products ("Promotional Materials");[12]</p>	<p>packages.</p> <p>[8] non-exclusivity gives Licensor the freedom to maximize its distribution and licensing rights and offset an underperforming licensee by entering into licensing and distribution agreements with other entities.</p>
<p>c) Licensor shall use its best efforts to support Company's sales and marketing of the Product. Licensor shall promptly provide standard information and marketing material for the Product to Company; and [13]</p>	<p>[9] The restriction on transferability ensures that a Licensee cannot force Licensor into a business relationship with another entity. This restriction does not, however, address situation where a Licensee undergoes a change of control through an acquisition, merger, reorganization, etc. where it might make sense to permit assignment. See Section 8.1 which it makes it clear that the agreement may not be transferred or assigned.</p>
<p>d) Notwithstanding anything to the contrary herein, nothing contained herein shall limit Licensor's ability to comply with all of the terms of existing agreements between Licensor and third parties, including but not limited to Licensor's prior appointment of distributors of the Product within the Territory.</p>	
<p>2.2 <u>Territory</u>. Company may not market, sell or otherwise distribute any Products to any third party outside the Territory without the prior written consent of Licensor and Company shall refer to Licensor all inquiries and referrals received by Company regarding potential licenses of Products outside the Territory. [14]</p>	<p>[10] Not all distribution licenses require this complete list of rights. Licensee and Licensor must agree on the specific rights contemplated by their relationship. For example, the Licensee may not have the right to re-brand as the Licensor may want to grant that right to another party.</p>
<p>2.3 <u>End User License</u>. Company is authorized to offer, distribute and license the Products to End Users under the terms, conditions and restrictions as provided in an End User License Agreement, as provided by Licensor in the Documentation or as may be attached hereto as <u>Exhibit D</u> or as otherwise agreed by the Parties (the "End User License Agreement"). If applicable, Company shall include the applicable End User License Agreement with the Products and shall comply with the reasonable instructions of Licensor regarding the packaging or presentation of the End User License Agreement. Licensor and Company will cooperate to establish mutually acceptable procedures to reasonably assure that End Users enter into the End User License Agreement.[15]</p>	<p>[11] It is important to specify the channels of distribution. Licensors may wish to license different parties to distribute via different channels. It is also important to consider whether intermediaries can be used such as resellers. The language "directly" and "to End Users" makes it clear that intermediaries are not</p>
<p>2.4 <u>Products Update</u>. Licensor shall take any and all steps required and/or requested by the Company from time to time in order to update (within ten (10) days as updates become available for a specific Product) and/or customize the Products in accordance with the specifications as reasonably requested by Company and the provisions of this Agreement, including without limitations menus and dialog boxes, animations,</p>	

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<p>graphics, audio tracks, video, online help system, textual content, installation program, user's guide and packaging and Lessor shall promptly, but not later than ten (10) days after the request from Company, perform such updates and the Parties agree that the charge to Company for such updates and/or customization shall not exceed 1/10 of the Licensee Fee for the Products paid by Company to Lessor provided that the work required is not more than 10 hours per year. [16]</p>	<p>permitted. and whether [12] Gives Licensee the right to benefit from goodwill and economic value of Lessor's established mark.</p>
<p>2.5 <u>Delivery of Products.</u> As soon as practicable after the Effective Date but not later than thirty (30) days after the Effective Date, Lessor will provide Company with one master copy of Lessor Products. [17]</p>	<p>[13] Best efforts provisions have often been a source of contention and confusion due to its ambiguity. Courts have held that best efforts requires more than good faith which is an implied covenant in all contracts. Benchmarks as to what is considered best efforts may help reduce ambiguity.</p>
<p>2.6 <u>Modifications.</u> Company shall have a right to modify the Products or request Lessor to modify the Products in accordance with Company's specification for purposes of monetizing the distribution of the Products and carrying out Company's obligations hereunder. [18]</p>	<p>[14] Note that the license grant in Section 2.1(a) is limited to the Territory. The addition of a contractual restriction in Section 2.2 provides the Lessor with additional causes of actions and remedies against the Licensee if it distributes or market Products outside the Territory. Often Lessors want to restrict Licensees from distributing in territories where the distributor does not have existing channels, contacts a customer base, or local knowledge of laws and regulations.</p>
<p>2.7 <u>Grant by Company.</u> Subject to the terms and conditions set forth herein, Company hereby grants to Lessor the following rights: [19]</p> <ul style="list-style-type: none"><li>a) the right to use, reproduce, publish, perform and display the Company Marks on the Lessor's or its Affiliates' web sites in connection with the posting of hyperlinks to the Company's web sites; and in promotional and marketing materials, content directories and indexes, and electronic and printed advertising, publicity, press releases, newsletters and mailings about Lessor or its Affiliates; and</li><li>b) the right to include, on the Lessor or its Affiliates' web sites, hypertext links (whether in graphical, text or other format) which enable users to link to Company's web sites for purposes of purchasing license to Products.</li></ul>	<p>[15] The EULA is software license which protects the Lessor and Licensee with provisions that limit liability in the event that use of the software results in damage. Lessor and Licensee agreement to the terms of the EULA is extremely important as the Lessor may want consistency among its ultimate end users, may not want to undertake any additionally liability or obligation, and limit any</p>
<p>2.8 <u>Ownership.</u> Company agrees that all right, title, and interest in and to Products, and all Intellectual Property Rights are the sole and exclusive property of Lessor, Suppliers and/or their Affiliates, as applicable. [20]</p>	
<p>2.9 <u>Limitation of Rights.</u></p> <ul style="list-style-type: none"><li>a) Except as otherwise expressly set forth in this Agreement, Company shall not decompile, disassemble or otherwise reverse engineer any Product or any part thereof, and <i>further provided</i> that Company may revise, modify and elaborate Product to carry out its obligations hereunder. [21] Except as otherwise specifically provided in this Agreement, Company does not acquire any right to Products, Supplier Marks or Lessor Marks; and</li></ul>	

