

**Model Intellectual Property
Security Agreement
(United States)**

Intellectual Property Security Agreement

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Intellectual Property Security Agreement

[DATE] (the *Effective Date*)

PARTIES

- [DEBTOR NAME], a [JURISDICTION] [ENTITY] (*Debtor*)
- [SECURED PARTY NAME], a [JURISDICTION] [ENTITY] (*Secured Party*)

BACKGROUND

Secured Party has agreed to make *Loans* to Debtor under the *Loan Agreement* dated the Effective Date between Debtor and Secured Party.

A condition to Secured Party's obligation to make the Loans is Debtor's execution and delivery of this Intellectual Property Security Agreement (this *Agreement*).

AGREEMENT

The parties agree as follows:

1 SECURITY INTEREST

1.1 Grant

To secure Debtor's performance of its present and future obligations under the Loan Documents (the *Secured Obligations*), Debtor grants Secured Party a security interest¹ (the *Security Interest*) in all Debtor's present and future rights and interest in any:

Copyrights, meaning any United States²

(a) copyrights, whether registered or unregistered, whether in published or unpublished works [of authorship],

(b) copyright registrations or applications in any IP Filing Office,

(c) mask works (meaning a layered blueprint of the circuitry in a computer chip as protected under Chapter 9 of Title 17 of the United States Code), and

(d) copyright renewals or extensions.

Patents, meaning any United States

- (a) issued patents (whether utility or design), patent applications, or certificates of invention in any IP Filing Office,
- (b) continuations, continuations-in-part, divisions, extensions, reissuances, or reexaminations of a patent or patent application in any IP Filing Office, and
- (c) inventions described and claimed in any patent or patent application.

Trademarks, meaning any United States

- (a) trademarks, service marks, certification marks, trade names, or other types of source identifier, whether statutory or common law, and whether registered or unregistered,
- (b) corporate and company names, business names, trade styles, designs, logos, or trade dress,
- (c) the goodwill of the business connected with the use of or symbolized by the trademark or service mark, and
- (d) any registrations, renewals, applications and other filings for any trademarks in any IP Filing Office.

Domain Names, meaning any Internet domain names,

Other Intellectual Property, meaning any intellectual property recognized by the laws of the United States or any State, other than a Copyright, Patent, Trademark, or Domain Name, whether statutory or common law, registered or unregistered, published or unpublished, including

- a trade secret or other proprietary or confidential information or data,
- rights with respect to software, programming codes, inventions, technical information, procedures, designs, know-how, data and databases, processes, models, drawings, plans, specifications, and records, and
- rights of publicity and privacy with respect to natural persons,

IP Licenses, meaning any agreements, whether or not styled as a “license,”

- (a) that grant a Person an exclusive or non-exclusive license or other right to use or exercise rights in Intellectual Property, other than a software license to the extent the software constitutes “goods” under section 9-102(a) of the UCC, or

(b) that obligate a Person to refrain from using or enforcing any Intellectual Property,

including settlements, consents-to-use, non-assertion agreements, or covenants-not-to-sue,

IP-Related Rights, meaning any

(a) rights to royalties, revenues, income, or other payments arising from a Copyright, Patent, Trademark, Domain Name, Other Intellectual Property, or IP License, and

(b) causes of action or rights to claim, sue or collect damages for, or enjoin or obtain other legal or equitable relief for, an infringement, misuse, misappropriation, dilution, violation, unfair competition, or other impairment (whether past, present, or future, and including expired items) of Intellectual Property (as defined below),

Associated Property, meaning any

(a) accounts, deposit accounts, general intangibles, instruments, investment property, or other personal property at any time constituting, evidencing, or arising under or with respect to Intellectual Property or IP Licenses,

(b) commercial tort claims related to Intellectual Property or IP Licenses and described on a record authenticated by Debtor as required by UCC Article 9,

(c) books, records, information, and data with respect to Intellectual Property or IP Licenses, and

(d) substitutions and replacements for any such property, and

Proceeds of any of the foregoing, meaning

(a) “proceeds,” as defined in Article 9 of the UCC, and

(b) additional or replacement collateral provided during, or payment or property received in, an Insolvency Proceeding on account of any “secured claim” (within the meaning of section 506(b) of the Bankruptcy Code or similar Bankruptcy Law).

Copyrights, Patents, Trademarks, Domain Names, and Other Intellectual Property are, collectively, ***Intellectual Property***. All Intellectual Property, IP Licenses, IP Related Rights, Associated Property, and Proceeds subject to the Security Interest and not excluded under the following section 1.2 are the ***Collateral***.

1.2 Excluded Property³

Notwithstanding anything to the contrary in this Agreement, the following rights and property (***Excluded Property***) are excluded from the Collateral to the extent set forth in this section 1.2:

1.2.1 Scheduled Excluded Property

Any right or property identified on Schedule A, “Excluded Property.”⁴

1.2.2 Trademark intent-to-use applications

A Trademark application filed in the PTO on the basis of Debtor’s intent to use the Trademark before evidence of use of the Trademark has been filed with and accepted by the PTO pursuant to section 1(c) or 1(d) of the Lanham Act (15 U.S.C. 1051, *et seq.*), but only if granting a security interest in the Trademark application before the filing of evidence of use of the Trademark would adversely affect the enforceability or validity of the Trademark application or the resulting Trademark registration. A Trademark application that is Excluded Property under this section 1.2.2 will automatically become Collateral upon the filing and acceptance by the PTO of evidence of use.⁵

1.2.3 Restricted IP Licenses⁶

Debtor’s rights under an IP License that is subject to or contains a Restrictive Provision that is effective against Debtor despite sections 9-406 through 9-409 of the UCC or other applicable law, but only for so long as the Restrictive Provision is effective and enforceable.

