

**NON-EXCLUSIVE LIMITED UNITED STATES  
PATENT LICENSE AGREEMENT FOR  
PLAYBACK AND RECORDING PRODUCTS**

This Agreement is effective this 1st day of \_\_\_\_\_, 200\_\_ (the “Effective Date”), between DISCOVISION ASSOCIATES, a joint venture subject to the State of California partnership law, having a place of business at 2265 East 220<sup>th</sup> Street, Long Beach, California 90810, United States of America (“DVA”) and \_\_\_\_\_, a \_\_\_\_\_ corporation, having a place of business at \_\_\_\_\_ (“LICENSEE”), who agree as follows:

**Section 1.0 Recitals**

- 1.1 This Agreement is a settlement of all outstanding controversies between the parties concerning the subject matter hereof. LICENSEE hereby acknowledges it has entered into this Agreement for, among other things, the freedom to design its products and not related to specific patent use.
- 1.2 LICENSEE has been offered, at its sole discretion, the choice of two licensing alternatives. Under the first licensing option, LICENSEE accepts a license under all **Licensed Patents** (as defined in Section 2.12). Alternatively, LICENSEE may accept a license under one or more individual DVA patents selected by LICENSEE, the availability of such license under any one or more of DVA's patents being in no way conditioned on the need for LICENSEE to take a license under any other of DVA's patents. LICENSEE has determined that its business interests will be best served by taking a license under the terms and conditions of this Agreement.

**Section 2.0 Definitions**

- 2.1 “**Disc(s)**” means any pre-recorded, non-recordable and non-erasable information storage medium in the shape of a disc and having information recorded thereon in one or more information bearing layers, which information is recoverable using optical detection means.
- 2.2 “**Digital Disc(s)**” means a **Disc** having pre-recorded thereon digitally encoded information. **Digital Discs** include, but are not limited to, **Discs** commonly known as CD Digital Audio Discs (i.e., compact discs), CD Single Discs (i.e., containing only twenty minutes or less of audio entertainment information), CD-ROM Discs, CD-I Discs, CD-G Discs, CD Digital Video Discs, Video CD's, DVD Video Discs, DVD ROM Discs and Pre-Recorded Mini Discs.

- 2.3 “**Video Disc(s)**” means a **Disc** having pre-recorded thereon video information which is not digitally encoded. **Video Discs** include, but are not limited to, **Discs** commonly known as laser discs (LD's), karaoke laser-discs and compact disc-video (CD-V) discs.
- 2.4 “**Recordable Media**” means an information storage medium in the shape of a disc, other than a master disc, capable of having information recorded thereon by an optical recording beam, which information is recoverable using optical detection means. **Recordable Media** include, but are not limited to, Write-Once Media, Magneto-Optical Media (e.g., 3.5”, 5.25”, etc.), Phase-Change Media, Recordable Compact Discs, CD-RW Media, CD-E Media, DVD-RAM Media, DVD Rewritable (DVD-RW) Media, DVD Recordable (DVD-R) Media, DVD Erasable (DVD-E) Media and Recordable Mini Discs.
- 2.5 “**Manufacturing Apparatus**” means apparatus for use in the fabrication of **Licensed Products**, including apparatus used in performing quality assurance procedures or testing of **Licensed Products**. **Manufacturing Apparatus** includes, but is not limited to, mastering equipment, disc replication equipment, master discs and stampers.
- 2.6 “**Manufacturing Process(es)**” means any method or process, including related apparatus, used in the fabrication of **Licensed Products**, including process steps directed to quality assurance procedures or testing of **Licensed Products**.
- 2.7 “**Digital Playback Product(s)**” means an apparatus primarily designed for recovering digitally encoded information from an information storage medium in the shape of a disc using optical detection means. Such apparatus shall not be capable of recording information on, or erasing information from, an information storage medium. **Digital Playback Products** include, but are not limited to, Compact Disc Digital Audio Players, Compact Disc Read Only Memory (CD-ROM) Players, Compact Disc Interactive (CD-I) Players, Compact Disc Graphics (CD-G) Players, Video CD Players, DVD Video Playback Products, DVD ROM Playback Products and Mini Disc Playback Products.
- 2.8 “**Video Playback Product(s)**” means an apparatus primarily designed for recovering video information from an information storage medium in the shape of a disc using optical detection means, which video information is not digitally encoded. Such apparatus shall not be capable of recording information on, or erasing information from, an information storage medium. **Video Playback Products** include, but are not limited to, video disc (VD) players, laser disc (LD) players and compact disc-video