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<p>b) Except as otherwise specifically provided in this Agreement, Lessor does not acquire any right to Company Marks and any other license, expressly or by implication, estoppel or otherwise, under any Company's Intellectual Property Rights owned by Company, its Suppliers and/or their Affiliates.</p>	<p>sublicenses or other IP grants; whereas the Licensee may want to ensure that it can provide sufficient rights to its end users, ensure that any warranties or Lessor obligations flow through to its end users, and that there are no undue restrictions it would be required to impose on its end users. If the EULA including all of its terms is not included with the distribution agreement, the parties may consider including a process for reaching agreement on those terms and ensure that all changes and agreements to terms are in writing.</p> <p>[16] This is a key provision that often leads to disputes in licensing agreements. Tension arises because the Lessor often wants to charge for updates but it is in both parties' interests to ensure that the Licensee is distributing the latest updates to End Users. Listing the obligations of the lessor with specificity is important. Distinguishing updates from new versions of software should also be considered. New software should be claimed as a separate licensed product and subject to a separate license.</p> <p>[17] The Licensee should consider whether or not it wants source code copies of the Product and if so it should specify that the master copy include both executable and source code versions. Similarly, the agreement may address delivery of new versions and updates.</p> <p>[18] The Licensee can only</p>
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	<p>modify the Products if it has source code. The Licensor may consider being more restrictive regarding modifications especially where compatibility or interoperability are important factors in the End User experience</p> <p>[19] Reciprocal rights that Licensee is giving to Licensor. In this agreement the grant backs are limited to the rights needed to co-market and promote distribution. Licensors may want other grant backs such as rights to improvements and modifications where the agreement permits a Licensee to make them,</p> <p>[20] Typically a Licensee would require a Licensor to represent and warrant ownership perhaps in addition to a covenant. This is an unusual provision as the Licensee is acknowledging the Licensor's and its Suppliers' ownership interests. The provision is likely intended to restrict the Licensee from asserting that it owns or controls the Products or the IP embodied in them. The provision could be clearer if it stated: "Company shall not expressly or impliedly state in any form that it owns or controls the Products or Intellectual Property Rights embodied in them."</p> <p>[21] If Licensee is authorized to make modification and extensions it will most likely require source code. If Licensor delivers source code to Licensee for this purpose, the no reverse-engineering restriction would be</p>
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	nonsensical.
<p><b>3. <u>License Fees, Payments and Orders.</u></b></p> <p>3.1 <u>License Fees and Payment.</u> Licensor grants the rights to Company set forth in <u>Section 2.1</u> of this Agreement in consideration of payment and other valuable consideration as provided in <u>Section 2.1</u> of certain Shareholder Agreement executed as of _____, 2016 (“<b>Shareholder Agreement</b>”) and as further detailed in the <u>Exhibit A</u> (“<u>License Fee</u>”).[22]</p> <p>3.2 <u>Prices.</u> Company may freely set up licensing fees to End Users and resellers [23] and further increase such licensing fees and prices to End Users for the amounts of applicable sales, use and value-added taxes. Company and Licensor are free to set its discounted, rebate and special promotion prices for the license of the Product.[24]</p> <p>3.3 <u>Taxes and other payments.</u> Each Party is responsible for complying with the collection, payment, and reporting of all taxes imposed by any governmental authority applicable to its activities in connection with this Agreement. None of the parties is responsible for taxes that may be imposed on the other party. Notwithstanding anything to the contrary herein, each party shall be solely responsible for any value added taxes collections, payments and related registrations arising in any way out of or relating to its respective marketing activities to their respective end users and sub-distributors pursuant to this Agreement.</p>	<p>[22] This particular provision was drafted towards a joint venture agreement and does not include specific provisions on royalty payments or annual payments as is customarily found in other licensing agreements. The parties can modify this section to include language that reflects specific terms regarding payment.</p> <p>[23] As discussed in connection with Section 2.1(a) the license does not permit the Licensee to distribute through resellers. Inconsistencies should be addressed.</p> <p>[24] It is important to know whether or not there are pricing restrictions on the sale and licensing of the Products although Licensors should be mindful in situations where the Products have or will have significant market shares implicating antitrust or unfair competition concerns. The particular language here would imply that Licensee is free to set its own prices but then grants rights to increase fees for taxes which would be implicit in having autonomy to set its own prices. Clarification might be helpful</p>

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	to parties if using similar provisions.
<p><b>4. <u>Representations and Warranties.</u> [25]</b></p> <p>4.1 Each Party represents and warrants to the other Party that:</p> <ul style="list-style-type: none"> <li>a) it is an entity duly created, formed and organized, validly existing and in good standing under the laws of the jurisdiction of its creation, formation, or organization;</li> <li>b) to its knowledge, there is no pending or threatened action (or basis therefor) for the dissolution, liquidation, or insolvency of the Party;</li> <li>c) it has all requisite corporate power and authority necessary to execute and deliver the Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby;</li> <li>d) the Agreement has been duly authorized, executed and delivered, and constitutes a valid, legal and binding obligation of the Party enforceable against such Party in accordance with its terms, subject to any law affecting creditors' rights; and</li> <li>e) to its knowledge, the execution, delivery and performance of the Agreement do not and will not (i) violate any charter document of the Party, (ii) violate any agreement or order to which such Party is a party to or by which such Party or its assets are bound, or (iii) require any consent from any Person.</li> </ul>	[25] These are generally standard representations and warranties. Licensees may additionally request representations and warranties address lack of current or threatened litigation against the Products and Licensed Marks. In addition, a Licensee may seek a representation and warranty that the Lessor owns the copyright in the software and documentation delivered, or has procured all necessary rights from third parties to grant the licenses to the Products. Other common representations that may be requested by a Licensee include that there are no claims filed or threatened related to the Products. Section 6.2 below includes these additional warranties.
<p><b>5. <u>DISCLAIMERS; LIMITATION OF LIABILITIES.</u></b></p> <p><b>5.1 <u>EXCLUSIONS OF DAMAGES AND LIABILITY.</u></b></p> <p>WITH THE EXCEPTION OF VIOLATION OF PARTY'S INTELLECTUAL PROPERTY RIGHTS [26], IN NO EVENT WILL LICENSOR OR COMPANY BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES UNDER ANY FORM OR THEORY OF ACTION WHATSOEVER, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, EQUITY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, OVERHEAD, DAMAGES FOR LOSS OF GOODWILL, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, OR ANY AND ALL OTHER COMMERCIAL DAMAGES OR LOSSES, EVEN IF ADVISED OF THE POSSIBILITY THEREOF.</p> <p><b>5.2 <u>Limitation on Liability.</u></b> If the Agreement is expired or terminated pursuant to any provision of hereof, Company shall not be liable to Licensor because of such termination, for consequential or</p>	[26] It is customary for parties entering into a business relationship to disclaim all forms of indirect damages. The parties should consider whether or not they want to exclude any claims from such disclaimer. The exclusion of Intellectual Property Rights is interesting in this case because the definition includes patent rights which a party could unknowingly infringe. It is more customary to exclude material breaches of the agreement and/or breaches of a party's