2 REPRESENTATIONS AND WARRANTIES⁷

Except to the extent otherwise set forth on the relevant Schedule, Debtor represents and warrants to Secured Party that on the Effective Date, on the date each Loan is made to Debtor, and, for any Collateral added by an Addendum, the date that the Addendum becomes part of the relevant Schedule:⁸

2.1 The Collateral⁹

2.1.1 Copyrights

(i) Schedule B¹⁰ lists all of Debtor’s subsisting

- Copyrights that are registered, or are the subject of pending applications, in any IP Filing Office,¹¹

- Copyrights that Debtor exclusively licenses from third parties,¹² and
- IP Licenses for Copyrights.¹³

(ii) Each Copyright listed on Schedule B is valid and enforceable.

2.1.2 Patents

(i) Schedule C lists all of Debtor's subsisting¹⁴

- issued Patents, and Patent applications pending, in any IP Filing Office, and
- IP Licenses for Patents.

(ii) Each issued Patent listed on Schedule C

- is valid and enforceable,¹⁵ and
- is not subject to any overdue IP Filing Office fees.

(iii) Each Patent application listed on Schedule C is subsisting and to Debtor's knowledge will result in a valid issued Patent.

2.1.3 Trademarks

(i) Schedule D lists all Debtor's subsisting

- registered Trademarks, and Trademark applications pending, in any IP Filing Office,
- material unregistered Trademarks, and
- IP Licenses for Trademarks.

(ii) Each Trademark registration and material unregistered Trademark listed on Schedule D

- is valid and enforceable,¹⁶ and
- is not subject to any overdue IP Filing Office fees.

(iii) Each Trademark application listed on Schedule D will to Debtor's knowledge result in a valid registration for the Trademark.

(iv) Debtor has notified Secured Party of all circumstances that could reasonably be expected to lead to the invalidity or unenforceability of a Trademark listed on Schedule D, including failure to enforce the Trademark against material unauthorized uses by third parties or use of the Trademark that is not supported by the goodwill of the connected business.

2.1.4 IP Licenses and Other Intellectual Property

Schedule E lists all of Debtor's material IP Licenses and material Other Intellectual Property that is not listed on Schedule B, C, or D and is not confidential.

2.1.5 Domain Names

Schedule F lists each of Debtor's Domain Names, its registrant, and next renewal date.¹⁷

2.1.6 IP Licenses and Domain Name Contracts

(i) Each IP License and Domain Name Contract included in the Collateral is in full force and effect and constitutes a valid and enforceable obligation of Debtor and, to Debtor's knowledge, each other party thereto, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium, or similar laws affecting the enforcement of creditor's rights generally, and by general equitable principles (whether enforcement is sought by proceedings in equity or at law).

(ii) No further consent of any party to any such IP License or Domain Name Contract is required in connection with the execution, delivery, and performance of this Agreement.

(iii) No further consent or authorization of, filing with, or other act by or in respect of any Governmental Authority is required in connection with the execution, delivery, performance, validity, or enforceability of any such IP License or Domain Name Contract by any party thereto.

(iv) Neither Debtor nor, to Debtor's knowledge, any other party to any such IP License or Domain Name Contract is in default in the performance or observance of any of its terms.

(v) Debtor's rights under each such IP License or Domain Name Contract are not subject to any defense, offset, counterclaim, or other claim that could reasonably be expected, either individually or in the aggregate, to have a Material Adverse Effect on the value of the Collateral taken as a whole.¹⁸

2.1.7 Ownership

(i) Debtor is the sole legal and equitable owner of, and has good title to, the Collateral, free and clear of any Liens, other than

- a Lien permitted under the Loan Documents,

- a Lien permitted by Secured Party's express prior written consent, or
- a Permitted License

(each a ***Permitted Lien***.¹⁹

(ii) Debtor is the record owner of all Collateral that is registered, or for which an application is pending, in any IP Filing Office, and there are no gaps in the chain of title to such Collateral.²⁰

(iii) Debtor has not licensed any Intellectual Property Collateral to any affiliate or third party except for Permitted Liens disclosed on Schedules B-F.²¹

(iv) No IP License materially adversely affects Debtor's rights to conduct its business as currently conducted.

(v) No third party has a contractual right to require Debtor to Transfer any Collateral, except to renew Permitted Licenses.

(vi) Debtor has not Transferred or agreed to Transfer any Collateral listed on Schedules B-F except in a Transfer that is

- expressly permitted by the Loan Documents,
- permitted by Secured Party's express prior written consent, or
- a Permitted License

(each a ***Permitted Transfer***).

2.1.8 Restrictive Provisions

Schedule G lists all of Debtor's Intellectual Property and IP Licenses that are subject to or contain a Restrictive Provision.²²

2.1.9 Existing or threatened claims; infringement

(i) No claim is pending or has been made or, to Debtor's knowledge, is threatened, including via an invitation to license, by any Person other than by an IP Filing Office examiner in the ordinary course of prosecution of applications, asserting that any Intellectual Property Collateral is invalid or unenforceable or that any such Collateral, or the conduct of Debtor's business, infringes, dilutes, misappropriates, or otherwise violates the rights of any Person.²³

(ii) To Debtor's knowledge, neither the use of the Collateral by Debtor or its licensees nor the conduct of Debtor's business infringes, dilutes,

misappropriates, or otherwise violates any Intellectual Property owned or controlled by any Person.

