

Trademark Licensing in Practice: Trademark Agreements that Perform, Protect, and Scale
Association of Corporate Counsel San Francisco Bay Area IP Symposium

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SAMPLE Trademark License Agreement

This Trademark License Agreement (this “Agreement”) is hereby entered into by and between [x] (“Licensor”) and [y] (“Licensee”). Licensor and Licensee may be referred to individually as a “Party” and collectively as the “Parties.”

WHEREAS, Licensor owns certain trademarks and wishes to license rights to use such trademarks to Licensee; and

WHEREAS, Licensee wishes to license rights from Licensor to use such trademarks.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Definitions. For the purposes of this Agreement, the following terms shall have the meanings ascribed to them below:

- a. "Mark" shall mean any trademarks, service marks, trade names, logos, word marks, symbols, designs, and any other distinctive brand features licensed under this Agreement, including both registered and unregistered marks, and shall specifically include the trademarks identified on Exhibit A hereto. This encompasses all stylized forms, word marks, logos, and trade dress associated with Licensor that Licensee is authorized to use pursuant to the terms of this Agreement.
- b. "Net sales" are defined as the gross sales of products or services bearing the Mark, less returns, allowances, discounts, and any taxes or duties levied on such sales.

2. Ownership and Goodwill. Licensor retains all ownership rights in and to the Mark. The use of the Mark by Licensee under this Agreement does not confer any ownership rights in the Mark to Licensee. All goodwill generated through the use of the Mark by Licensee shall inure solely to the benefit of Licensor. Any and all rights not expressly granted to Licensee herein are reserved by Licensor. Licensee acknowledges that it shall not acquire any rights in the Mark, other than the rights expressly granted under this Agreement.

3. Grant of Rights and Use of Mark.

- a. Pursuant to the terms and conditions of this Agreement, Licensor hereby grants to Licensee a non-exclusive, non-transferable, and revocable license to use the Mark in connection with the marketing, sale, and distribution of the products or services specified herein, within the following scopes:
- b. Field of Use: Licensee is granted the right to use the Mark in relation to the products or services as detailed in the attached Schedule A, which may include, but is not limited to, specified categories of goods or services.
- c. Channels: The rights granted herein shall include the use of the Mark across various channels, including but not limited to, retail, wholesale, online sales platforms, and direct marketing channels.
- d. Media: Licensee is authorized to use the Mark in various media forms, including print, digital, broadcast, and outdoor advertising.
- e. Digital and Augmented/Virtual Reality (AR/VR): The use of the Mark is also extended to digital platforms and in the context of augmented or virtual reality environments, subject to the terms and conditions of this Agreement.
- f. This license is granted solely for the territory of California and is subject to any restrictions or limitations that may be imposed by applicable law or by the specific terms of this Agreement. Licensee agrees to use the Mark in a manner that is consistent with the standards and quality as may be established by Licensor from time to time and to comply with all applicable laws and regulations in the use of the Mark.

4. Territory

- a. The territory in which Licensee is authorized to use the Mark shall be limited to the following geographic areas: [Specify Countries/Regions]. Licensee shall not use, sell, distribute, or advertise the Mark outside of these designated territories without the prior written consent of Licensor. This restriction includes any sales or distributions that cross national borders within the specified territory.
- b. Licensee agrees to implement and maintain reasonable geo-fencing technologies and practices to ensure compliance with the territorial restrictions set forth in this Agreement. Licensee shall promptly inform Licensor of any breaches of these

territorial restrictions and take all necessary steps to cease any unauthorized use of the Mark as soon as such use is identified.