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<p>incidental damages, including without limitation, loss of profits or goodwill. Termination shall not, however, relieve either Party of its liability or obligation for any breach or default occurring before the termination. Notwithstanding any provision to the contrary herein, the liability of Company to Licensor for any claim whatsoever related to the Software and/or Products or this Agreement, including any cause of action sounding in contract, tort, or strict liability, shall not exceed the greater of One Thousand (\$1,000.00) Dollars or the total amount of payments theretofore paid by Company during the previous one-year period to Licensor in connection with the Product(s) relating to such liability.[27]</p>	<p>representation of warranties.</p> <p>[27] This limitation on liability for the Licensee is favorable in that it sets a maximum amount that is nominal or would require the Licensee to double its payment to the Licensor for a mere 1-year period. Given that the payment appears in this Agreement to be equity only, a more relevant measure would be to pay the value of that equity based on its fair market value at the time the liability must be satisfied. In addition, requesting a limitation on liability by one party will likely result in a reciprocal request by the other party. Unless there is an imbalance in negotiation leverage, both parties will generally agree to some form of equivalent limitations or no limitations for either party.</p>
<p><b>6. <u>Indemnification; Product Warranty.</u></b></p> <p>6.1 <b>Indemnification.</b> Each Party (the “<b>Indemnifying Party</b>”) agrees to indemnify, defend and hold harmless the other and their</p>	<p>[28] Note indemnification do not cover claims relating to intellectual property violations. Typically a Licensor will want</p>

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<p>respective officers, directors, employees, agents, successors, and assigns (the “<b>Indemnified Party</b>”), from any and all losses, liabilities, damages and claims, and all related expenses (including reasonable legal fees and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties) and costs related to, arising from, or in connection with any third-party claim related to, arising from, or in connection with the actual or alleged (i) personal injury (including death) or property damage due to the gross negligence or intentional misconduct of the Indemnifying Party, and/or (ii) breach by the Indemnifying Party of any of its representations, warranties, obligations, and/or covenants set forth herein.[28]</p>	<p>to control litigation involving IP claims involving its products. The provision here does not protect the Licensor from negligence or product liability claims that would result from the Licensee’s distribution and marketing of the Products.</p>
<p><b>6.2 Product Warranty.</b> Licensor hereby represents and warrants to Company that: [29](a) all Products are the original work of Licensor or owned or duly licensed by Licensor for the purposes for which they are delivered; (b) Licensor is the lawful owner or licensee of all (i) Products and (ii) technology used by it in the creation of the Products; and (b) if access to such technology is granted hereby, Licensor has the right to permit Company access to or use of such technology. Licensor further warrants to Company that to the best of its knowledge: (c) there is no claim, litigation or proceeding pending or threatened against Licensor with respect to the Product, or any component thereof, alleging infringement of any Intellectual Property Rights of any person or entity; and (d) there is no pending litigation that could impact Licensor’s ability to provide the services relating to the Products. Without prejudice to any other rights of Company against the Licensor, including any indemnification obligations, if any, Product, or any part thereof, under this Agreement becomes, or in Company’s opinion may become, the subject of any claim, suit or proceeding for infringement of any Intellectual Property Rights, or if any Product, or any part thereof, is held or otherwise determined to infringe any Intellectual Property Rights, Licensor will at its expense achieve the following results in the listed order of preference: (i) secure for Company the right to continue using the affected Products; or (ii) replace or modify the Products to make it non-infringing without degrading its performance or utility.</p>	<p>[29] See note 25. A Licensee may wish to obtain these warranties in the form of representations as well to ensure that it has the ability to pursue a full range of remedial options in the event of a breach.</p>
<p><b>7. Term and Termination.</b></p> <p><b>7.1 Term.</b> This Agreement is effective as of the Effective Date and will remain in full force and effect for a period of ten (10) years from the Effective Date (the “<b>Original Term</b>”) and shall automatically extend for consecutive one (1) year periods upon the expiration of the Original Term and the applicable extension periods (as so extended, the “<b>Term</b>”), unless either Party submits written notification to the other Party of its intent not to extend the Agreement at least ninety (90) days prior to expiration of the Original Term or the applicable extension period. [30]</p>	<p>[30] The term of the agreement itself largely depends on the scope of the transaction and parties intent with respect to parties relationship. The automatic renewal (as well as the long term) benefits Licensee in this transaction as it allows for a longer use of the licensed product</p>

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**7.2 Termination**. The Parties may terminate this Agreement as provided below:

- a) Company and Lessor may terminate this Agreement by mutual written consent at any time;
- b) Company may terminate this Agreement:
  - i). by giving notice to Lessor at any time if Lessor has breached any representation, warranty, obligation or covenant contained in this Agreement in any material respect and this breach has not been cured within a fifteen (15) day period; and [31]
  - ii). if any legal proceeding is initiated and not dismissed within twenty (20) days alleging that (a) Lessor or Products violate the material laws of the foreign government and/or the laws and regulations of the United States, or (b) Lessor or Products has interfered with, infringed upon, misappropriated, or otherwise violate or come into conflict with any other person's Intellectual Property Rights. [32]
- c) Lessor may terminate this Agreement:
  - i). by giving notice to Company at any time if Company has breached any material representation, warranty, obligation or covenant contained in this Agreement and this breach has not been cured within a fifteen (15) day period.
- d) either Party may terminate this Agreement upon notice:
  - i). if the other Party attempts to make an assignment in violation of Section 8.1 below;
  - ii). if the other Party declares insolvency or bankruptcy,
  - iii). if a petition is filed in any court and not dismissed in ninety (90) days to declare the other Party bankrupt or for the other Party's reorganization under bankruptcy, insolvency, reorganization, moratorium, or other laws relating to or affecting the rights of creditors; and
  - iv). if the other Party consents to the appointment of a trustee in bankruptcy or a receiver or similar entity.

**7.3 Actions upon Termination**. In the event of termination or expiration of this Agreement: [32]

- a). Company shall immediately cease all use of the Products, Software, and Lessor Marks and immediately return to Lessor the master copies of the Products, if

[31]Providing a cure period is beneficial to maintain the integrity of a business transaction.

[32]Termination provision that allows for termination of the agreement by Licensee in the event that licensor and/or licensed product are subject to a legal proceeding for IP infringement benefits licensee and allows Licensee to minimize its exposure.

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<p>any, and Confidential Information, including any copies thereof; and</p> <p>b). Company shall calculate and pay to Lessor the License Fees through the date of termination and any other amounts due Lessor hereunder.</p> <p>7.4 <u>Survival of Certain Provisions.</u> [33] Notwithstanding any provisions to the contrary herein, the provisions of <u>Sections 2.8, 2.9, 3.3, 6</u> (for two years), <u>7.3, 7.4</u> and <u>8</u> shall survive the termination or expiration of the Agreement and such termination or expiration shall not release Company or Lessor of their respective obligations regarding the Confidential Information, Company's obligations with respect to Intellectual Property Rights or any duties, liabilities or obligations which by the terms hereof or in context are to survive termination; all licenses properly granted to End Users pursuant to the then-existing end-user license agreements shall continue in force and effect in accordance with the terms thereof and the Products already distributed shall remain in use under the terms of such end-user license agreements.</p>	<p>[32] Action upon termination provision should provide the language that effectively terminates the license to IP. <i>See, section 5.3.</i> If Licensee will have inventory and existing contracts to fulfill with End Users the parties should agree upon the Licensee's rights. If any, to distribute its remaining inventory following termination.</p> <p>[33] The parties may agree which provisions survive the termination of the agreement including with respect to certain IP warranties and confidentiality obligations.</p>
<p><b>8. <u>Miscellaneous Provisions.</u></b></p>	

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8.1 Assignment. This Agreement may not be assigned, in whole or in part, by either Party without the prior written consent of the other Party.

8.2 Governing Law. This Agreement shall be construed and interpreted in accordance with the laws of the \_\_\_\_\_ without reference to conflicts of law rules or principles. This Agreement shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded.

8.3 Arbitration. [34] In the event of a dispute between the Parties arising out of or in connection with this Agreement, the parties hereto shall use their best efforts to resolve the dispute on an amicable basis. If an amicable settlement cannot be reached, either Party hereto may request, by written notice, that the dispute be resolved by arbitration by a panel of three (3) arbitrators before the American Arbitration Association pursuant to the then current rules of the United Nations Commission on International Trade Law (UNCITRAL Rules). In the event of any conflict between the UNCITRAL Rules and the provisions of this Agreement, the provisions of this Agreement shall prevail. The place of the arbitration shall be Washington, D.C., USA. The claimant Party shall appoint an arbitrator and the respondent Party shall appoint one arbitrator, and the two arbitrators so appointed shall appoint the third arbitrator, in accordance with the provisions of the UNCITRAL Rules. The English language shall be used as the written and spoken language for all matters connected with all references to arbitration. The decision of the arbitrators shall be made by majority vote and shall be made in writing. The decision of the arbitrators shall be final and binding on the Parties, save in the event of fraud, manifest mistake or failure by any of the arbitrators to disclose any conflict of interest. The decision of the arbitrators may be enforced by any court of competent jurisdiction and may be executed against the person and assets of the losing Party in any jurisdiction. For the avoidance of doubt, such court includes any court that is authorized to make such an order by virtue of any treaty or legislation relating to the reciprocal enforcement of foreign arbitral awards or judgments.

[34] Arbitration is may be helpful in cross-border transactions. Generally, an order of arbitration body is more readily enforced in a foreign jurisdiction than a decision of a foreign court.

8.4 Legal Expenses.[35] The prevailing Party in any legal action, including arbitration, brought by one Party against the other and arising out of this Agreement shall be entitled, along with any other rights and remedies it may have, to reimbursement for its expenses, including court costs and reasonable attorney's fees. Such fees may be set by the court in the trial of such action or may be enforced in a separate action brought for that purpose. Such fees shall be in addition to any other relief that may be awarded.[23]

8.5 Publicity. [36] The Parties shall work together to issue publicity and general marketing communications concerning their relationship and other mutually agreed-upon matters. In addition, neither Party shall issue such publicity and general marketing communications concerning their relationship without the prior written consent of the other

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[Annotation by Leo Gureff and Daniel Jacob]

Party (not to be unreasonably withheld or delayed). Neither Party shall disclose the terms of this Agreement to any third party other than its outside counsel, auditors, and financial and technical advisors, except as required by law.[24]

[35]Legal expenses paid by a losing party discourage unwarranted lawsuits.