(iii) To Debtor's knowledge, no Person is infringing, diluting, misappropriating, or otherwise violating any of Debtor's rights in the Collateral and Debtor has not made any such claim that has not been resolved.²⁴

2.1.10 IP notices

Debtor has been using proper notices of copyright proprietorship in connection with publication of its Copyrighted works and proper statutory notices in connection with its use of its issued Patents and registered Trademarks.²⁵

2.1.11 Standards of quality

(i) Debtor uses consistent standards of quality in all products manufactured, distributed, and sold, and in the performance of services provided, in connection with the Trademark Collateral, and

(ii) Debtor has taken all action necessary to insure that all licensees of Debtor's Trademarks adhere to Debtor's established standards of quality for the goods and services provided by the licensee using the licensed Trademark.²⁶

2.1.12 Proprietary software

(i) Each of Debtor's current and former employees, officers, contractors, and consultants who has developed, contributed to, modified, or improved Debtor's proprietary software programs either performed such work as a "work for hire" or has assigned to Debtor all of such Person's interest in such programs.

(ii) There are no material defects or malfunctions in Debtor's proprietary software programs that have not been corrected, and Debtor's proprietary software programs operate in accordance with their specifications in all material respects.

(iii) Debtor's proprietary software programs do not contain any device or feature designed to disrupt, disable, or otherwise impair the functioning of any software program.

(iv) To Debtor's knowledge, there has been no unauthorized access to any of Debtor's proprietary software programs or databases.

(v) Except for Permitted Transfers and Permitted Liens, Debtor has not delivered, licensed, or made available, and has no obligation (present, contingent, or otherwise) to deliver, license, or make available, the source code for any of Debtor's proprietary software programs to any escrow agent or other Person other than Debtor's current employees for the performance of their duties to Debtor.

(vi) None of Debtor's proprietary software programs is subject to any open source or free software license terms and conditions that would require Debtor to disclose any source code or license the program, the code, or any modifications to third parties.²⁷

2.2 The Security Interest

2.2.1 No existing Lien or Transfer filings

There is no effective financing statement or other Lien or Transfer instrument covering any Collateral that is recorded or filed in any UCC filing office or any IP Filing Office, except those that pertain to Permitted Liens, Permitted Transfers, or completed Transfers by Debtor's predecessors in title.²⁸

2.2.2 Validity, perfection, priority

This Agreement creates a valid security interest in all of the Collateral in which Debtor now has a right or interest, and will create a valid security interest in each other item of Collateral when Debtor acquires a right or interest in it. The Security Interest will be a perfected and first priority security interest in the Collateral²⁹ upon (i) the filing of UCC financing statements in the applicable offices listed on Schedule H, and (ii) the completion of the following actions, as applicable:

- for any Copyright that is the subject of a registration or application in the Copyright Office, recording a Notice of Security Interest in Copyrights (substantially in the form of Exhibit 1) with the Copyright Office within one month of the Effective Date,
- for each Patent issued by or pending in the PTO, recording a Notice of Security Interest in Patents (substantially in the form of Exhibit 2) with the PTO within three months of the Effective Date, and
- for each Trademark that is registered or pending in the PTO, recording a Notice of Security Interest in Trademarks (substantially in the form of Exhibit 3) with the PTO within three months of the Effective Date.

2.3 Debtor

2.3.1 Existence, power, authority

Debtor is validly existing and has the corporate (or other organizational) power and capacity to enter into, and perform all of its obligations under, this Agreement. Debtor's execution and delivery of, and performance of its obligations under, this Agreement have been duly authorized by all necessary action by or on behalf of Debtor.

2.3.2 Debtor information

Schedule I sets forth

- Debtor's exact legal name,
- if Debtor is a corporation, limited liability company, limited partnership, corporate trust, or other registered organization, the State or other jurisdiction under whose law Debtor was organized,
- if Debtor is an individual, the address of Debtor's primary residence,
- the addresses of Debtor's chief executive office and its principal place of business,
- the addresses where Debtor's records concerning the Collateral are maintained, and
- Debtor's taxpayer identification number, if any.

3 COVENANTS

3.1 No Transfers of Collateral

Debtor will not Transfer any Collateral except in a Permitted Transfer.³⁰

3.2 No Liens on Collateral

Debtor will not create and will take any action necessary to remove any Lien on the Collateral other than a Permitted Lien.

3.3 No Restrictive Provisions

Debtor will not enter into any IP License after the Effective Date that contains a Restrictive Provision.³¹

3.4 Registration of Copyrights and Trademarks; pursuit of Patents

To the extent not already registered or the subject of a pending application, Debtor will promptly register all material Copyright and Trademark Collateral with the applicable IP Filing Office, and will pursue Patents on all material patentable inventions, in each case except to the extent that Debtor determines in its reasonable business judgment that the costs or risks of such action would materially outweigh the probable benefits.³²

3.5 Recording of assignments and IP Licenses

Within 30 days after obtaining a written assignment of a registered or applied-for Copyright, Patent, or Trademark from any Person, Debtor will record the assignment in the applicable IP Filing Office. Within 30 days after obtaining an IP License for which recordation will give third parties constructive notice of Debtor's interest, Debtor will record the IP License in the applicable IP Filing Office.³³

3.6 Protection of Collateral

3.6.1 Compliance with law

Debtor will comply in all material respects with all United States federal, State, and local laws and regulations applicable to any Collateral.

3.6.2 General

Debtor will take all steps reasonably necessary to

- maintain the registrations of all registered Collateral in full force and effect,
- prosecute any pending applications for Collateral registration, and
- prevent any material Collateral from being abandoned, forfeited or dedicated to the public,³⁴

except, in each case, to the extent that Debtor determines in its reasonable business judgment that

- such Collateral has minimal commercial value and is no longer used in or useful to the operation of Debtor's business,
- the failure to take any such steps will not materially affect the value of the Collateral taken as a whole, or

- the economic costs of such action would materially outweigh the probable economic benefits.