5. Exclusivity. This Agreement grants Licensee exclusive rights to use the Mark within the Territory for the specified Field of Use and Channels defined in Section 3, subject to the following conditions:

- a. Licensee shall have the sole and exclusive right to use the Mark in the Territory for the duration of this Agreement, preventing any other party, including Licensor, from using the Mark within the Territory.
- b. Notwithstanding the foregoing, Licensor reserves the right to use the Mark for non-commercial, promotional purposes within the Territory.
- c. The exclusivity granted herein is subject to certain carve-outs as agreed upon by the parties. These carve-outs may include specific uses or applications of the Mark that are reserved by Licensor or permitted to third parties.
- d. Licensor retains the right to use the Mark in connection with any retained accounts, being specific pre-existing arrangements or accounts that Licensor has elected to exclude from Licensee's exclusive rights under this Agreement. Details of such retained accounts shall be documented in an annex to this Agreement.
- e. Should Licensee wish to sublicense the Mark within the Territory, such sublicensing must be done in accordance with the terms of this Agreement and with prior written consent from Licensor.
- f. Any attempt by Licensee to use the Mark outside the scope of the exclusive rights granted herein, including any use beyond the Territory or in violation of the carve-outs and retained accounts, shall constitute a breach of this Agreement.
- g. This exclusivity clause is intended to ensure that Licensee has a unique position within the Territory for the use of the Mark, while also accommodating certain exceptions and retained rights by Licensor.

6. Term and Renewal

- a. This Agreement shall commence on the Effective Date and shall continue in full force and effect for an initial term of five (5) years ("Initial Term"). Unless terminated earlier in accordance with the provisions of this Agreement, this Agreement shall automatically renew for successive one (1) year terms (each a "Renewal Term"), unless either party provides written notice of its intention not to renew at least ninety (90) days prior to the end of the Initial Term or any Renewal Term.
- b. The continuation of Licensee's right to use the Mark during any Renewal Term is contingent upon Licensee's continued compliance with the terms and conditions of this Agreement, including but not limited to the performance conditions set forth herein and any additional conditions that may be agreed upon by the parties.

In the event of Licensee's failure to meet these conditions, Licensor shall have the right to terminate the Agreement pursuant to the termination provisions contained herein.

- c. Notwithstanding the foregoing, either party may terminate this Agreement at any time during any Renewal Term with or without cause by providing at least sixty (60) days written notice to the other party.

7. Financial Terms. This Agreement sets forth the financial obligations and rights of Licensor and Licensee concerning the use of the Mark within the Territory. Licensee agrees to pay Licensor a royalty based on a percentage of the net sales of products or services bearing the Mark, as follows:

- a. A royalty rate of [specify percentage] of Net Sales, payable quarterly in arrears.
- b. Minimum annual guarantees of [specify amount], payable in quarterly installments in advance.
- c. In addition to royalty payments, Licensee shall provide Licensor with quarterly sales reports detailing the sales of products and services bearing the Mark within 30 days of the end of each quarter. Licensor reserves the right to audit Licensee's sales records upon reasonable notice to verify the accuracy of royalty payments. Any underpayment discovered during an audit will be payable immediately, along with interest calculated at the rate of the lesser of [specify interest rate] per annum or the maximum rate permissible by law.
- d. The financial terms outlined in this section shall commence on the Effective Date and continue throughout the Initial Term and any Renewal Term(s), subject to the Termination Provisions outlined in this Agreement.

8. Sublicensing and Assignment. This Agreement strictly prohibits Licensee from sublicensing, assigning, transferring, or otherwise disposing of any rights or obligations under this Agreement without the prior written consent of Licensor. Notwithstanding the foregoing, Licensee may, upon obtaining such written consent, sublicense the rights to use the Mark within the Territory, provided that:

- a. All sublicenses are consistent with the terms and conditions of this Agreement;
- b. Licensee remains fully responsible and liable for the acts and omissions of its sublicensees as if they were the acts and omissions of Licensee itself;
- c. Licensee ensures that all sublicensees agree in writing to be bound by the confidentiality and non-disclosure provisions of this Agreement;
- d. Licensee delivers a copy of each sublicense agreement to Licensor within ten (10) business days of its execution.
- e. In the event of an assignment, merger, or change of control affecting Licensee, the rights and obligations under this Agreement may not be transferred without the

express written consent of Licensor. Such consent shall not be unreasonably withheld, provided that the proposed assignee agrees in writing to be bound by all terms and conditions of this Agreement, including but not limited to the Termination Provisions and any obligations related to Net Sales.