8.6 Notices.[37] All claims, instructions, consents, designations, notices, waivers, and other communications in connection with the Agreement (“**Notifications**”) will be in writing. Such Notifications will be deemed properly given (a) when received if delivered personally, (b) if delivered by facsimile transmission when the appropriate telecopy confirmation is received; (c) upon the receipt of the electronic transmission by the server of the recipient when transmitted by electronic mail, or (d) within three (3) days after deposit with an internationally recognized express delivery service, in each case when transmitted to a Party at the following address or location: [25]

[36]Many public companies do not allow provisions in an agreement that provide the other side with a right to issue publicity and marketing statements using their name and/or indicia.

If to Lessor:

to the address indicated on the signature page.

If to Company:

to the address indicated on the signature page.

with a copy to (which shall not constitute notice):

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8.7 Independent Contractors. The relationship of Lessor and Company established by this Agreement is that of independent contractors and nothing contained in this Agreement shall be construed to (i) give either Party the power to direct and control the day-to-day activities of the other, (ii) constitute the Parties as partners, joint ventures, franchisor-franchisee, co-owners or otherwise as participants in a joint or common undertaking, or (iii) allow Company to create or assume any obligation on behalf of Lessor for any purpose whatsoever. Except for the rights of Lessor set forth in this Agreement, Lessor shall be solely responsible for developing and implementing its business and marketing plans and its operations.

[37]Having a detailed notice provision helps with maintaining proper channels of communications

8.8 Severability. If this Agreement or any provision thereof is, or the transactions contemplated hereby are, found by a court of competent jurisdiction to be invalid, void, unenforceable for any reason or inconsistent or contrary to any valid applicable laws or official orders, rules and regulations, in whole or in part, the inconsistent or contrary provision of this Agreement shall be null and void and such laws, orders, rules and regulations shall control and, as so modified, this Agreement shall continue in full force and effect and the remaining provisions of this Agreement shall be unaffected thereby and shall remain in full force and effect to the fullest extent permitted by law, *provided, however,* that nothing herein contained shall be construed as a waiver of any right to

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question or contest any such law, order, rule or regulation in any forum having jurisdiction.

8.9 **No Waiver.** No provision of the Agreement will be considered waived unless such waiver is in writing and signed by the Party that benefits from the enforcement of such provision. No waiver of any provision in the Agreement, however, will be deemed a waiver of a subsequent breach of such provision or a waiver of a similar provision. In addition, a waiver of any breach or a failure to enforce any term or condition of the Agreement will not in any way affect, limit, or waive a Party's rights under the Agreement at any time to enforce strict compliance thereafter with every term and condition of the Agreement.

8.10 **Force Majeure.** Nonperformance of either Party shall be excused to the extent the performance is rendered impossible by strike, fire, flood, governmental acts or orders or restrictions, failure of suppliers.

8.11 **Further Assurances.** The Parties will each perform such acts, execute and deliver such documents and instruments, and do such other things as may be reasonably requested to accomplish the transactions contemplated by this Agreement and to carry out the purpose and intent hereof.

8.12 **No Third Party Beneficiaries.** This Agreement is solely for the benefit of the Parties and, except as otherwise provided herein, no other Person will have any right, interest, or claim under this Agreement.

8.13 **Entire Agreement.** With the exception of prior Non-Disclosure Agreements, if any, the Agreement, together with the exhibits, attachments and appendices hereto, constitutes the entire agreement and understanding between the Parties or any of their Affiliates with respect to its subject matters and supersedes all prior agreements, understandings and representations, written or oral, to the extent they relate in any way to the subject matter of the Agreement.

8.14 **Warranty of Authority.** The individuals actually executing this Agreement personally represent and warrant that they have the necessary power and authority to execute this Agreement on behalf of the Party they represent and their signatures are sufficient to make this Agreement a binding and enforceable obligation of such Party.

8.15 **Signatures.** This Agreement and any written notice, consent, agreement or document provided for in this Agreement shall be deemed signed and/or bearing the original signature of a given person, if such person's name and/or adopted signature is placed by such person on the document whether by manual signature, electronic transmission or facsimile transmission by the person. Delivery of a copy of this Agreement or such other document bearing an original signature by facsimile transmission or a scanned image of the original signature, by electronic mail in "portable document format" ("pdf") form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, will have the same effect as physical delivery of the paper document bearing the original signature.

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8.16 <u>Counterparts</u> . This Agreement and any documents pursuant hereto may be separately executed by the Parties in two (2) or more counterparts and all such counterparts shall be deemed an original, but all of which together shall constitute one and the same instrument and will be binding on the Parties as if they had originally signed one copy of the Agreement.	
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[SIGNATURE PAGE FOLLOWS]	
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9. signature page 1 of 1	
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IN WITNESS WHEREOF, each of the undersigned Parties to this Distribution and Licensing Agreement has caused this Agreement to be duly executed in its corporate name by one of its authorized representatives, all as of the date first set forth above.	
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LICENSOR [NAME]	
-----------------	--

By:

\_\_\_\_\_

-

Name:

Title:

*Address:*

COMPANY [NAME]	
----------------	--

By:

\_\_\_\_\_

-

Name:

Title:

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<i>Address:</i>	
<b>EXHIBIT A</b>  LICENSOR SOFTWARE AND PRODUCTS	
<b>Current Titles:</b>	
10. <b>EXHIBIT B</b>  11. COMPANY AND ITS AFFILIATES MARKS AND POLICIES  Provided from time to time	
12.  <b>EXHIBIT C</b>  TERRITORY  Worldwide	
13.  <b>EXHIBIT D</b>  END USER LICENSE AGREEMENT  None	
14.  <b>EXHIBIT E</b>	

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SERVICE AND SUPPORT	
[none]	
15.  <b>EXHIBIT F</b>  <u>DEFINITION OF TERMS</u> [38]	<p>[38] The definition section serves to make the agreement provisions concise and reduce risks of ambiguity. Customary practices would be to capitalize the defined terms throughout the agreement in order to signal that its meaning has been explicitly defined.</p>

**Defined Terms:**

1.1. ***"Affiliate"*** shall mean, with respect to a given Person, any person or entity which, directly or indirectly, controls, is controlled by, or is under common control with, the given Person; "control" (including, with its correlative meanings, "controlled by" and "under common control with") means possession, directly or indirectly, of the power to direct or cause the direction of management or policies (whether through ownership of securities or partnership or other ownership interests, by contract or otherwise).