Such reasonable steps will include

- taking actions in, or filing responses to office actions issued by, an IP Filing Office, court, or Governmental Authority,
- paying when due all maintenance and other required fees,
- filing applications for renewal or extension,
- filing affidavits under sections 8 and 15 of the Lanham (Trademark) Act, and
- filing divisional, continuation, continuation-in-part, or reissue applications.

3.6.3 IP notices

Debtor will use proper statutory notices in connection with its use of its registered Trademarks and issued Patents, and notice of copyright proprietorship in connection with publication of its Copyrighted works.³⁵

3.6.4 Trademark quality control

(i) Debtor will maintain the standards of quality of all products manufactured, distributed, and sold, and in the performance of services provided, in connection with Trademark Collateral at a level at least as high as on the Effective Date, unless commercially reasonable business practices justify a change.³⁶

(ii) Debtor will take all action necessary to insure that all licensees of its Trademarks adhere to Debtor's then-established standards of quality for the goods and services provided by the licensee using the licensed Trademark.³⁷

3.6.5 Performance of IP Licenses

Debtor will perform all its obligations under each IP License to which it is a party.³⁸

3.6.6 Protection of trade secrets

Debtor will take reasonable measures to protect its material trade secrets, including entering into confidentiality agreements with employees and labeling and restricting access to secret information and documents.³⁹

3.6.7 Infringements by others

Debtor will

- promptly notify Secured Party, providing reasonable details, of any Person's infringement, dilution, misappropriation, or other violation of any Collateral,⁴⁰ and
- take all reasonable actions to stop such infringement, dilution, misappropriation, or other violation, which actions may include seeking damages for or an injunction against such conduct.⁴¹

3.6.8 Infringement and other suits by others

Debtor will

- promptly notify Secured Party, providing reasonable details, of the institution of any proceeding in any court or administrative body or any IP Filing Office regarding the validity or enforceability of, or Debtor's right to register, own, or use, any material Intellectual Property Collateral, and of any adverse determination on the merits in any such proceeding (in each case other than non-final IP Filing Office "office actions" by examiners in the ordinary course of prosecution of applications), and
- take all commercially reasonable steps to defend its rights in the Intellectual Property Collateral in interference, reexamination, opposition, cancellation, infringement, dilution, misappropriation, and other proceedings.

3.7 After-acquired Collateral

3.7.1 Notice of after-acquired Collateral; Addenda

Debtor will notify Secured Party of each acquisition after the Effective Date of an interest in

- a registered or applied-for Copyright, Patent, Trademark, or Domain Name, or
- an IP License of a type required to be disclosed on the Effective Date.

Debtor will provide the notice by the 10th Business Day following the end of the calendar quarter in which the interest was acquired, along with addenda to Schedules B, C, D, E, and F (each an **Addendum**), as appropriate, listing the acquired interests. Each Addendum will become

part of the relevant Schedule effective upon Secured Party's receipt of the Addendum.⁴²

Without limiting Debtor's obligations, Secured Party may at any time unilaterally provide an Addendum to Schedule B, C, D, E or F, as appropriate, to include any such after-acquired Collateral, whether or not Debtor has notified Secured Party of its acquisition. Any such Addendum will become a part of the relevant Schedule effective upon Secured Party's sending a copy of the Addendum to Debtor. Debtor's or Secured Party's failure to provide an Addendum will not affect, invalidate, release, limit, or detract from the Security Interest in the after-acquired Collateral or other Collateral.

With each Addendum delivered to Secured Party, Debtor will also deliver (unless previously delivered under section 3.7.2) executed Notices of Copyright Security Interest, Notices of Patent Security Interest, and Notices of Trademark Security Interest, as applicable, for the Intellectual Property listed on the Addendum, which Secured Party may file with the applicable IP Filing Office. If Debtor does not deliver any such Notice, Secured Party may prepare and execute an appropriate Notice on Debtor's behalf and file it in the applicable IP Filing Office.⁴³

3.7.2 Notice of Copyright applications

Debtor will notify Secured Party at least 10 Business Days' before Debtor files an application to register Copyright Collateral with the Copyright Office. The notice will include the title of the copyrighted work as it will appear on the application and the date the application will be filed. Prior to filing, Debtor will execute and deliver to the Secured Party any Notices of Copyright Security Interest that Secured Party reasonably requests to maintain the perfection and priority of the Security Interest in the Copyright. At Secured Party's request, Debtor will file such lien documents in the Copyright Office concurrently with filing the application, and provide Secured Party with copies of the filed copyright application and lien documents with its next quarterly notice under the preceding section 3.7.1.

3.7.3 Commercial tort claims

Debtor will promptly notify Secured Party of any commercial tort claim with respect to any Collateral in a signed writing that gives brief details of the claim and grants Secured Party a security interest in the claim and any proceeds, all upon the terms of this Agreement.

3.8 Escrow agreement

Debtor will enter into a source code escrow agreement with Secured Party by the Effective Date.⁴⁴ Debtor will deposit with the escrow agent under the escrow agreement all materials required under the escrow agreement, including the source code

- for current versions of Debtor's proprietary computer software, by the 10th Business Day following the Effective Date, and,
- for each update to such software, by the 10th Business Day following public release of the update.⁴⁵

3.9 No change of name or jurisdiction of organization or relocation of business

Debtor will not

- change its legal name or jurisdiction of organization,
- move its chief executive office, principal place of business, or records with respect to the Collateral from the address identified on Schedule I, or
- if an individual, change his or her principal residence,

without 15 days' prior notice to Secured Party.

3.10 Maintenance of records; audit and inspection

Debtor will maintain appropriate and customary records with respect to the Collateral and will permit Secured Party to visit Debtor's premises to inspect Debtor's books and records with respect to the Collateral and any tangible items embodying the Collateral. Such visits and inspections will be made during regular business hours, with reasonable advance notice, except that notice will not be required while an Event of Default exists. Debtor will deliver copies of reports and information as to Collateral in Debtor's possession or under its control as Secured Party reasonably requests.