- (CD-V) players. **Video Playback Products** also shall include multiple format playback apparatus capable of recovering information from a **Video Disc** and a **Digital Disc** (e.g., DVD/LD or DVD/CD/LD combination or “combi” players capable of recovering information from a DVD Video Disc and a laser disc).
- 2.9 “**Recording Product(s)**” means an apparatus, other than **Manufacturing Apparatus**, primarily designed for recording information on **Recordable Media**. Such apparatus may also be capable of recovering or erasing information from **Recordable Media**. **Recording Products** include, but are not limited to, Write Once Read Many (WORM) Drives, Magneto-Optical Drives (e.g., 3.5”, 5.25”, etc.), Phase-Change Drives, CD-R Drives, CD-RW Drives, CD-E Drives, DVD-RAM Drives, DVD Rewritable (DVD-RW) Drives, DVD Recordable (DVD-R) Drives, DVD Erasable (DVD-E) Drives and Mini Disc Recording Products.
- 2.10 “**Kit(s)**” means a part, or an aggregation of parts, designed and intended to be incorporated or assembled into a **Digital Playback Product**, a significant portion of a **Digital Playback Product**, a **Video Playback Product**, a significant portion of a **Video Playback Product**, a **Recording Product** or a significant portion of a **Recording Product**. A **Kit** may be, for example, any one of the following:
- Type I **Kit** - optical head;
  - Type II **Kit** - aggregation of optical head and mechanical deck;
  - Type III **Kit** - aggregation of optical head, mechanical deck and signal processing and control electronics;
  - Type IV **Kit** - aggregation of optical head, mechanical deck, signal processing and control electronics, power supply and casing.
- 2.11 “**Licensed Product(s)**” means **Digital Playback Products**, **Digital Playback Product Kits**, **Video Playback Products**, **Video Playback Product Kits**, **Recording Products** and **Recording Product Kits**.
- 2.12 “**Licensed Patent(s)**” means the patents listed in Appendix A hereof, and any patents issuing from pending United States patent applications owned or subject to license by DVA as of the Effective Date, directed to the **Licensed Products** or any **Manufacturing Apparatus** or any **Manufacturing Process**, under which patents and patent applications (as well as divisionals, continuations and continuation-in-part applications, reissues and reexaminations) DVA has the right to grant licenses to LICENSEE of the same scope granted herein; provided, however, that such grant, or the exercise of rights under such grant, will not result in the payment of royalties or other consideration by DVA to third parties (except for payments to third parties for

- inventions made by said third parties while employed by DVA). The parties agree that the patents listed on Appendix A are all the patents under which LICENSEE has agreed to take a license. DVA shall provide LICENSEE on an annual basis an updated version of Appendix A, including any new patent issued from an application described above. Expired patents will be omitted annually from the updated Appendix A.
- 2.13 “**Transfer**” means (i) rent, lease, sell or sold; (ii) deliver to others (including for export) other than by sale, regardless of the basis of compensation, if any, (for example, by consignment, by gift or by transshipment through an intermediate country or territory); or (iii) sell (sold) in combination with other products.
- 2.14 “**Type Number**” means any combination of numbers, letters and/or words used to identify a particular type or model of **Licensed Product**.
- 2.15 “**Subsidiary(ies)**” means any corporation, company, or other business entity controlled by LICENSEE. For this purpose, control means direct or indirect beneficial ownership of greater than fifty percent (50%) of the voting securities or greater than fifty percent (50%) interest in the income of such corporation, company, or other business entity.
- 2.16 “**Arm's Length Trade**” means a sale, lease or other commercial transaction between unaffiliated parties having an adverse economic interest. After completion of an **Arm's Length Trade**, a party thereto will derive no further economic benefit from subsequent transactions by another party thereto with respect to the goods involved in such **Arm's Length Trade**.
- 2.17 “**Net Selling Price**” means the invoice price after discounts actually allowed for a **Licensed Product** sold in **Arm's Length Trade** by LICENSEE or its **Subsidiary**, such price not to include: (1) packaging costs incurred by LICENSEE for such **Licensed Product**; (2) insurance fees and packing and transportation charges incurred by LICENSEE and invoiced separately; (3) duties and sales taxes actually incurred and paid by LICENSEE in connection with delivery of such **Licensed Product**; and (4) the cost of any patent license fee paid by LICENSEE to a third party with respect to the manufacture of the **Licensed Product**. In respect of a **Licensed Product** used by LICENSEE or its **Subsidiary** or **Transferred** by LICENSEE or its **Subsidiary** in other than **Arm's Length Trade**, the **Net Selling Price** shall be deemed to be equal to the average **Net Selling Price** as defined above for the same or equivalent **Licensed Product** sold in **Arm's Length Trade** during the then current accounting period. If there are no sales in **Arm's Length Trade**

during an accounting period, DVA and LICENSEE shall attempt to agree upon an amount to be regarded as the **Net Selling Price** for such accounting period. If DVA and LICENSEE do not so agree, then **Net Selling Price** shall mean the actual selling price to an end-user consumer. If a **Licensed Product** is not separately sold and is included with other apparatus, then the **Net Selling Price** of such **Licensed Product** shall be the **Net Selling Price** of the equivalent **Licensed Product** which is separately sold, or, if no such equivalent **Licensed Product** exists, shall be, at LICENSEE's option, either: (1) the sales price as aforesaid of such other apparatus multiplied by the ratio of the **Manufacturing Cost** of such **Licensed Product** to the **Manufacturing Cost** of such other apparatus; or (2) one hundred fifty percent (150%) of the **Manufacturing Cost** of that part of the apparatus that constitutes the **Licensed Product**.

- 2.18 “**Manufacturing Cost**” means total cost of direct materials, direct and indirect factory labor and factory overhead determined in accordance with sound accounting principles.
- 2.19 “**Toll Conversion/Sell-Back Arrangement(s)**” means arrangements in which the net result constitutes an attempt to sublicense a third party. Said arrangements include, but are not limited to, transactions between LICENSEE and a third party wherein LICENSEE obtains **Licensed Products** from said third party and then LICENSEE **Transfers** those **Licensed Products** back to the third party. It is understood that such arrangements are not limited to direct transactions between LICENSEE and a third party, but may also involve affiliates thereof and/or other intermediate entities.