1.2. ***"Agreement"*** shall have the meaning set forth in the preamble hereof.

1.3. ***"Confidential Information"*** shall mean any information, product, document or other material of any nature relating to or concerning one Party and/or its Affiliates, that is provided or made available to the other Party either before or after the Effective Date, directly or indirectly in any form whatsoever, including in writing, orally, and machine readable, and including, but not be limited to, any correspondence, memoranda, notes, e-mails, formulas, samples, equipment, compilations, blueprints, business information, technical information, know-how, information regarding patents, patent applications, software, computer Object Code or Source Code, algorithms, high-level structures, graphic user interfaces, ongoing research and development, business plans, business or marketing strategies or plans, products or product development strategies or plans, information concerning current and future products and services, customers, suppliers and markets, price lists and pricing information, financial statements and forecasts, computerized or other magnetically filed data, methods and techniques, manufacturing processes, developments, inventions, designs, drawings, engineering specifications, hardware configuration information, trade secrets, financial information of the Party and/or its Affiliates and any other business records and

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information, including without limitation the information about this Agreement, the use or disclosure of which might reasonably be construed to be contrary to the interests of such Party and/or their Affiliates, including information of third parties subject to confidentiality obligations and which such Party and/or its Affiliates may share with the other Party, *provided, however*, that Confidential Information shall not include information which: (i) that is already in the possession of the receiving Party before receipt from the disclosing Party and/or its Affiliates; (ii) is or becomes rightfully in the public domain without no fault of the receiving Party; (iii) is received by the receiving Party from a third party who or which is not under any obligation of confidentiality or restriction on use or disclosure concerning such information, or (iv) is disclosed under operation of law to the public or to a third party without a duty of confidentiality. If a Party asserts one of the four exceptions to Confidential Information above, then such Party shall prove such assertion by proper forms of documentary evidence.

1.4.     ***“Company”*** shall have the meaning set forth in the preamble hereof.

1.5.     ***“Company Marks”*** shall mean all proprietary indicia and designations of origin, trademarks, trade names, trade dress, service marks, service names, symbols, logos and other distinct brand elements that appear from time to time in properties, products, ventures and services of Company or any of its Affiliates, together with any modifications to the foregoing made by such parties during the Term of this Agreement as may be specified on Exhibit B hereof.

1.6.     ***“Documentation”*** shall mean user manuals, training materials, product descriptions and specifications, technical manuals, supporting materials, maintenance know how, text and graphic elements of all user interfaces and any modifications or upgrades of the foregoing, developed for use in connection with Products and provided or made available by Licensor or any of its Affiliates from time to time.

1.7.     ***“Effective Date”*** shall have the meaning set forth in the preamble hereof.

1.8.     ***“End User”*** shall mean any Person that licenses Products for his, her, or its use and not for redistribution.

1.9.     ***“End User License Agreement”*** shall have the meaning set forth in Section 2.3 hereof.

1.10.    ***“Indemnified Party”*** shall have the meaning set forth in Section 6 hereof.

1.11.    ***“Indemnifying Party”*** shall have the meaning set forth in Section 6 hereof.

1.12.    ***“Intellectual Property Rights”*** shall mean all worldwide (i) inventions (whether patentable or unpatentable, whether or not reduced to practice, and/or whether developed alone or jointly with others), all improvements thereto, patents, patent applications, patent and invention disclosures, and all other rights of inventorship, together with all reissues, continuations, continuations-in-part, divisions,

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revisions, supplementary protection certificates, extensions and re-examinations thereof; (ii) Internet domain names, trademarks, service marks, trade dress, trade names, logos, designs, slogans, product names, corporate names, together with all of the goodwill symbolized thereby and associated therewith, and registrations and applications for registration thereof and renewals thereof; (iii) copyrights (registered or unregistered), copyrightable works, rights of authorship, and registrations and applications for registration thereof and renewals thereof; (iv) integrated circuit designs, cell libraries, electronic masks, net lists, simulations, mask works, semiconductor chip rights, and registrations and applications for registration thereof and renewals thereof; (v) computer software (including without limitation Source Code, Source Code engines, source data files, and Object Code), software development tools (including without limitation assemblers, compilers, converters, utilities, compression tools), libraries, algorithms, routines, subroutines, commented and documented code, programmer's notes, system architecture, logic flow, data, computer applications and operating programs, databases and documentation thereof; (vi) trade secrets and other confidential information (including without limitation ideas, technologies, know-how, manufacturing and production processes and techniques, research and development information, drawings, schematics, specifications, bill of material, designs, plans, proposals, technical data, pricing data, marketing data, financial records, customer and supplier lists, and other proprietary information), (vii) copies and tangible embodiments thereof (in whatever form or medium), and all modifications, enhancements and derivative works of any of the foregoing; and (viii) all rights to sue and collect remedies for any past, present and future infringement of any of the foregoing, and rights of priority and protection of interests therein under the laws of any jurisdiction worldwide.

1.13. ***“License”*** shall have the meaning set forth in Section 2.1 hereof.

1.14. ***“License Fee”*** shall have the meaning set forth in Section 2.1 hereof

1.15. ***“Licensor”*** shall have the meaning set forth in the preamble hereof.

1.16. ***“Licensor Marks”*** shall mean all proprietary indicia and designations of origin, trademarks, trade names, trade dress, service marks, service names, symbols, logos and other distinct brand elements that appear from time to time in properties, products, ventures and services of Licensor or any of its Affiliates, together with any modifications to the foregoing made by such parties during the Term of this Agreement.

