



LICENSE AND CONSULTING SERVICES AGREEMENT

This License and Consulting Services Agreement (the "Agreement") is entered into this day by and among KinderJam, LLC (hereinafter called "Licensor" or the "Company"), the signer of this document (hereinafter called the "Licensee"), and El'Tanya P. Brown ("Consultant").

WHEREAS, Licensor is the owner of certain rights in the trade and service marks, names, logos and symbols generally used for a Music and Movement program for preschool aged children using contemporary, upbeat music to expose parents and children to techniques and pedagogy as noted in Exhibit A (hereinafter referred to as "KinderJam" or the "Licensed Trademark");

WHEREAS, Licensee desires to become engaged in the business of operation and management of a Music and Movement program for preschool aged children using contemporary, upbeat music to expose parents and children to techniques and pedagogy, and desires to obtain from Licensor a non-exclusive license to use the Licensed Trademark to advertise, identify, operate and offer services for a Music and Movement for preschool aged children using contemporary, upbeat music to expose parents and children to techniques and pedagogy according to the terms and conditions set forth herein;

WHEREAS, KinderJam, LLC, as Licensor and has certain special and unique skills, knowledge and know-how in the area of development, location, setting up, marketing and operation of a Music and Movement program for preschool aged children using contemporary, upbeat music to expose parents and children to techniques and pedagogy.

WHEREAS, Licensor desires to retain the services of the Consultant in its efforts to develop, locate, set up, market and operate a Music and Movement program for preschool aged children using contemporary, upbeat music to expose parents and children to techniques and pedagogy and Consultant desires to serve as a consultant and otherwise assist Licensee with the development, location, setting up, marketing and operation of a Music and Movement program for preschool aged children using contemporary, upbeat music to expose parents and children to techniques and pedagogy under the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the premises and mutual covenants contained therein, and for good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound, do hereby agree to as follows:

- Grant of License.
- Subject to the terms and conditions of this Agreement, Licensor hereby grants to Licensee a non-exclusive, non-transferable, limited-use license to use, advertise, identify and offer services, in any other commercially reasonable manner, a Music and Movement program for preschool aged children using contemporary, upbeat music to expose parents and children to techniques and pedagogy using the Licensed Trademark.
- Subject to the terms and conditions of this license granted under this Agreement, Licensee may, for the purpose of marketing and operating the program, affix the Licensed Trademark to or on items, packaging, labeling, advertising electronic splash screens, promotional and display materials used in connection with the advertising, identification and offering of services for a Music and Movement program for preschool aged children using contemporary, upbeat music to expose parents and children to techniques and pedagogy.
- Except as expressly set forth herein, the license granted to Licensee hereunder does not include the right to sublicense the license and Licensee shall not negotiate or enter into any license, sub-



license agreement or sub-contract or similar agreement with any third parties in respect of the Licensed Trademark, or any right or interest granted by the Licensor to the Licensee pursuant to this Agreement, and Licensee shall further refrain from directly or indirectly, on its own behalf, transferring, licensing, sub-licensing or sub-contracting the Licensed Trademark, or other right or interest granted by the Licensor to the Licensee to such third parties without the Licensor's prior written consent.

- Licensee shall not (i) assign, transfer, lease, rent or distribute the Licensed Trademark, (ii) modify or create any derivative of the Licensed Trademark or (iii) use the Licensed Trademark to create any trade or service mark or other mark that replicates or substantially resembles the Licensed Trademark.
- No license or right is intended to be or granted by the Licensor to the Licensee, either expressly or by implication, under any licenses or rights or any intellectual property rights owned or controlled by the Licensor, except as expressly set forth in this Agreement. Licensee's rights in and to the Licensed Trademark are solely as set forth in this Agreement and do not include any rights of ownership. Licensee agrees that, as between Licensee and Licensor, Licensor owns all right, title and interest (including without limitation all copyright, patent, trade secret and other intellectual property rights) to the Licensed Trademark.
- The license granted pursuant to this Agreement shall expire simultaneously with the Term of this Agreement.
- Licensee shall comply with all laws, rules and regulations directly or indirectly attributable to use and possession of the Licensed Trademark, and shall indemnify, defend and hold harmless Licensor for any failure of Licensee to do so.
- Licensor shall be responsible for trademark registration and maintenance with, but not limited to the United States Patent and Trademark Office, to ensure its validity and compliance with all laws, rules and regulations directly or indirectly attributable to use and possession of the Licensed Trademark and shall indemnify, defend and hold harmless Licensee for any failure of Licensor to do so.
- Scope of License.
- The license granted herein by Licensor to Licensee shall be strictly limited to, and be used for, marketing, operation and the running of the KinderJam program.
- Licensor shall not grant, assign and/or license to use, advertise, identify and sell, in any other commercially reasonable manner, a Music and Movement program for preschool aged children using contemporary, upbeat music to expose parents and children to techniques and pedagogy using the Licensed Trademark to any other person, company, during the term of this agreement without the mutual consent of both Licensor and Licensee.
- All rights in and to the Licensed Trademark, other than as specifically granted herein, are reserved to Licensor for its own use and benefits. Licensee acknowledges that it shall not acquire, and shall not claim any rights or whatsoever nature in the Licensed Trademark as a result of the use thereof, and that all use of the Licensed Trademark by Licensee shall inure to the benefit of Licensor.
- Licensee further acknowledges Licensor's ownership of and other rights to the Licensed Trademark, as well as the validity of all United States registrations thereof, and shall not at any time do or suffer to be done any act or thing which will in any way impair the rights of Licensor. Licensee shall not at any time during the duration of this Agreement register, assert ownership or use any trade or service mark, names, logos and symbols that is the same as or confusingly similar to the Licensed Trademark by themselves, or in combination with any other words, symbols or designs.