### **Section 3.0 Non-Exclusive License Grant**

- 3.1 DVA grants to LICENSEE a non-exclusive, royalty bearing license under the **Licensed Patents** (i) to make, have made, use, offer for sale or **Transfer Licensed Products** in the United States, and (ii) to make or use **Manufacturing Apparatus** in the United States and to use **Manufacturing Processes** in the United States to manufacture **Licensed Products** for LICENSEE.
- 3.2 No license is granted by DVA to LICENSEE, either expressly or by implication, estoppel, or otherwise (i) other than under the **Licensed Patents** listed in Appendix A, as updated annually; (ii) with respect to any products other than **Licensed Products**; (iii) to manufacture, use or **Transfer Licensed Products** outside the United States; (iv) to offer for sale or **Transfer** any **Manufacturing Apparatus**; or (v) to offer for sale or **Transfer** any **Manufacturing Process** or process step thereof.

LICENSEE understands that DVA owns or has the right to license numerous other United States patents not directed to the **Licensed Products**, which are not licensed under this Agreement. LICENSEE further understands that DVA currently owns and may acquire patents outside of the United States directed to the **Licensed Products**, which are not listed in Appendix A and not licensed under this Agreement. DVA reserves the right to bring a patent infringement action against LICENSEE with respect to any patents owned or subject to license by DVA, which are not licensed under this Agreement.

- 3.3 LICENSEE understands that the manufacture, use or **Transfer** of any **Licensed Product** outside the United States is not deemed licensed under this Agreement. If LICENSEE manufactures and **Transfers Licensed Products** in an OEM capacity and does not owe DVA royalties on such **Licensed Products** pursuant to Section 5.0, LICENSEE agrees to inform any purchaser of such **Licensed Products** that a royalty may be due DVA. In furtherance of the foregoing, LICENSEE shall include the following language in all purchase agreements and orders:

**THE PURCHASER OF THE PRODUCTS BEING SOLD OR OTHERWISE TRANSFERRED HEREUNDER IS HEREBY NOTIFIED THAT IT MAY BE RESPONSIBLE FOR PAYING A ROYALTY ON THESE PRODUCTS TO DISCOVISION ASSOCIATES IF THESE PRODUCTS ARE SUBSEQUENTLY USED, SOLD OR OTHERWISE TRANSFERRED. SUCH PRODUCTS SHALL REMAIN UNLICENSED UNLESS AND UNTIL DISCOVISION ASSOCIATES RECEIVES FULL ROYALTIES THEREON.**

DVA reserves the right to seek royalties from third parties for the manufacture, use and/or **Transfer** of products for which LICENSEE has not paid the royalty under this Agreement, as described above.

- 3.4 The license granted herein includes a license to **Subsidiaries** of the same scope as the one granted to LICENSEE in Section 3.1 above. Such license shall be granted to **Subsidiaries** identified in Appendix B, which LICENSEE represents are all of its **Subsidiaries** as of the Effective Date. LICENSEE shall pay and account to DVA for royalties hereunder with respect to the exercise by any **Subsidiary** of the license granted to it hereunder, and if LICENSEE fails to make such payment or accounting, DVA reserves the right to seek directly from such **Subsidiary** any royalties due and owing to DVA. Licenses will be granted to additional **Subsidiaries** during the term of this Agreement upon receipt by DVA of written notices from LICENSEE setting

forth the names and addresses of such additional **Subsidiaries** to be covered by this Agreement, provided each such notice is given before any sales of **Licensed Products** by the **Subsidiary** named therein. Each **Subsidiary** licensed under this Agreement shall be bound by the terms and conditions of this Agreement as if it were named herein in the place of LICENSEE. LICENSEE represents to DVA that it has the power to bind each such **Subsidiary** to the terms and conditions of this Agreement. The license granted to a **Subsidiary** shall terminate on the date such **Subsidiary** ceases to be a **Subsidiary**.

- 3.5 LICENSEE may not sublicense third parties under this Agreement. **Toll Conversion/Sell-Back Arrangements** are deemed to be a prohibited attempt to sublicense a third party and constitute a material breach of this Agreement.

#### **Section 4.0 Release**

- 4.1 Subject to the conditions set forth in Section 4.3, DVA releases LICENSEE and its **Subsidiaries**, identified in Appendix B, from any and all claims of infringement of the **Licensed Patents**, which claims have been made or which might be made at any time, with respect to any **Licensed Products** used or otherwise **Transferred** by or for LICENSEE or its licensed **Subsidiaries** before the Effective Date, to the extent such **Licensed Products** would have been licensed hereunder had they been manufactured, used or otherwise **Transferred** after the Effective Date. This release shall not apply to any **Licensed Product** on which a royalty accrues after the Effective Date. This release applies only to the **Licensed Patents** and does not apply to any other patents owned or subject to license by DVA. LICENSEE may remain liable for infringement of other patents owned or subject to license by DVA.
- 4.2 No release is granted to any party to whom LICENSEE or its licensed **Subsidiaries** may have **Transferred Kits** before the Effective Date for the manufacture, use or **Transfer** by such party of assembled products using such **Kits**. DVA reserves all rights with respect to such **Kits**, including the right to collect from such party or their customers a payment for assembled products using such **Kits**.
- 4.3 LICENSEE acknowledges that the release set forth in Section 4.1 above is conditioned upon (1) payment of the consideration set forth in Section 5.6 and (2) LICENSEE's compliance with all the terms and conditions of this Agreement, for the first two years of this Agreement. If LICENSEE breaches or terminates this Agreement within two years of the Effective Date, the release shall be void. The consideration paid under Section 5.6, if any, may be used to offset any claims of infringement DVA may choose to pursue upon LICENSEE's breach. LICENSEE further agrees that all legal and equitable limitations laws and periods, including

without limitation 35 USC §286, applicable to any such infringement claims will be tolled during the first two years of this Agreement.