1.17. ***“Notifications”*** shall have the meaning set forth in Section 8.6 hereof.

1.18. ***“Object Code”*** shall mean computer programs assembled or compiled in magnetic or electronic binary form on

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software media, which are readable and usable by machines, but not generally readable by humans without reverse-assembly, reverse-compiling, or reverse-engineering.

1.19. ***“Original Term”*** shall have the meaning set forth in Section 7.1 hereof.

1.20. ***“Parties” or “Party”*** shall have the meaning set forth in the preamble hereof.

1.21. ***“Person”*** means any individual, partnership, limited liability company, corporation, association, joint stock company, trust, joint venture, labor organization, unincorporated organization, or governmental authority.

1.22. ***“Products”*** shall mean software (e.g. video game) set forth in Exhibit A (where Exhibit A may be updated from time to time upon mutual agreement by the Parties) owned or licensed by Licensor in any form, tangible or intangible, and on any media and all fixes, updates, modifications, enhancements and new releases of the Software and those related materials sold and/or used in connection therewith.

1.23. ***“Promotional Materials”*** shall have the meaning set forth in Section 2.1b) hereof.

1.24. ***“Rules”*** shall have the meaning set forth in Section 8.3 hereof.

1.25. ***“Shareholder Agreement”*** shall have the meaning set forth in Section 3.1 hereof.

1.26. ***“Suppliers”*** shall mean one or more of the entities from which the Products or rights to the Products may be or may have been obtained by Licensor.

1.27. ***“Suppliers Marks”*** shall mean all proprietary indicia and designations of origin, trademarks, trade names, trade dress, service marks, service names, symbols, logos and other distinct brand elements that appear from time to time in properties, products, ventures and services of Suppliers or any of their Affiliates, together with any modifications to the foregoing made by such parties during the Term of this Agreement.

1.28. ***“Term”*** shall have the meaning set forth in Section 7.1 hereof.

1.29. ***“Territory”*** shall mean those geographic areas specified in Exhibit C attached hereto and incorporated herein.

16.

**EXHIBIT G**

**PARTIES ADDITIONAL OBLIGATIONS**

**1. Company Obligations:**

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<p>1.1. <b>Promotional Efforts.</b><sup>[40]</sup> Company shall use its commercially reasonable efforts to (i) promote vigorously and aggressively the marketing and distribution of the Products in the Territory, and (ii) independently, or in co-operation with Licensor, seek out clients, identify, qualify, and secure licensing opportunities in the Territory. Company may advertise the Products in advertising media of Company's choice, provided that the primary audience or circulation is located in the Territory. Company shall make full use of all promotional material supplied by Licensor or its own Promotional Materials. In all advertising and promotion of the Products, Company shall comply with Licensor's standard cooperative advertising policies as specified from time to time by Licensor.</p> <p>1.2. <b>Protection of Goodwill.</b> <sup>[41]</sup> Company shall undertake reasonable efforts to protect and preserve the goodwill and image of the Products and to avoid deceptive, misleading, or unethical practices that are or might be detrimental to Company or its Affiliates, or the public, including any disparagement of Company and its Affiliates. Each Party agree that it shall not communicate, transmit, or promulgate in any matter, means or medium, any threatening, harassing, or obscene material, matter, or communications of any sort or to otherwise use the Internet service for any illegal or unlawful purpose or to deliberately communicate, transmit, or promulgate in any matter, means or medium, any unsolicited information or material to any individual or group of individuals (i.e.: "spamming") or to use such methods to promote a product.</p> <p>1.3. <b>Market Conditions.</b> <sup>[42]</sup> Company may, but not bound to advise Licensor concerning any market information that comes to Company's attention respecting Licensor, the Products, Licensor's market position, or the continued competitiveness of the Products in the marketplace.</p> <p>1.4. <b>Packaging and Licensing Agreements.</b> <sup>[43]</sup> Parties acknowledge and agree that Products will be subject to all warranties, shrink-wrap agreements, disclaimers and end-user license agreements and other license agreements contained in the packages as provided by Licensor and/or Suppliers and Company shall instruct its customers as to the terms of such documents applicable to Products.</p> <p>1.5. <b>Other Company's Obligations.</b><sup>[44]</sup> Company shall:</p> <ol style="list-style-type: none"><li>keep Licensor's Confidential Information in strict confidence and shall not make use of Confidential Information for any purpose other than in connection with the Agreement;</li></ol>	<p>[40] Marketing and promotional obligations are a major part of a business transaction where the rights to distribute products are involved, and therefore having a detailed provision benefits both parties.</p> <p>[41] Obligations with respect to protection and preservation of goodwill associated with licensor's products preserve and increase value in the products. This is particularly important when the license granted to licensee is exclusive against licensor.</p>
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<p>b). notify Lessor if disclosure of Lessor's Confidential Information by Company is necessary to comply with the requirements of any law, government order, regulation or legal process prior to such disclosure;</p> <p>c). comply with all applicable international, national, governmental, quasi-governmental and/or local laws and regulations in performing its duties hereunder, including without limitation, relevant embargo and export laws and regulations;</p> <p>d). keep and maintain accurate books, records, reports and customer data relating to the Products to the extent such information is available to Company; and</p> <p>e). provide first level technical support to the Products via phone, email and other electronic media, as appropriate.</p>	<p>[42]Knowing market conditions is often beneficial for assessing long-term product development goals.</p> <p>[43]Obligations to provide end-users with appropriate EULAs and shrink-wrap agreements allow for greater protection of licensor's IPR.</p>
<p><b>2. <u>Licensor Obligations:</u></b><b>[45]</b></p> <p>2.1. Lessor shall:</p> <p>a). keep Company's Confidential Information in strict confidence and shall not make use of Company's Confidential Information for any purpose other than in connection with the Agreement;</p> <p>b). notify Company if disclosure of Company's Confidential Information by Lessor is necessary to comply with the requirements of any law, government order, regulation or legal process prior to such disclosure and at Company's request use best efforts to seek an appropriate protective order in connection with such legal process and, if unsuccessful, to use best efforts to assure that confidential treatment will be accorded to the disclosed Confidential Information of Company;</p> <p>c). take all necessary steps to ensure compliance by its employees or its other representatives with Lessor's obligations under this Agreement;</p> <p>d). in exercising its rights or performing its obligations hereunder, Lessor shall use its best efforts to comply with all applicable international, national, governmental, quasi-governmental and/or local laws and regulations in performing its duties hereunder and in any of its dealings with respect to the Products, including without limitation, relevant embargo and export laws and regulations, and assure that, in connection with performance of its obligations pursuant to this Agreement or arising or relating therefrom, no Product, Documentation, Confidential Information or any portion thereof, and any information</p>	<p>[44]Confidentiality provisions prevent unauthorized disclosure and/or use of Confidential Information. Parties may seek greater specificity as to how Confidential Information may be identified (i.e. watermark). Parties may also seek to provide an expiration date for obligations described in this section.</p>