3.11 Further assurances

Upon Secured Party's request, Debtor will promptly and duly execute and deliver such further instruments and documents and take such further actions as Secured Party deems reasonably appropriate to obtain the full benefits of this Agreement, including

- using commercially reasonable efforts to obtain consents and approvals for Debtor to grant a security interest in any item of Collateral to Secured Party, or for Secured Party to enforce the Security Interest or exercise other rights and remedies under this Agreement,⁴⁶ and
- filing, or cooperating with Secured Party in filing in IP Filing Offices, forms or other documents in connection with the perfection, protection, or enforcement of the Security Interest.

3.12 Filings by Secured Party;

Debtor authorizes Secured Party to file UCC financing statements with respect to any Collateral in such filing offices as Secured Party reasonably deems advisable, and ratifies and confirms Secured Party's authorization to file any such UCC financing statements before the Effective Date.

4 EVENTS OF DEFAULT; REMEDIES

4.1 Events of Default

Each of the following events or conditions is an *Event of Default*:

- (i) there is an "Event of Default" as defined in the Loan Agreement,
- (ii) a representation or warranty made by Debtor in this Agreement is incorrect in any material respect when made or deemed made,
- (iii) Debtor Transfers any Collateral, except in a Permitted Transfer,
- (iv) any Collateral is subject to any Lien other than a Permitted Lien,
- (v) Secured Party does not have a perfected, first-priority security interest in any Collateral, or Debtor or any third party challenges the attachment, perfection, or priority of Secured Party's security interest in any Collateral, in each case except to the extent, if any, that such Collateral is not subject to the requirements of this Agreement for such perfection or priority, as applicable, or
- (vi) Debtor fails to observe or perform any of its other covenants, agreements, or obligations under this Agreement and does not correct the failure within 10 days after notice from Secured Party.

4.2 Enforcement, collection and disposition of Collateral

While an Event of Default exists, Secured Party may take any appropriate actions to enforce, collect, protect the value of, or dispose of Collateral to the extent permitted by applicable law. Such actions may include

- (i) taking possession of any tangible Collateral, and entering premises where such Collateral is located to effect such possession,
- (ii) taking physical or electronic action to render any tangible Collateral unusable by Debtor, and entering premises where such Collateral is located to effect such action, ,
- (iii) preparing and advertising Collateral for sale, lease, license, or other disposition,⁴⁷
- (iv) notifying any account debtor or other Person liable for payment to Debtor with respect to any Collateral of Secured Party's interest in such Collateral, instructing the account debtor or other Person to make the payment directly to Secured Party or as Secured Party directs, and receiving and collecting all such payments,
- (v) instituting, defending, or settling legal proceedings to collect on or enforce Debtor's rights and remedies against account debtors and other third parties (including licensors and licensees) under or on account of any Collateral,
- (vi) paying, discharging, purchasing, contracting for, or compromising any actual or threatened Lien on the Collateral that in Secured Party's opinion may be prior or superior to the Security Interest,
- (vii) to the extent possible without violating any then-existing Permitted Licenses, granting licenses and sublicenses in any Collateral to third parties, on an exclusive or non-exclusive basis, on such terms and conditions, and in such manner, as Secured Party may determine⁴⁸, with such licenses or sublicenses as are lawfully granted by Secured Party surviving as direct licenses or sublicenses of the Debtor if the Event of Default no longer exists ,
- (viii) take all action that Secured Party deems reasonably appropriate to maintain Debtor's standards of quality, as required under section 3.6.4 of this Agreement, for products manufactured, distributed, or sold, or services performed, in connection with Trademark Collateral,
- (ix) disposing of any Collateral at public or private sale, lease, license, or other disposition, at Secured Party's offices or elsewhere, at such prices as

Secured Party may deem acceptable, for cash or on credit, without assumption of any credit risk,

(x) enforcing Debtor's rights under any IP License or Domain Name Contract included in the Collateral, without becoming a party to or incurring any liability under such IP License or Domain Name Contract,

(xi) notifying parties to any IP License or Domain Name Contract included in the Collateral that Debtor's rights and interest in the IP License or Domain Name Contract have been assigned to Secured Party, and communicating with such parties to verify the existence, amount, terms, and status of the IP License or Domain Contract⁴⁹[, and]

[(xii) exercising any of Debtor's rights in Collateral as fully and completely as though Secured Party were the absolute owner of such rights for all purposes⁵⁰].

4.3 License to Secured Party to use Intellectual Property ⁵¹

For the sole purpose of enabling Secured Party to exercise its rights and remedies as to the Collateral under this section 4, and in addition to such rights and remedies, Debtor grants to Secured Party an irrevocable, nonexclusive, worldwide license (or sublicense) to use and exercise Debtor's rights in or to any of Debtor's Intellectual Property not included in the Collateral, without payment of royalty or other compensation to Debtor. This license is subject to the following:

- To the extent that this license is a sublicense of Debtor's rights as a licensee under any IP License (the **primary license**), this license is subject to any limitations in the primary license.
- This license does not include Intellectual Property if the primary license for such Intellectual Property by its terms or as a matter of law prohibits sublicenses, requires the licensor's consent, or entails additional consideration.
- The license is effective only while an Event of Default exists and is irrevocable until the termination of this Agreement.
- For licensed Trademarks, this license is subject to Debtor's standards of quality control and inspection, whether maintained by Debtor or by Secured Party as provided in this Agreement, as necessary to avoid the risk of invalidation of the Trademarks.