**Section 5.0 Royalties and other Payments**

5.1 LICENSEE shall pay, as hereinafter provided, earned royalties to DVA on its manufacture, use or **Transfer** of each **Licensed Product**.

5.2 LICENSEE shall pay to DVA each of the following royalties, regardless of the number of **Licensed Patents** used:

5.2.1 For each **Digital Playback Product** and each Type I and Type II **Digital Playback Product Kit** which is manufactured, used and/or **Transferred** by or for LICENSEE and/or its **Subsidiaries** in the United States, LICENSEE shall pay to DVA a royalty of one percent (1.0%) of the **Net Selling Price** of such **Digital Playback Product** and such **Digital Playback Product Kit**.

5.2.2 For each **Recording Product** and each Type I and Type II **Recording Product Kit** which is manufactured, used and/or **Transferred** by or for LICENSEE and/or its **Subsidiaries** in the United States, LICENSEE shall pay to DVA a royalty of one percent (1.0%) of the **Net Selling Price** of such **Recording Product** and such **Recording Product Kit**.

5.2.3 For each **Video Playback Product** and each Type I and Type II **Video Playback Product Kit** which is manufactured, used and/or **Transferred** by or for LICENSEE and/or its **Subsidiaries** in the United States, LICENSEE shall pay to DVA a royalty of one and one-half percent (1.5%) of the **Net Selling Price** of such **Video Playback Product** and such **Video Playback Product Kit**.

5.2.4 For each Type III and Type IV **Digital Playback Product Kit**, each Type III and Type IV **Video Playback Product Kit** and each Type III and Type IV **Recording Product Kit** that is manufactured, used and/or **Transferred** by or for LICENSEE and/or its **Subsidiaries** in the United States, LICENSEE shall pay to DVA each of the following royalties:

5.2.4.1 For each Type III and Type IV **Digital Playback Product Kit**, a royalty of one and one-quarter percent (1.25%) of the **Net Selling Price**;

- 5.2.4.2 For each Type III and Type IV **Recording Product Kit**, a royalty of one and one-quarter percent (1.25%) of the **Net Selling Price**; and
- 5.2.4.3 For each Type III and Type IV **Video Playback Product Kit**, a royalty of either one and one-half percent (1.5%) of the **Net Selling Price** or one and one-half United States dollars (U.S. \$1.50), whichever is greater.
- 5.3 The customers of LICENSEE identified in accordance with Section 6.4.4 will receive a royalty credit equal to the royalty paid to DVA and reported by LICENSEE for each Type I and Type II **Kit**. The royalty credit can only be applied against royalties owed by such customer to DVA for the product containing the **Kit**. The credit cannot be applied to royalties due DVA on other products. Subject to this royalty credit, DVA reserves the right to seek the remaining royalties from customers of LICENSEE for assembled products using Type I and Type II **Kits** obtained from LICENSEE. Notwithstanding the foregoing, DVA reserves the right to seek royalties from third parties for the manufacture, use and/or **Transfer** of products incorporating LICENSEE's **Kits** for which LICENSEE has not paid a full royalty under this Agreement.
- 5.4 For Type III and Type IV **Kits**, DVA will not seek further royalty under the **Licensed Patents** from customers of LICENSEE identified in accordance with Section 6.4.5 for the manufacture, use and/or **Transfer** of **Digital Playback Products, Video Playback Products** or **Recording Products** which include Type III and Type IV **Kits** purchased from LICENSEE and for which **Kits** LICENSEE has both reported and paid the royalty as set forth in Section 5.2. Notwithstanding the foregoing, DVA reserves the right to seek royalties from third parties for the manufacture, use and/or **Transfer** of products incorporating LICENSEE's **Kits** for which LICENSEE has not paid a full royalty under this Agreement.
- 5.5 If LICENSEE purchases from a third party portions of a **Licensed Product** and combines such portions with other portions in a manner such that the combination is itself a **Licensed Product**, then royalty shall be due for the combination in accordance with the preceding provisions of this Section 5.0 regardless of whether or not said third party is licensed by DVA to sell said purchased portions in the country of manufacture and/or purchase.
- 5.6 LICENSEE agrees to pay DVA, within sixty (60) days of the execution of this Agreement, the sum of \_\_\_\_\_ United States dollars (U.S. \$ \_\_\_\_\_) as additional consideration for the release granted LICENSEE

in Section 4.0. This sum is not refundable and is not creditable toward royalties set forth in this Section 5.0. LICENSEE and its **Subsidiaries** are jointly and severally liable for this payment, and if LICENSEE fails to make this payment, DVA reserves the right to seek such payment from any or all of the **Subsidiaries**.