- f. Furthermore, Licensee is permitted to engage subcontractors to perform its obligations under this Agreement, subject to the following conditions:
 - i. Licensee must notify Licensor in writing of its intention to engage a subcontractor, including the subcontractor's name and the scope of work to be performed;
 - ii. The subcontractor must agree in writing to comply with all relevant terms and conditions of this Agreement, including the confidentiality and non-disclosure provisions;
 - iii. Licensee remains fully responsible and liable for the acts and omissions of its subcontractors as if they were the acts and omissions of Licensee itself.

9. Use Approvals and Brand Governance

- a. In the interest of maintaining the integrity and value of the Mark within the Territory, Licensee agrees to adhere strictly to Licensor's brand guidelines, which may be updated from time to time by Licensor. Licensee shall obtain Licensor's written approval before the production, distribution, or public display of any materials or products bearing the Mark. This includes, but is not limited to, marketing materials, packaging, and product designs.
- b. Licensee must submit all proposed uses of the Mark, including new or modified product designs, marketing materials, and any other representations of the Mark, to Licensor for pre-production approval. Licensor shall review and respond to such submissions within a reasonable timeframe, not to exceed thirty (30) days. Approval by Licensor shall not be unreasonably withheld, delayed, or conditioned.
- c. Furthermore, Licensee agrees to submit to Licensor, for its approval, any proposed changes to the use of the Mark not previously approved, including changes in product design, marketing strategies, or distribution channels. Such approval by Licensor shall be in writing and may include conditions to ensure continued compliance with Licensor's brand guidelines.
- d. Licensor reserves the right to conduct periodic audits of Licensee's use of the Mark to ensure compliance with this Agreement and Licensor's brand guidelines. Non-compliance may result in corrective actions as deemed necessary by Licensor, up to and including termination of this Agreement pursuant to the Termination Provisions.

10. Infringement and Enforcement

- a. In the event that either Party becomes aware of any infringement or unauthorized use of the Mark within the Territory, Licensor shall have the first right, but not the obligation, to enforce the Mark's rights against such infringement or unauthorized use. Licensee agrees to promptly notify Licensor of any such infringement or unauthorized use of which it becomes aware and to provide reasonable assistance to Licensor, at Licensor's request and expense, in any enforcement action taken by Licensor.
- b. Should Licensor choose not to take action to enforce the Mark's rights within a reasonable period after being notified of the infringement or unauthorized use, Licensee shall have the right, but not the obligation, to initiate enforcement action in its own name and at its own expense. In such cases, Licensee shall promptly inform Licensor of its intent to pursue such action and shall not settle any such action without Licensor's prior written consent, which shall not be unreasonably withheld.
- c. All recoveries obtained from any enforcement action, whether initiated by Licensor or Licensee, shall first be applied to reimburse the initiating party for its reasonable out-of-pocket costs incurred in connection with the enforcement action. Any remaining recoveries shall be divided between Licensor and Licensee as agreed upon by the parties, but in no event shall Licensee's share of such recoveries be less than fifty percent (50%).
- d. In addition, Licensee is granted the authority, upon prior written approval from Licensor, to take action on online platforms to request the takedown of infringing or unauthorized uses of the Mark. Such takedown actions must be conducted in accordance with the platform's policies and procedures and must be communicated to Licensor prior to initiation.

11. Termination and Exit. This Agreement may be terminated under the following conditions:

- a. **Termination for Breach:** Either party may terminate this Agreement upon written notice if the other party materially breaches any of its obligations under this Agreement and fails to cure such breach within thirty (30) days after receiving written notice of the breach.
- b. **Termination for Convenience:** Either party may terminate this Agreement at any time for convenience upon providing sixty (60) days written notice to the other party, subject to payment of any outstanding fees or royalties due.
- c. **Cure Periods:** In the event of a breach by Licensee, Licensor shall provide Licensee with a written notice specifying the nature of the breach and allowing a cure period of thirty (30) days to remedy the breach. If the breach is not remedied within this period, Licensor may proceed with termination.

- d. **Sell-Off Period:** Upon termination of this Agreement for any reason other than Licensee's material breach, Licensee shall have the right to sell off existing inventory of products bearing the Mark for a period of ninety (90) days following the effective date of termination, provided that such sell-off shall be conducted in accordance with the terms of this Agreement and any remaining inventory shall be destroyed or returned to Licensor at Licensee's expense.
- e. **Post-Termination Obligations:** Following the termination of this Agreement, Licensee shall cease all use of the Mark and shall return to Licensor all materials and documents containing the Mark. Licensee shall also provide a written certification of compliance with these post-termination obligations within thirty (30) days of the termination date.