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<p>relating thereto or to this Agreement, is exported, transshipped or re-exported, directly or indirectly, in violation of any applicable law;</p> <ul style="list-style-type: none"> <li>e). represent Products and any information relating to Products accurately and fairly and shall avoid any misleading or unethical business and advertising practices;</li> <li>f). upon the terms and conditions as agreed between the Parties and as set forth in <u>Exhibit E</u> attached hereto, provide technical support for all Products in the Territory and related services. Parties may amend and revise <u>Exhibit E</u> at any time upon mutual written consent;</li> <li>g). refrain from making any warranty, representation, or guarantees with respect to the specifications, features, or capabilities of Products, including without limitations warranties of functionality or performance, that are inconsistent with the Product's warranties and disclaimers;</li> <li>h). not to communicate, transmit, or promulgate in any matter, means or medium, any threatening, harassing, or obscene material, matter, or communications of any sort or to otherwise use the Internet service for any illegal or unlawful purpose and not to communicate, transmit, or promulgate in any matter, means or medium, any unsolicited information or material to any individual or group of individuals (i.e.: "spamming"), or any other manner violate the CAN-SPAM Act of 2003; and</li> <li>i). provide Products' technical support to End Users via email, telephone, open discussion forums, knowledge base articles and by other electronic means.</li> </ul>	<p>[45]This agreement is generally pro-licensee, and this provision should be viewed in this light. In addition to confidentiality obligations, this section provides for licensor's obligations to comply with international laws, spam and privacy provisions, and not to devalue licensed product by making false representations, etc.</p>
<p style="text-align: center;">17.</p> <p style="text-align: center;"><b>EXHIBIT H</b></p> <p style="text-align: center;">PROPRIETARY NOTICES; TRADEMARKS [46]</p> <p>1.1. <u>Licensor Marks</u>. Any and all Licensor Marks are and shall remain the exclusive property of Licensor, Suppliers and/or of their Affiliates, as the case may be, and Licensor grants Company a limited license to reproduce the Licensor Marks only to the extent expressly provided herein. Company will use the Licensor Marks consistently with guidelines for use as may be communicated by Licensor from time to time. Company acknowledges that its utilization of the Licensor Marks pursuant hereto shall not create in it, nor shall it represent it has, any</p>	<p>[46]The sections here deal with maintaining ownership and control over the parties' respective trademarks. Note that if trademarks are licensed, it is important to include trademarks policies pursuant to which the licensee may use the marks to prevent 'naked license' pitfalls.</p>

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right, title or interest in or to the Licensor Marks other than the license expressly granted herein, or contest or impair Intellectual Property Rights.

1.2. Company Marks. Any and all Company Marks are and shall remain the exclusive property of Company, Suppliers and/or of their Affiliates, as the case may be, and Licensor shall have not right to use any of the Company's Marks unless specifically agreed to the contrary in writing. Licensor shall (i) not, either during or after the Term of this Agreement, do anything or aid or assist any other Person to do anything which would infringe upon, harm or contest the validity of any Company Mark or Company's, Suppliers' or any of their Affiliates' rights therein or which would hinder or prevent Company, Suppliers' or any of their Affiliates from utilizing and/or licensing or sublicensing the Company Marks in any manner; (ii) not in any manner authorize or purport to authorize any Person to use any of the Company Marks; and (iii) report to Company any unauthorized use of any of the Company Marks by any Person that comes to Licensor's attention in any manner whatsoever.

1.3. Licensor's Mark Policies and Standards; Quality Control. Company acknowledges that any right to use the Licensor Marks is conditioned upon Company's observance of the provisions of this Agreement regarding the marketing and advertising of the Products. Company shall display the Licensor Marks in accordance with Licensor's guidelines for using trademarks as in effect from time to time and as provided to Company upon a thirty (30) days' notice by Licensor. Notwithstanding the foregoing, any change by Licensor, Suppliers or any of their Affiliates to the Licensor Marks guidelines which affects Company's usage shall not apply retroactively to Company's past usage which conformed with the then current guidelines and Licensor shall permit Company a reasonable period of time in which to conform with the new guidelines. Licensor retains the right, upon notice, to specify and approve the quality and standards of all materials on which the Licensor Marks are displayed and to inspect from time to time samples of such materials. If requested by Licensor, additional agreements and conditions regarding manufacture and quality control will be set forth in a separate Addendum to this Agreement.

1.4. Right to Re-brand or Co-brand the Products. [46] Company shall have a right to (i) re-brand the Products by replacing all Licensor Marks with the Company Marks, and/or (ii) co-brand the Products either by adding Company Marks to the Products or by replacing some but not all of the Licensor Marks with the Company Marks. [35]

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	<p>[46]Rights to rebrand/cobrand are not always present. In case of licensee, negotiating for the rights to rebrand/cobrand the licensed products may add value to a transaction.</p>
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