5.7 No royalties shall be paid by LICENSEE for:

5.7.1 **Licensed Products** manufactured for LICENSEE by any other DVA licensee, so long as the other DVA licensee has fully paid and reported royalties at the royalty rates set forth in this Section 5.0 to DVA on such **Licensed Products**, and has identified LICENSEE as the purchaser of such **Licensed Products** in its royalty reports to DVA. If the other DVA licensee has paid a partial royalty to DVA for any **Licensed Product**, then LICENSEE shall receive a credit for that partial royalty which shall be used solely to offset royalties payable by LICENSEE for such **Licensed Product**;

5.7.2 **Licensed Products** manufactured by LICENSEE for any other DVA licensee, so long as the other DVA licensee has fully paid and reported royalties at the royalty rates set forth in this Section 5.0 to DVA on such **Licensed Products**, and LICENSEE has identified such other DVA licensee as the purchaser, and both LICENSEE and such other DVA licensee have both identified the other in their respective royalty reports due DVA reporting such transaction. If the other DVA licensee has paid a partial royalty to DVA for any **Licensed Product**, then LICENSEE shall receive a credit for that partial royalty which shall be used solely to offset royalties payable by LICENSEE for such **Licensed Product**; and

5.7.3 The credits provided for in Sections 5.7.1 and 5.7.2 above shall only be applicable in cases where each licensee of DVA is currently paying running royalties, i.e., on a quarterly or semiannual basis, on the **Licensed Products**.

5.8 If at any time legal restrictions in the country of LICENSEE's place of business set forth in this Agreement prevent the prompt remittance of part or all of the royalties or other payments to DVA set forth in this Section 5.0, LICENSEE shall upon DVA's written request perform the following:

5.8.1 LICENSEE shall make such payments by depositing the amount thereof in local currency to DVA's account in a bank or other depository in such country; and

5.8.2 LICENSEE shall assist DVA to obtain authorization to remit such payments outside such country in equivalent U.S. currency.

**Section 6.0 Accruals, Records and Reports**

- 6.1 Subject to Section 6.5 hereof, royalties shall accrue when any **Licensed Product** with respect to which royalty payments are required by Section 5.0 of this Agreement is first sold (as evidenced by bill or invoice), first put into use or first **Transferred**, whether or not payment is received by LICENSEE. On sales or **Transfers** between LICENSEE and its **Subsidiary** for resale or for further **Transfer**, the royalty shall accrue at the time of sale or **Transfer** to the **Subsidiary**.
- 6.2 LICENSEE shall pay royalties and other sums of money due hereunder in United States dollars. All royalties for an accounting period computed on invoiced amounts in currencies other than United States dollars shall be converted directly into United States dollars, without intermediate conversions to another currency, at the Telegraphic Transfer Selling (TTS) rate quoted by [either the \_\_\_\_\_ edition of the Wall Street Journal or the Bank of \_\_\_\_\_ (city,country) \_\_\_\_\_] at the close of banking on the last business day of such accounting period. LICENSEE shall provide written confirmation of the quoted TTS rate directly to DVA with the royalty report.
- 6.3 An accounting period shall end on the last day of each March, June, September and December during the term of this Agreement. The first accounting period under this Agreement shall commence as of the Effective Date. Within sixty (60) days after the end of each such period, LICENSEE shall furnish to DVA the written reports containing the information specified in Section 6.4 hereof and shall pay to DVA all owed royalties accrued hereunder in favor of DVA to the end of each such period. LICENSEE shall bear and pay, for its activities and DVA's activities, all taxes which are required by its national government, including any political subdivision thereof, as the result of the existence or operation of this Agreement, except any necessary, appropriate and required national income tax imposed upon royalties or other payments by the national government of LICENSEE. LICENSEE may deduct or withhold such national income tax from said royalties or other payments, provided LICENSEE furnishes DVA with a tax certificate or other document evidencing payment of such income tax.
- 6.4 For each accounting period, LICENSEE shall submit a royalty report to DVA that contains the following information:

- 6.4.1 identification by **Type Number**, brand name or label name (if applicable), **Licensed Product** type (for example, laser disc player, CD-ROM player, CD-R Drive, etc.), **Net Selling Price**, and quantity of each **Licensed Product** type upon which royalty has accrued pursuant to this Agreement;
- 6.4.2 for each **Licensed Product** type, the name of the manufacturer, country of manufacture, use or **Transfer** of the **Licensed Products**;
- 6.4.3 identification of the royalty basis used for each **Licensed Product** type according to the provisions of Section 5.0, the amount of royalties due for each **Licensed Product** type, all information required to show how such amount has been calculated, and the aggregate amount of all royalties due;
- 6.4.4 identification of **Type Number**, brand name or label name (if applicable), and quantity of each **Licensed Product** type that is exempt from royalty according to Section 5.7;
- 6.4.5 the name and address of each Type I and Type II **Kit** customer who is to receive a royalty credit in accordance with Section 5.3, together with an indication of the **Type Number**, **Kit** type and quantity of **Kits** purchased and the amount of royalty credit to be received by each such customer; and
- 6.4.6 the name and address of each Type III and Type IV **Kit** customer from whom no further royalty is to be sought in accordance with Section 5.4, together with an indication of the **Type Number**, **Kit** type and quantity of **Kits** purchased by each such customer.