12. Quality Control. In order to maintain the integrity and reputation of the Mark, and understanding the measures below are essential to ensuring that the use of the Mark under this Agreement upholds the value and reputation of Licensor's brand, Licensee agrees to adhere to the following quality control measures:

- a. Licensee shall ensure that all products, services, and marketing materials bearing the Mark meet the quality standards and brand use standards established by Licensor. These standards shall be communicated to Licensee in the form of Brand Guidelines.
- b. Before the production, distribution, or public display of any product, service, or marketing material bearing the Mark, Licensee must obtain Pre-Production Approval from Licensor. This approval process shall be outlined in the Brand Guidelines.
- c. Licensor reserves the right to conduct Periodic Audits of Licensee's operations, products, and marketing materials to ensure compliance with the agreed-upon quality standards and Brand Guidelines. The frequency and scope of these audits will be determined by Licensor and communicated to Licensee in advance.
- d. In the event that any product, service, or marketing material does not meet Licensor's quality standards, Licensee shall take all necessary corrective actions as directed by Licensor. Failure to comply with such directives may result in immediate termination of this Agreement, in accordance with the Termination Provisions.
- e. Licensee shall not alter, modify, or change the Mark in any way without the express written consent of Licensor. Any proposed changes must be submitted to Licensor for approval before implementation.

13. Oversight Rights

- a. In order to ensure Licensee's compliance with the terms of this Agreement, the Brand Guidelines, and the quality standards expected by Licensor for products or services bearing the Mark, Licensor reserves the right to conduct, or have

conducted on its behalf, periodic audits of Licensee's operations. These audits may include, but are not limited to, inspection of facilities, review of relevant documentation, verification of third-party certifications, and examination of products (including sample and lot pulls) to ensure adherence to the agreed-upon standards and requirements.

- b. Licensee agrees to provide Licensor, or its designated representatives, with full access to its facilities, records, employees, and subcontractors as necessary to conduct these audits. Licensee further agrees to maintain accurate and comprehensive records relating to the use of the Mark, including but not limited to production, distribution, sales, and marketing activities, and to make such records available to Licensor upon request.
- c. In the event that an audit reveals non-compliance with the Agreement or the Brand Guidelines, Licensee shall take all necessary corrective actions, as directed by Licensor, within a reasonable timeframe. Failure to comply with such directives, or to remedy the non-compliance within the specified timeframe, may result in the imposition of penalties, up to and including termination of the Agreement, as outlined in the Termination Provisions.
- d. The costs associated with these audits will be borne by Licensor, unless the audit reveals significant non-compliance by Licensee, in which case Licensee will be responsible for the cost of the audit, in addition to any other penalties or remedies specified in the Agreement.

14. Nonconformance Responses

- a. In the event that any products or services bearing the Mark do not conform to the Brand Guidelines, Licensee shall promptly notify Licensor in writing. Upon receipt of such notice, Licensor may, at its discretion, require Licensee to take one or more of the following actions:
 - i. Submit a corrective action plan detailing the steps to be taken to achieve conformity with the Brand Guidelines. This plan must be approved by Licensor before implementation.
 - ii. Suspend shipments of the nonconforming products or services until they meet the Brand Guidelines.
 - iii. Recall any distributed products that fail to comply with the Brand Guidelines, at Licensee's expense.
 - iv. Remediate any issues causing the nonconformance, including modifications to products, services, or marketing materials, as necessary to align with the Brand Guidelines.
- b. Licensor shall allow Licensee a reasonable period of not less than thirty (30) days to cure any such nonconformance, unless such nonconformance poses an

immediate threat to public health or safety. Failure to cure the nonconformance within the specified period may result in immediate termination of this Agreement, pursuant to the Termination Provisions. Licensor reserves the right to exercise any other remedies available under law or in equity.