4.4 Access to Debtor's systems and expertise

In connection with Secured Party's exercise of its rights and remedies under this section 4, Debtor will, at Secured Party's request and to the extent within Debtor's power and authority, give Secured Party access to

- all software or data used for the management of data as to the Collateral or any Intellectual Property licensed to Secured Party under section 4.3, and access to all media in which any of such software, data, or Intellectual Property may be recorded or stored.⁵²
- Debtor's know-how, expertise, and relevant data (such as customer lists) regarding the Collateral or the manufacture, sale, distribution or provision of any goods or services in connection with Intellectual Property Collateral, and
- Debtor's personnel responsible for such matters.

4.5 General remedy provisions⁵³

4.5.1 UCC remedies

While an Event of Default exists, Secured Party may exercise all rights and remedies available under the UCC to a secured party following a debtor's default.

4.5.2 Remedies cumulative.

All remedies provided to Secured Party herein are cumulative and in addition to all other rights and remedies granted to it under this Agreement or available under applicable law. Remedies may be exercised separately or concurrently, without demand on or notice to Debtor, except as required by applicable law, and the exercise or partial exercise of any such right or remedy will not preclude the exercise of any other right or remedy.

4.5.3 Reasonable notice

To the extent that Secured Party is required by the UCC or other applicable law to give Debtor prior notice of the disposition of any Collateral, 10-days' notice of the time and place of any public disposition or of the time after which a private disposition may take place is reasonable notice of such matters.

4.5.4 Application of Proceeds

After deduction of all costs and expenses payable by Debtor under this Agreement, Secured Party will apply the remainder of any proceeds of collection or sale, license or other disposition of Collateral, to the extent actually received in cash, to the payment of the Secured Obligations in such order of preference as Secured Party may determine, with proper allowance and provision being made for any Secured Obligations not then due. Upon the final payment and satisfaction in full of all of the Secured Obligations and after making any payments required by UCC §9-608(a)(1)(C) or §9-615(a)(3), Secured Party will return any remaining proceeds to Debtor. Only after so paying over such net proceeds and after the payment by Secured Party of any other amount required by any provision of law will Secured Party need to account to Debtor for any surplus proceeds. Debtor will remain liable for any deficiency if the proceeds of disposition of the Collateral are insufficient to fully pay the Secured Obligations.

4.5.5 No marshaling

Secured Party will not be required to marshal the Collateral or any present or any other future security for, or other assurances of payment of, the Secured Obligations or to resort to such security or assurances in any particular order. To the extent permitted by applicable law, Debtor agrees not to invoke any law relating to the marshaling of Collateral that might delay or impede the enforcement of Secured Party's rights and remedies under this Agreement or otherwise, and, to the extent that it lawfully may, Debtor irrevocably waives the benefits of all such law.

5 SECURED PARTY'S OTHER RIGHTS

5.1 Power of attorney

Debtor appoints Secured Party as its attorney-in-fact, with full power of substitution, without notice to or assent by Debtor, in its own name or in Debtor's name, in Debtor's place and stead,

- (i) to file any documents with an IP Filing Office that Secured Party reasonably deems appropriate to perfect, record, confirm, protect, or assure the priority of, the Security Interest, or to remove ineffective filings,⁵⁴
- (ii) to take any actions required of Debtor under this Agreement that Debtor fails or is unable to take in a timely manner, and

(iii) while an Event of Default exists, to take any actions that Secured Party deems appropriate:

- to protect, preserve, or realize upon the Collateral and the Security Interest or to accomplish the purposes of this Agreement, including any actions described in section 4; and
- in connection with a disposition of any Collateral, (A) to assign or transfer title to such Collateral to itself or to any third party purchaser, and (B) to file with any IP Filing Office or Governmental Authority any documents necessary or advisable to implement, effectuate or reflect the disposition, including any transfer statement permitted under section 9-619 of the UCC.

This power of attorney is a power coupled with an interest and will be irrevocable as long as this Agreement is in effect or is reinstated.

5.2 Indemnity

Debtor will defend and indemnify Secured Party and its officers, employees, and agents against

- all losses, obligations, demands, claims, and liabilities (collectively, **Claims**) asserted by a third party in connection with the transactions contemplated by this Agreement, including acts or failures to act of Secured Party under section 4 (“Events of Default; remedies”), and
- all costs and expenses (including reasonable attorneys’ fees and fees of professionals) paid or incurred by Secured Party in connection with a Claim,

except to the extent such Claims are caused by Secured Party’s (or any of its officers’, employees’, or agents’) gross negligence or willful misconduct.

5.3 Costs and expenses

Debtor will pay

- all fees, costs, and expenses incurred by Debtor, Secured Party or a third party in connection with actions required of Debtor under this Agreement,
- all out-of-pocket fees, costs, and expenses (including reasonable attorneys’ fees and fees of advisors, experts, agents and professionals) reasonably incurred in connection with Secured Party’s exercise, enforcement, or protection of its rights and

remedies under this Agreement or in respect of the Collateral, including claims against Debtor for breach of this Agreement and actions under sections 3.7 (“After-acquired Collateral”), 3.10 (“Maintenance of records; audit and inspection”), 3.11 (“Further assurances”), 3.12 (“Filings by Secured Party”), 5 (“Remedies upon Default”), 5.1 (“Power of attorney”), 5.2 (“Indemnity”), or 6.2 (“Reinstatement”).

- any claims and charges that in Secured Party’s reasonable opinion might, if not paid, prejudice, imperil, or otherwise adversely affect the Security Interest or its priority, and
- any costs or expenses stated in any Loan Document to be part of the Secured Obligations.

Debtor’s obligations to Secured Party under this section 5.3 will be payable on demand. Until paid, such obligations will bear interest at the “Default Rate” defined in the Loan Agreement and (with such interest) will be part of the Secured Obligations.