In the event no royalties are due, LICENSEE's report shall so state.

- 6.5 Within thirty (30) days after termination or the expiration of this Agreement pursuant to Section 10.0 hereof, LICENSEE shall (i) provide DVA with a royalty report containing the information required by Section 6.4 hereof for all **Licensed Products** on which royalty is payable hereunder but that was not previously reported and paid to DVA and (ii) pay all royalties on such products.
  - 6.5.1 For purposes of this post-termination report, royalties shall accrue when any **Licensed Product** is manufactured.
  - 6.5.2 For all **Licensed Products** manufactured and used or otherwise **Transferred** prior to the termination or expiration of this Agreement, LICENSEE shall

provide all the information required by Section 6.4 above and the royalty rates shall be determined as prescribed in Section 5.0 hereof.

- 6.5.3 For all **Licensed Products** manufactured prior to the termination or expiration of this Agreement but not used or otherwise **Transferred** prior to such termination or expiration, LICENSEE shall separately set forth such **Licensed Products** and also provide all applicable information required by Section 6.4 hereof. For purposes of royalty calculations for such **Licensed Products**, LICENSEE shall use the **Net Selling Price** for comparable **Licensed Products** from the last royalty report provided to DVA.
- 6.6 LICENSEE's royalty reports shall be certified by an officer of LICENSEE or by a designee of such officer to be correct to the best of LICENSEE's knowledge and information.
- 6.7 LICENSEE shall keep separate records in sufficient detail to permit the determination of royalties payable hereunder. At the request of DVA, LICENSEE shall permit independent auditors or technical consultants selected by DVA to examine during ordinary business hours once in each calendar year such records and other documents as may be necessary to verify or determine royalties paid or payable under this Agreement. The date of commencement of any such audit shall be determined by DVA. Such auditors or technical consultants shall be instructed to report to DVA only the amount of royalties due and payable. If no request for examination of such records for any particular accounting period has been made by DVA within five (5) years after the end of said period, the right to examine such records for said period, and the obligation to keep such records for said period, will terminate.
- 6.8 The fees and expenses of DVA's representatives performing any examination of records under Section 6.7 above shall be borne by DVA. However, if an error in royalties of more than three percent (3.0%) of the total royalties due is discovered for any period examined, then the total fees and expenses of these representatives shall be borne by LICENSEE.

**Section 7.0 Interest on Overdue Royalties and Other Payments**

- 7.1 LICENSEE shall be liable for interest at a rate of one and one-half percent (1.5%) per month compounded monthly on any overdue royalty or other payment required under this Agreement, commencing on the date such royalty or other payment becomes due. Interest on such overdue royalty or other payment shall continue to accrue, and the duty to pay such interest shall continue beyond any expiration or

termination of this Agreement (including, without limitation, any termination under Section 10.0). If such interest rate exceeds the maximum legal rate in the jurisdiction where a claim therefor is being asserted, the interest rate shall be reduced to such maximum legal rate.

**Section 8.0 License to DVA**

- 8.1 LICENSEE grants to DVA an irrevocable, non-exclusive, royalty-free license under LICENSEE's United States patents and patent applications to make, have made, use or otherwise **Transfer** products corresponding to the **Licensed Products** defined herein, and to make, have made, use or have used **Manufacturing Apparatus** in the manufacture of such products and to practice or have practiced **Manufacturing Processes** in the manufacture of such products. Said license to DVA shall be effective as of the date LICENSEE first pays royalties in accordance with Section 5.0 hereof. Said license shall be with respect to all of LICENSEE's United States patents and patent applications, including divisionals, reissues, continuation, continuations-in-part applications and reexaminations, under which patents and patent applications LICENSEE now has or hereafter, during the term of this Agreement, obtains the right to grant licenses to DVA of the scope granted herein.
- 8.2 The license as set forth in Section 8.1 shall not apply with respect to any patent of LICENSEE, if such grant would result in the payment of royalties by LICENSEE to third parties, except for payments to **Subsidiaries** and payments to third parties for inventions made by said third parties while employed by LICENSEE or any of its **Subsidiaries**.

**Section 9.0 Assignments**

- 9.1 LICENSEE shall not assign any of its rights or privileges hereunder, by operation of law or otherwise, without the prior written consent of DVA. In no event, however, shall the granted license be assigned or otherwise transferred to an unlicensed party or entity that, prior to the Effective Date, was engaged in production or sale of products which are licensed hereunder.

**Section 10.0 Term of Agreement; Termination**

- 10.1 Subject to Section 10.6 below, the term of this Agreement (and the license granted herein) will be from the Effective Date until the expiration of the last to expire of the **Licensed Patents**, unless previously terminated as hereinafter provided.
- 10.2 Beginning December 31, 2009, LICENSEE may terminate the license granted herein, but only in its entirety. LICENSEE may terminate the license granted herein only in its entirety before December 31, 2009 if, and only if, all patents licensed hereunder

have expired or have been adjudicated by a court of competent jurisdiction (including the exhaustion of all applicable appellate rights) to be invalid or unenforceable. LICENSEE must provide DVA with written notice of such termination, in accordance with Section 11.0 below in order for such termination to be effective. This Agreement will not be terminated by LICENSEE in any other manner, including without limitation, LICENSEE's withholding of royalties, verbal communications or written notices that do not comply with Section 11.0.