15. Evidence of Control. To ensure Licensor's control over the use of the Mark within the Territory, Licensee agrees to the following provisions:

- a. Maintain accurate and comprehensive records of all use of the Mark, including but not limited to production, distribution, sales, and marketing activities. These records shall be made available to Licensor upon request.
- b. Adhere to a reporting cadence as agreed upon by both parties, providing Licensor with regular updates on the use of the Mark, including compliance with Brand Guidelines and any changes in the use or representation of the Mark.
- c. Undergo training provided by Licensor or its designated representatives on the Brand Guidelines to ensure that all uses of the Mark are in accordance with Licensor's standards and policies.
- d. Acknowledge that, in the event of any breach of the terms of this Agreement, including but not limited to unauthorized use of the Mark, Licensor shall have the right to seek injunctive relief in addition to any other remedies available under the law or specified in this Agreement.

16. Relationship

- a. This Agreement does not create any form of partnership, joint venture, agency, or employment relationship between Licensor and Licensee. Licensee shall operate its business independently and is not authorized to make any representation, contract, or commitment on behalf of Licensor unless specifically authorized in writing by Licensor.
- b. Licensor does not exercise control over the business operations of Licensee, including but not limited to the selection of suppliers. However, Licensor reserves the right to approve suppliers to the extent necessary to ensure that the quality of products or services associated with the Mark meets Licensor's Brand Guidelines.
- c. The Agreement does not obligate Licensor to provide an operating manual, marketing plan, or training program to Licensee. Nonetheless, Licensee is encouraged to adhere to the Brand Guidelines provided by Licensor to ensure consistency and quality in the use of the Mark.
- d. While Licensor may conduct Periodic Audits to ensure compliance with the Agreement and Brand Guidelines, Licensee acknowledges the importance of maintaining accurate and comprehensive Recordkeeping and adhering to the Reporting Cadence as specified in the Agreement. Licensee further acknowledges

Licensor's right to seek Injunctive Relief as a remedy for any breaches of the Agreement.

- e. In the event that the operation of this Agreement triggers the application of franchise laws within the Territory, the following provisions shall apply:
 - i. Licensor and Licensee shall jointly undertake a review to determine the specific franchise law compliance requirements applicable to their arrangement. This review shall be initiated within thirty (30) days of either party becoming aware of such a trigger.
 - ii. Both parties agree to allocate the costs associated with franchise law compliance, including but not limited to, disclosure and registration obligations, in a fair and equitable manner. The specific allocation of these costs shall be agreed upon in writing by both parties.
 - iii. If compliance with franchise laws necessitates modifications to this Agreement, the parties shall negotiate in good faith to reform the Agreement accordingly. Such reformation shall aim to preserve the original intent of the parties as closely as possible while ensuring compliance with applicable laws.
 - iv. In the event that any provision of this Agreement is found to be unenforceable or invalid under franchise laws, such provision shall be modified to the minimum extent necessary to make it enforceable and valid. If such modification is not possible, the provision shall be severed from this Agreement, and the remainder of the Agreement shall remain in full force and effect.
 - v. Licensor may, upon written notice to Licensee, immediately suspend Licensee's rights under this Agreement if Licensee fails to comply with any franchise law requirements or to undertake necessary actions for compliance as agreed upon. Such suspension shall remain in effect until Licensee demonstrates to Licensor's satisfaction that it has returned to full compliance with all applicable franchise laws.

17. Internal Enforcement Allocation. To define the responsibilities and procedures related to the enforcement of the Mark within the Territory. Licensor and Licensee agree to the following terms:

- a. **Policing and Monitoring:** Licensee shall be responsible for the ongoing monitoring and policing of the Mark's use within the Territory to ensure compliance with this Agreement and applicable laws. Licensee must promptly notify Licensor in writing of any unauthorized use of the Mark or any infringement by third parties.