5.4 Non-disturbance of Permitted Licenses⁵⁵

Secured Party will not disturb the rights of any third party licensee of Collateral under a Permitted License, so long as the licensee is not in breach of its obligations to Debtor under the Permitted License. Upon Debtor’s request with respect to a particular licensee, Secured Party will negotiate, execute and deliver a non-disturbance agreement with the licensee, in form reasonably acceptable to Secured Party, Debtor, and the licensee.⁵⁶

5.5 Limited obligations of Secured Party

Secured Party will not be liable for any failure to exercise, or delay in exercising, any of its rights or remedies under this Agreement, or for any diminution in the value of the Collateral, and will not be obligated to

- collect any amounts due, redeem or realize on, or make any presentments, demands or notices of protest in connection with, any Collateral,
- take any steps necessary to preserve rights in any instrument, contract, license, or lease against third parties or to preserve rights against prior parties,
- take any actions that Debtor is required to take under section 3.6 (“Protection of Collateral”), or

- remove any Liens or take any actions for the perfection, enforcement, collection, or protection of Collateral,

except to the extent that such obligations may not be waived or varied under UCC section 9-602.

6 GENERAL PROVISIONS

6.1 Term of Agreement

This Agreement will remain in effect, and Secured Party will have no obligation to release any Collateral, until all the Secured Obligations are completely and indefeasibly paid and performed in full and Secured Party no longer has a commitment to make Loans to Debtor.

6.2 Reinstatement

This Agreement will continue to be effective or be automatically reinstated, as the case may be, if at any time payment, in whole or in part, of any of the Secured Obligations is rescinded or must otherwise be restored or returned by Secured Party or any holder of the Secured Obligations as a preference, fraudulent conveyance or otherwise under any Bankruptcy Law, all as though such payment had not been made.

6.3 Notices and communications

6.3.1 General notices

All notices and other communications required or permitted under this Agreement will be in writing or other record form, and will be sent by hand, by registered or certified mail return receipt requested, by overnight courier service maintaining records of receipt, or by other electronic means as the parties may agree in writing, in all cases with charges prepaid, and will be effective on the earlier of receipt or

- if mailed, the third Business Day after being mailed,
- if sent by overnight courier service, the following Business Day,
- if sent by facsimile, upon sender's receipt of transmission confirmation, or
- if sent by electronic means, the time agreed by the parties in writing.

All notices will be addressed to the parties at the following addresses until changed by notice pursuant to this section.

- If to Debtor: _____
- If to Secured Party: _____

6.3.2 *Electronic Communications*

Notices and other communications may be delivered by electronic communication (including e-mail), except that any record required to be signed, executed or authenticated will not be effective if contained only in the body of an electronic communication, but must be separately authenticated and delivered by telecopy or other electronic imaging means (e.g. “pdf” or “tif”).

6.4 Successors and assigns

Debtor will not assign its rights or delegate its duties under this Agreement. Secured Party may assign the Secured Obligations to one or more assignees on such terms and conditions as Secured Party deems advisable. Debtor waives and will not assert against such an assignee any claims, setoffs, recoupments, or defenses that Debtor may have against Secured Party.

6.5 Amendments and waivers

Except as provided in section 3.7 with respect to describing Collateral in an appropriate Addendum, this Agreement may not be modified or amended except in a record authenticated by Debtor and Secured Party, and none of its provisions may be waived except in a record authenticated by Secured Party. No waivers will be implied, whether from any custom or course of dealing or any delay or failure in Secured Party’s exercise of its rights and remedies hereunder or otherwise. Any waiver granted by Secured Party will not obligate Secured Party to grant any further, similar, or other waivers.

6.6 Governing law

This Agreement will be construed in accordance with and governed by the laws of [STATE].

6.7 Severability

If any provision of this Agreement or its application to any Person or circumstance will be invalid or unenforceable to any extent, the remainder of this Agreement or the application of the provision to other Persons or

circumstances will not be affected thereby and will be enforceable to the greatest extent permitted by law.

6.8 Jurisdiction; venue

Debtor irrevocably consents to the exclusive jurisdiction of the courts located in [STATE] for any action in connection with this Agreement, any Secured Obligations, or any Collateral, and will not contest or challenge venue in any such courts.

6.9 Jury waiver

Debtor and Secured Party each knowingly, willingly, and irrevocably waives its rights to demand a jury trial in any action or proceeding involving this Agreement, any of the Secured Obligations, or any Collateral. A copy of this section may be filed as a written consent to a trial by the court.

7 DEFINITIONS AND USAGES

7.1 Defined terms

In this Agreement, the following terms have the following meanings:

Bankruptcy Code means Title 11 of the United States Code, titled “Bankruptcy.”

Bankruptcy Law means the Bankruptcy Code and any similar United States federal, State, or foreign bankruptcy, insolvency, receivership, or similar law affecting creditors’ rights generally.

Business Day means a day other than a Saturday, Sunday, or other day on which commercial banks in [CITY] are authorized or required by law to close.

Copyright Office means the United States Copyright Office.

Domain Name Contract means an agreement that permits a Person to use a Domain Name.

Governmental Authority means any United States federal, State, municipal, national, or other government, governmental department, commission, board, bureau, court, agency or instrumentality, or political subdivision thereof, or any entity or officer exercising executive, legislative, judicial, regulatory, or administrative functions of or pertaining to any government or any court of the United States or any State.

Insolvency Proceedings means any United States federal, State or foreign bankruptcy, reorganization, liquidation, assignment for the benefit of creditors, receivership, or other insolvency proceedings commenced at any time by or against Debtor or its property, pursuant to Bankruptcy Law or otherwise.