10.3 DVA may terminate this Agreement if:

10.3.1 LICENSEE fails to make any payment when due under this Agreement and such payment is not made within sixty (60) days of written notice from DVA;  
or

10.3.2 LICENSEE defaults under any term of this Agreement, other than a default involving the payment of money or a default under Section 10.4 hereof, which default is not cured within thirty (30) days of written notice from DVA; or

10.3.3 LICENSEE becomes insolvent or admits in writing its inability to pay its debts as they mature or makes an assignment for the benefit of creditors; or

10.3.4 LICENSEE files a petition under any foreign or U.S. bankruptcy law; or

10.3.5 LICENSEE fails to comply with Section 10.4 hereof.

If DVA elects not to exercise its right to terminate this Agreement under subsections 10.3.1 or 10.3.2, royalty obligations shall continue to accrue until LICENSEE terminates this Agreement as prescribed in Sections 10.0 and 11.0. The rights and remedies set forth in this section are not exclusive and are in addition to any other legal or equitable rights and remedies available to DVA.

10.4 Each party must inform the other of its intent to file a voluntary petition in bankruptcy or of another's intent to file an involuntary petition against such party in bankruptcy at least thirty days before the filing of such a petition. Notwithstanding any provision of this Agreement, either party may terminate this Agreement upon receipt of the notice described in the immediately preceding sentence. A party's failure to provide the notice required under this section shall be deemed a material, pre-petition incurable breach of this Agreement. Notwithstanding any provision of

this Agreement, any termination which results from a failure to give notice required under this Section 10.4 shall be effective as of the date of such breach.

- 10.5 If this Agreement or the license granted hereunder is terminated under this Section 10.0 or assigned under Section 9.0, the corresponding licenses granted to **Subsidiaries** under Section 3.4 will likewise terminate, but no notices need be given by DVA to such **Subsidiaries**.
- 10.6 Any expiration or termination of this Agreement under this Section 10.0, or any termination of a license to **Subsidiaries** under Section 3.4, shall not relieve LICENSEE of any obligation or liability accrued before such expiration or termination (including, without limitation, the obligations set forth in Sections 5.0, 6.0 and 7.0), or rescind or give rise to any right to rescind anything done by LICENSEE or any payments made or other consideration given to DVA before the time such expiration or termination becomes effective, and such expiration or termination shall not affect in any manner any rights of DVA arising under this Agreement or at law or equity before such expiration or termination. LICENSEE's obligations under Sections 6.5 and 7.0 will survive any expiration or termination of this Agreement.

**Section 11.0 Payments, Notices and Other Communications**

- 11.1 Any notice or other communication pursuant to this Agreement shall be made by registered airmail (except that registered or certified mail may be used where delivery is in the same country as mailing) or international courier and will be effective upon receipt by the addressee. Such notice or communication shall be mailed to:

11.1.1 In the case of DVA:

Dennis Fischel  
President  
DISCOVISION ASSOCIATES  
2265 East 220<sup>th</sup> Street  
Long Beach, California 90810  
United States of America

11.1.2 In the case of LICENSEE:

Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Company: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 \_\_\_\_\_

11.2 LICENSEE's royalty reports, as described in Section 6.0 of this Agreement, shall be mailed via air mail to:

DISCOVISION ASSOCIATES  
 ATTN: President  
 2265 East 220<sup>th</sup> Street  
 Long Beach, California 90810  
 United States of America

Fax No.: +1 (310) 952-7685

A summary of the report, which states the total royalty to be paid, shall be sent by facsimile to DVA on, or before, the mailing of the complete report.

11.3 All payments set forth in Section 5.0 of this Agreement shall be paid as follows:

11.3.1 For all international payments paid via FED wire transfer using SWIFT payment:

Sumitomo Mitsui Banking Corporation,  
 New York Branch SMBCUS33  
 for the Account of Sumitomo Mitsui Banking Corporation,  
 Los Angeles Branch SMBCUS66  
 for Beneficiary Customer: Discovision Associates  
Account Number: 046 133013 70;

11.3.2 for any other international payments paid via FED wire transfer **not** using SWIFT payment and all wire payments originating in the United States:

Sumitomo Mitsui Banking Corporation,  
Los Angeles Branch  
FED ABA Number: 122041594  
for Beneficiary Customer: Discovision Associates  
Account Number: 046 133013 70;

11.3.3 or by check payable to DVA and mailed via air mail directly to:

DISCOVISION ASSOCIATES  
ATTN: President  
2265 East 220<sup>th</sup> Street  
Long Beach, California 90810  
United States of America

**Section 12.0 Applicable Law; Venue; Jurisdiction**

12.1 This Agreement shall be construed, and the legal relations between the parties shall be determined, in accordance with the laws of the State of New York (without giving effect to the choice of law provisions thereof).

12.2 Any dispute that arises under or relates to this Agreement or the **Licensed Patents** shall, at DVA's election, be prosecuted exclusively in the appropriate court situated in the State of Delaware, United States of America. LICENSEE consents to the venue and jurisdiction of such court for purposes of any such dispute, and agrees (i) to be bound by such judgment and (ii) that a judgment of such court shall be enforceable in any jurisdiction in the world. LICENSEE consents to service of process by mail to the address identified in section 11.1.2 above, and waives any right to service by any other method.