- b. Notice of Infringement: Upon receiving notice of any infringement or unauthorized use of the Mark, Licensor shall have the first right to decide whether to take action against such infringement or unauthorized use.
- c. First Right to Act: If Licensor elects to take action against the infringement or unauthorized use, Licensor shall have the primary responsibility for initiating and controlling any legal proceedings. Licensee agrees to provide reasonable assistance to Licensor in such legal proceedings.
- d. Step-In Rights: If Licensor does not take action within a reasonable period after being notified of the infringement or unauthorized use, Licensee may, after providing written notice to Licensor, take action in its own name and at its own expense. Licensee shall keep Licensor informed of any such actions and the progress thereof.
- e. Cost and Recovery Split: The parties agree that any costs incurred in connection with the enforcement actions against unauthorized use or infringement of the Mark shall be borne by the party initiating the action. Any recoveries obtained as a result of such enforcement actions, whether by judgment, settlement, or otherwise, shall be allocated as follows: 75% to the party initiating and bearing the costs of the action and 25% to the other party, unless otherwise agreed in writing.
- f. In the exercise of its rights under this Agreement, Licensee is authorized to utilize various external tools and defenses to protect the integrity of the Mark and prevent unauthorized use within the Territory. Such measures may include, but are not limited to:
 - i. Initiating platform takedowns to remove unauthorized listings or content infringing upon the Mark on online marketplaces and social media platforms.
 - ii. Engaging in customs recordation and seizures by registering the Mark with customs authorities to prevent the importation of counterfeit goods bearing the Mark.
 - iii. Implementing anti-counterfeiting measures, including the use of holograms, serial numbers, or other security features on products bearing the Mark to ensure authenticity.
 - iv. Exploring alternative dispute resolution (ADR) options, such as mediation or arbitration, to resolve disputes concerning the Mark in a manner that is efficient and minimizes litigation costs.
- g. Licensee shall undertake any such actions in compliance with applicable laws and regulations of the Territory and in coordination with Licensor, as necessary, to ensure a unified approach to the protection of the Mark.

18. Third-Party Claims Against Licensee. In the event of any third-party claim, action, or proceeding (collectively, "Claim") against Licensee alleging that the use of the Mark within the Territory infringes or violates the rights of a third party, the following provisions shall apply:

- a. Licensee shall promptly notify Licensors in writing of any such Claim, providing all relevant details and cooperating fully with Licensors in the defense of such Claim.
- b. Licensors shall have the right, but not the obligation, to take control of the defense and/or settlement of any such Claim at its own expense. Licensee agrees to provide reasonable assistance in the defense of such Claim.
- c. In the event that Licensors opt to take control of the defense, Licensee shall have the right to participate in the defense of the Claim with counsel of its own choosing, at its own expense.
- d. If it is determined that the use of the Mark infringes upon the rights of a third party, Licensors shall, at its sole discretion and expense: (a) obtain for Licensee the right to continue using the Mark; (b) modify the Mark so that it is non-infringing; or (c) replace the Mark with a non-infringing alternative.
- e. Licensors Indemnification of Licensee.
 - i. Except where such Claim arises from Licensee's gross negligence, willful misconduct, or use of the Mark outside the scope of this Agreement, Licensors shall indemnify, defend, and hold harmless Licensee from and against any damages, liabilities, costs, and expenses (including reasonable attorneys' fees) awarded against Licensee as a result of or in connection with any such Claim, provided that Licensee: (a) promptly notifies Licensors in writing of the Claim; (b) gives Licensors sole control of the defense and any settlement negotiations; and (c) provides Licensors with all reasonable assistance, at Licensors's expense.
 - ii. This indemnification obligation is conditional upon Licensee using the Mark strictly within the scope of the license granted under this Agreement and in accordance with any guidelines provided by Licensors, including the Brand Guidelines.
 - iii. Licensee shall maintain, at its own expense, commercial general liability insurance with coverage limits of not less than two million dollars (\$2,000,000) per occurrence to protect against potential claims of this nature. Licensors shall be named as an additional insured on such policy, and Licensee shall provide Licensors with a certificate of insurance evidencing this coverage within 30 days of executing this Agreement and upon each renewal.