IP Filing Office means, as applicable, the PTO, the Copyright Office, any similar United States federal or State office or agency, or any Internet Domain Name registry.

Lien means with respect to Debtor's rights or interest in any item of Collateral,

- (i) any "Lien" as defined in the Loan Agreement,
- (ii) any voluntary collateral assignment, conditional assignment, license equivalent to an encumbrance, mortgage, charge, hypothecation, pledge, security interest, or lien on, in, or to those rights or that interest, or
- (iii) any involuntary lien, claim or other encumbrance on, in, or to those rights or that interest, including a tax lien, judgment lien, statutory or common law lien, equitable lien, or other attachment, levy, execution, or judicial action with respect to those rights or that interest.

Loan Documents means the Loan Agreement, the promissory note dated the Effective Date issued by Debtor to Secured Party, this Agreement, and any other agreement executed on or after the Effective Date in connection with any of them.

[***Material Adverse Effect*** has the same meaning as in the Loan Agreement.]

Permitted License means an IP License (i) that was in effect before the Effective Date and was (if required) listed on Schedule B, C, D or E, or (ii) that is granted by Debtor as licensor, before or after the Effective Date, in the ordinary course of business and that, at the time of such grant, does not materially adversely affect Debtor's operation of its business or the value of the Collateral taken as a whole.

Person means a natural person, corporation, limited liability company, trust, business trust, joint venture, association, company, partnership, Governmental Authority, or other entity.

PTO means the United States Patent and Trademark Office.

Restrictive Provision means a provision of an agreement or of applicable law that purports to

- prohibit Debtor's assignment of, grant of a security interest in, or license of its rights under, an IP License or Domain Name,
- require any other Person's consent to such assignment, grant, or license, or
- make such assignment, grant, or license constitute or result in a violation of law or a breach, default, or termination of an IP License or Domain Name Contract.

State means a state or territory of the United States, or the District of Columbia.⁵⁷

A **Transfer** of Collateral is Debtor's voluntary disposition (or agreement to dispose) of its rights therein, in whole or in part, by sale, lease, license, assignment, operation of law, or other method, other than the creation or enforcement of a Lien on, or any actual or deemed abandonment of, its rights in any Collateral. To **Transfer** any Collateral means to effect or implement a Transfer.

UCC means the [STATE] Uniform Commercial Code or, for any particular matter, the Uniform Commercial Code of the State that governs such matter, in each case as in effect at the relevant time.

United States includes all the States (as defined above).

7.2 Usages

Unless otherwise stated or the context clearly requires otherwise:

UCC terms. Terms defined in the UCC have the same meanings in this Agreement. If a term is defined in Article 9 of the UCC and in another Article of the UCC, the term has the meaning specified in Article 9.

Debtor. If Debtor is a partnership or an unincorporated association of more than one person, the term "Debtor" refers to the entity and to each partner and/or each such person, jointly, severally, and individually

Singular and plural. Definitions of terms apply equally to the singular and plural forms.

Masculine and feminine. Pronouns include the corresponding masculine, feminine, and neuter forms.

Time of day. All indications of time of day mean [CITY] time.

Time periods. In computing periods from a specified date to a later specified date, the words "from" and "commencing on" (and the like) mean

“from and including,” and the words “to,” “until” and “ending on” (and the like) mean “to but excluding.” References to a number of “days” (uncapitalized) mean that number of calendar days.

When action may be taken. Any action permitted under this Agreement may be taken at any time and from time to time.

May. Any action that a Person “may” take it may take in its discretion but is not obligated to take.

Inclusive Terms. “Including” (or “include(s)”) means “including (or include(s)), but not limited to.”

Or. “A or B” means “A or B or both.”

Herein, etc. “Herein,” “hereof,” “hereunder,” and words of similar import refer to this Agreement in its entirety and not to any particular provision.

Successors and assigns. References to a Person include the Person’s permitted successors and assigns.

Statutes and regulations. References to a statute refer to the statute and all regulations promulgated under or implementing the statute as in effect at the relevant time. References to a specific provision of a statute or regulation include successor provisions. References to a section of the Bankruptcy Code also refer to any similar provision of Bankruptcy Law.

Governmental agencies and self-regulatory organizations. References to a governmental or quasi-governmental agency or authority or a self-regulatory organization include any successor agency, authority, or self-regulatory organization.

Agreements. References to an agreement (including this Agreement) refer to the agreement as amended at the relevant time.

Schedules and Exhibits. References to a Schedule or Exhibit refer to Schedules or Exhibits to this Agreement.

Section references. Section references refer to sections of this Agreement. References to numbered sections refer to all included sections. For example, a reference to section 2 also refers to sections 2.1, 2.1.2, 2.1.2(ii), etc. References to a section or article in an agreement, statute or regulation include successor and renumbered sections and articles of that or any successor agreement, statute, or regulation.

Nouns and adjectives. Defined terms that are nouns may be used as adjectives; for example, “Copyright Collateral” to refer to Copyrights included in the Collateral.

SIGNATURES

[DEBTOR]

By: _____

[NAME]

[TITLE]

[SECURED PARTY]

By: _____

[NAME]

[TITLE]

DRAFT NOTE: Exhibits and schedules to be converted to separate pages later

Schedules

- A Excluded Property
- B Copyrights, Copyright Applications, and Copyright Licenses
- C Patents, Patent Applications, and Patent Licenses
- D Registered Trademarks, Trademark Applications, and Trademark Licenses
- E Other IP Licenses
- F Domain Names
- G Restrictive Provisions
- H UCC Filing Offices
- I Debtor Information

Exhibits

- 1 Notice of Security Interest in Copyrights
- 2 Notice of Security Interest in Patents
- 3 Notice of Security Interest in Trademarks

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