**Section 13.0 Miscellaneous**

13.1 Nothing contained in this Agreement shall be construed as:

13.1.1 requiring the filing of any patent application, the securing of any patents or the maintenance of any patents; or

13.1.2 a warranty or representation by DVA as to the validity or scope of any **Licensed Patent**; or

13.1.3 a warranty or representation that the manufacture, use or other **Transfer** of any **Licensed Product** is free from infringement of any patents or other rights of third parties; or

- 13.1.4 an obligation upon DVA to furnish any manufacturing or technical information, or any information concerning other licensees; or
  - 13.1.5 an obligation upon DVA to determine the applicability of its patents to any of LICENSEE's products; or
  - 13.1.6 a license with respect to any act which would otherwise constitute inducement of infringement or contributory infringement under United States patent law or its equivalent under any law foreign to the United States; or
  - 13.1.7 conferring any right to use, in advertising, publicity, or otherwise, any name, trade name, trademark, service mark, symbol or any other identification or any contraction, abbreviation or simulation thereof; or
  - 13.1.8 an obligation to bring or prosecute actions or suits against third parties for infringement of any patent.
- 13.2 LICENSEE acknowledges that DVA, in its sole discretion, may abandon or let lapse any **Licensed Patent** or patent application and that such abandonment shall not result in any refund of royalties or credit to LICENSEE.
- 13.3 LICENSEE shall have the complete responsibility and shall use its best efforts to obtain all necessary approvals and validations of this Agreement, including all necessary approvals and validations for any products made, used or sold hereunder.
- 13.4 LICENSEE will sell and deliver to DVA, F.O.B. LICENSEE's shipping point, any **Licensed Product** ordered from LICENSEE by DVA and which is manufactured by or available for sale by LICENSEE. LICENSEE will also sell and deliver to DVA a copy of each manual (including, but not limited to, service, use and other technical manuals) relevant to a **Licensed Product** manufactured by or for LICENSEE, provided that, upon request by LICENSEE, DVA first delivers to LICENSEE a letter agreeing to hold such manual in confidence and to use it only for reverse engineering purposes. Any such sales will be at the same prices charged to LICENSEE's most favored customer.
- 13.5 The waiver by either party of a breach or default of any provision of this Agreement by the other party shall not be construed as a waiver of any succeeding breach of the same or any other provision, nor shall any delay or omission on the part of either

- party to exercise or avail itself of any right, power or privilege that it has or may have hereunder operate as a waiver of any right, power or privilege of such party.
- 13.6 Both parties intend to make this Agreement binding only to the extent that it may be lawfully done under existing applicable law. If any sentence, paragraph, clause or combination of the same is in violation of any applicable law, that portion which is in violation shall be severed from this Agreement and the remainder of this Agreement shall remain binding upon the parties hereto, except that no license is granted, expressly or by implication, estoppel or otherwise, unless royalties are paid under Section 5.0.
- 13.7 Each party represents and warrants that it has the full right and power to enter into this Agreement and that there are no outstanding agreements, assignments, or encumbrances to which the representing party is bound which may restrict, or prohibit entry into, or performance under, this Agreement. DVA further represents and warrants that it has the full power to grant the license and release set forth in Sections 3.0 and 4.0. Neither party makes any other representations or warranties, express or implied, other than the representations set forth in Section 3.4 regarding **Subsidiaries**.
- 13.8 The headings of the several sections are inserted for convenience of reference only and are not intended to affect the meaning or interpretation of this Agreement.
- 13.9 This Agreement may be executed in any number of copies, but all of such counterparts together shall constitute one and the same Agreement.
- 13.10 The parties acknowledge that this instrument sets forth the entire agreement and understanding of the parties hereto and supersedes all previous communications, representations, understandings and agreements, either oral or written, between the parties relating to the subject matter hereof, and shall not be subject to any change or modification except by the signing of a written instrument by or on behalf of both parties.
- 13.11 All references in this Agreement to the United States shall include its territories and possessions, the District of Columbia, and the Commonwealth of Puerto Rico.
- 13.12 Each party acknowledges that it has executed this Agreement with its full knowledge and understanding of its content, and with the consent and upon the advice of independent counsel of its own choice. This Agreement shall be construed as if

drafted by both LICENSEE and DVA and shall not be strictly construed against either party.

**Section 14.0 Confidentiality**

14.1 The parties and their agents agree that they will treat as confidential the contents of this Agreement, shall take all reasonable precautions to keep them confidential and shall not disclose to others the contents of this Agreement except (i) to wholly-owned related entities; (ii) as required by law; or (iii) in order to enforce their respective rights hereunder; provided, however, that this obligation of confidentiality does not preclude either party from divulging to others only the fact that the parties have reached an agreement on mutually acceptable terms and conditions, or from DVA including LICENSEE's name on a list of DVA licensees.

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be duly signed as of the dates written below, to be effective as of the Effective Date.

(COMPANY)

DISCOVISION ASSOCIATES

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

\_\_\_\_\_  
By: Dennis Fischel  
Title: President

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

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



**APPENDIX B**

**Subsidiaries** as of the Effective Date are:

Company: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Company: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Company: \_\_\_\_\_  
Address: \_\_\_\_\_  
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