19. Maintenance of Rights

- a. Licensor shall maintain the Mark in full force and effect throughout the Territory during the term of this Agreement, including the Initial Term and any Renewal Term(s). This includes, but is not limited to, the responsibility for renewing the Mark as required, defending the Mark against claims of infringement, and not performing any acts or failing to perform any acts that would adversely affect the Mark's validity or enforceability.
- b. Licensee agrees to assist Licensor in maintaining the rights to the Mark as reasonably requested, including providing specimens of use for recordation purposes and participating in quality control activities to ensure that the products or services associated with the Mark meet Licensor's Brand Guidelines. Licensee shall not use the Mark in any manner that could jeopardize its validity or enforceability, including but not limited to uses that are likely to cause confusion, mistake, or deception.
- c. Furthermore, Licensee shall keep accurate records of its use of the Mark and provide Licensor with periodic reports detailing such use, in accordance with the Reporting Cadence agreed upon in this Agreement. These records shall be made available to Licensor upon request for the purpose of conducting Periodic Audits to ensure compliance with the terms of this Agreement and the Brand Guidelines.
- d. In the event Licensee becomes aware of any Claim, Licensee shall promptly provide Written Notice to Licensor. Licensor shall have the sole right and discretion to defend, settle, or otherwise resolve any Claim, at its own expense and with counsel of its choosing. Licensee agrees to cooperate fully with Licensor in the defense of any Claim.
- e. Should Licensor fail to maintain the Mark as required under this Agreement, resulting in the Mark's cancellation, expiration, or unenforceability, Licensee shall have the right to terminate this Agreement upon Written Notice to Licensor. Such termination shall be without prejudice to any other rights or remedies Licensee may have under this Agreement or applicable law.

20. Influencer and Creator Arrangements. This Agreement acknowledges the engagement of influencers and creators by Licensee for the promotion and endorsement of products or services associated with the Mark within the Territory. Licensee shall ensure that all such engagements are conducted in compliance with the following terms:

- a. **Services and Content License:** Licensee is granted a non-exclusive, non-transferable license to use, reproduce, distribute, display, and perform the services and content provided by influencers and creators, solely in connection with the promotion of the Mark within the Territory. All rights not expressly granted herein are reserved by Licensor.
- b. **Content Ownership:** Unless otherwise agreed in writing, Licensor retains all rights, title, and interest in and to the content created by influencers and creators

for the purpose of promoting the Mark, including any intellectual property rights therein.

- c. **Approval and Takedown:** Licensor reserves the right to review and approve all content associated with the Mark before its publication. Licensor may require the takedown or modification of any content that does not comply with the Brand Guidelines or that is otherwise objectionable to Licensor.
- d. **Publicity and Likeness Rights:** Licensee must obtain the express written consent of influencers and creators for the use of their name, image, likeness, and other personal attributes in connection with the promotion of the Mark.
- e. **Disclosure Compliance:** Licensee and all engaged influencers and creators must comply with all applicable laws and regulations regarding endorsements and testimonials, including but not limited to the Federal Trade Commission (FTC) guidelines on endorsements and California Business and Professions Code Section 17200 et seq. regarding unfair competition and false advertising.
- f. **Claims and Substantiation:** Licensee is responsible for ensuring that all promotional materials and statements made by influencers and creators are truthful, not misleading, and substantiated according to applicable laws and regulations.
- g. **Morals Clause:** Licensee's agreements with influencers and creators shall include a morals clause, allowing for the immediate termination of the engagement in the event that the behavior of an influencer or creator brings disrepute upon Licensor or the Mark.
- h. **Indemnity and Insurance:** Licensee shall indemnify and hold Licensor harmless from any claims, damages, liabilities, costs, and expenses arising out of the services provided by influencers and creators, except to the extent caused by Licensor's gross negligence or willful misconduct. This indemnification obligation shall be subject to the limitations imposed by California Civil Code Section 2778. Licensee shall also ensure that influencers and creators maintain adequate insurance coverage.

21. Marketplace and Reseller Controls. Licensor grants Licensee the non-exclusive, non-transferable right to act as an authorized reseller of the products or services associated with the Mark within the Territory. This authorization is subject to the following conditions:

- a. Licensee must adhere to Licensor's first sale and quality control standards to ensure the integrity and reputation of the Mark are maintained.
- b. Licensee agrees to implement measures to prevent diversion and sale of products in the gray market. This includes monitoring and controlling the distribution channels to ensure products are sold in authorized territories only.

- c. Licensee is permitted to use keyword advertising and social media tags involving the Mark, provided such use complies with Licensor's Brand Guidelines and does not mislead consumers regarding the relationship between Licensor and Licensee.
- d. Licensee shall cooperate with Licensor in registering the Mark on online platforms' brand registries, where applicable, to ensure control over the Mark's use on such platforms.
- e. Licensee agrees to provide Licensor with regular data and reporting on sales, marketing efforts, and customer feedback related to the Mark, in accordance with the Reporting Cadence agreed upon by the parties.
- f. Licensee shall cooperate with Licensor in the takedown of unauthorized uses of the Mark on online platforms, including but not limited to counterfeit sales and infringement.

22. IP Rights

- a. This Agreement acknowledges that all intellectual property rights in the Mark and any associated content, including but not limited to copyrights, trademarks, service marks, and any derivatives thereof, shall remain the sole property of Licensor. Licensee shall not, at any time during or after the term of this Agreement, dispute or contest, directly or indirectly, Licensor's exclusive ownership of the Mark, nor shall Licensee seek to register, or support others in registering, any trademarks, service marks, or copyrights that are confusingly similar to the Mark.
- b. Licensee is granted a non-exclusive, non-transferable license to use the Mark within the Territory solely in connection with the products or services specified in this Agreement. This license does not include the right to sublicense, except as may be expressly provided in this Agreement.
- c. Licensee agrees to grant Licensor a non-exclusive, royalty-free license to use any user-generated content (UGC) created by Licensee that incorporates the Mark for the purpose of promoting the products or services associated with the Mark. This UGC license shall include the right for Licensor to modify, reproduce, distribute, display, and perform such content in any media now known or hereafter developed.
- d. Both parties agree to maintain the confidentiality of any proprietary information shared during the term of this Agreement, and to use such information solely for the purposes of fulfilling their obligations under this Agreement. This confidentiality obligation shall survive the termination of this Agreement for a period of five (5) years, except for trade secrets which shall remain confidential for as long as they qualify as trade secrets under California Civil Code Section 3426 et seq.

23. Miscellaneous

- a. **Warranties and Representations:** Both parties warrant and represent that they have the full legal right and authority to enter into this Agreement and to perform their respective obligations hereunder. Licensor further warrants that it has the right to license the Mark as contemplated by this Agreement.
- b. **Indemnification:** Licensee agrees to indemnify, defend, and hold harmless Licensor from and against any third-party claims, damages, liabilities, costs, and expenses (including reasonable attorneys' fees) arising out of Licensee's use of the Mark, breach of this Agreement, or violation of any law or the rights of a third party, except to the extent caused by Licensor's gross negligence or willful misconduct.
- c. **Insurance:** Licensee shall obtain and maintain, at its own expense, comprehensive general liability insurance with coverage amounts satisfactory to Licensor, naming Licensor as an additional insured, and providing for thirty (30) days' prior written notice to Licensor of any cancellation, non-renewal, or material change in coverage.
- d. **Compliance with Laws:** Licensee must comply with all applicable laws, regulations, and ordinances in the performance of its obligations under this Agreement, including but not limited to those related to the use of the Mark.
- e. **Confidentiality:** Each party agrees to maintain the confidentiality of any proprietary or confidential information disclosed by the other party in connection with this Agreement and to use such information only for purposes of performing its obligations under this Agreement.
- f. **Limitation of Liability:** Except for breaches of confidentiality, indemnification obligations, obligations under the Intellectual Property Rights clause, and cases of gross negligence or willful misconduct, neither party shall be liable to the other for any indirect, special, incidental, consequential, or punitive damages arising out of or related to this Agreement. Nothing in this Agreement shall limit or exclude liability that cannot be limited or excluded under California law.
- g. **Dispute Resolution:** Any disputes arising out of or related to this Agreement shall be resolved through binding arbitration in accordance with the rules of the American Arbitration Association, conducted in the English language, in California. The parties acknowledge that they are knowingly waiving their right to a jury trial and to participate in a class action lawsuit by agreeing to this arbitration provision.
- h. **Notices:** All notices under this Agreement must be in writing and will be deemed given when delivered personally, sent by certified or registered mail (return receipt requested), or sent by a nationally recognized overnight courier service, to the addresses specified in this Agreement or such other addresses as the parties may later specify in writing.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the latest date written below (the “Effective Date”).

LICENSOR

LICENSEE

[]

[]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____