- Notwithstanding anything contained herein to the contrary, Licensee shall obtain a written authorization and consent for any and all particular methods and manner including, but not limited to, logos, labels, website listings, advertisement and marketing campaigns) in which Licensee may use the Licensed Trademark under this Agreement. The foregoing provision is a material term of this Agreement.
- Term.
- This Agreement shall become effective as of the date hereof and shall continue in effect for a period of 1 year, unless sooner terminated in accordance with Section 4 of this Agreement. Provided that Licensee shall be in full and abiding compliance with the terms and conditions of this Agreement, Licensee may request for an extension of this Agreement every 3 years for additional periods of 3 years each. Notwithstanding the foregoing, any extension of this Agreement is subject to the approval and consent of the Licensor which shall not be unreasonably withheld and/or delayed.
- In the event that Licensee desires to seek an extension of this Agreement, Licensee shall provide Licensor with a notice of intent seeking such extension no later than Thirty (30) days prior to the expiration of the Agreement or a renewal or extension thereof.
- Survival. The covenants, conditions, obligations, agreements, indemnities, representations, warranties, confidentiality and other provisions hereof which by their terms contemplate the continuing performance of a party hereto after the termination or expiration of this Agreement, and/or after the termination or expiration of any license granted hereunder, and/or after the termination or expiration of any services to be provided hereunder, shall survive the termination or expiration of this Agreement and/or the termination or expiration of the license granted hereunder, and/or the termination or expiration of this Agreement or of the license granted hereunder or of the services to be performed hereunder, and shall not operate so as to relieve any party of legal responsibility or liability for its breach hereof, whether in damages or otherwise, and whether occurring before or after any such termination or expiration has occurred.
- Early Termination
 - Licensor may terminate this Agreement and/or the license granted in Section 1 hereof (a) immediately upon written notice if Licensee, Licensor (i) institutes bankruptcy or similar proceedings; (ii) has bankruptcy similar proceedings instituted against it, and such proceedings are not stayed or dismissed within sixty (60) days; or (iii) makes an assignment of property or assets for the benefit of its creditors; (b) immediately upon Licensee's breach of Section 2 or Section 17 of this Agreement; (c) thirty (30) days after written notice to Licensee of Licensee's breach of any of its payment obligations, which breach is not remedied in such 30-day period; or (d) thirty (30) days after written notice to Licensee of Licensee's breach of any of its other obligations under this Agreement in any material respect, which breach is not remedied within such 30-day period. In addition, Licensor may pursue any legal remedies available to it pursuant to this Agreement in order to recover all amounts due and legally owing to it hereunder from Licensee.
 - Payment Default. Licensor, in addition to all other remedies available to it hereunder, shall have the right to terminate this Agreement if Licensee shall, for any reason, fail to continue to operate a KinderJam program in accordance with the terms and conditions of this Agreement.
 - Effect of Termination. Upon any expiration or termination of this Agreement, the license granted in this Agreement shall terminate and Licensee shall immediately cease use of the Licensed Trademark. Within thirty (30) days after expiration or termination, Licensee shall return to



Licensor, or destroy, as instructed by Licensor, all forms or materials containing or bearing the Licensed Trademark in Licensee's possession at the time of such expiration or termination, and Licensee shall certify to Licensor in writing that, to the best of its knowledge, the original and all copies of all such forms and materials have been destroyed or returned to Licensor.

- Intellectual Property Rights. Subject to the terms and conditions of this Agreement, if the license granted hereunder is terminated pursuant to this Section 4, then all rights licensed to Licensee pursuant to this Agreement shall immediately revert to and shall thereafter be owned solely by Licensor, free and clear of such license provisions.
- Consulting Services
- Appointment of Consultant. The Licensee hereby retains the El'Tanya Brown as a consultant to provide, and El'Tanya Brown hereby agrees to accept such retention and undertake and agree to provide to the Licensee, the services described below, subject to the terms and conditions of this Agreement.
- For as long as this Agreement is operative, the El'Tanya Brown shall provide consulting services to the Licensee in the areas of curriculum, audio and video selection, location choice, interior and exterior design, layout staff training, inventory purchase, goods pricing, staff management, marketing and general operation in connection with the operation of the KinderJam program and according to the terms and conditions of this Agreement.
- The Licensee hereby acknowledges that the consulting services to be provided by Consultant shall be rendered to the Licensee on a part-time basis, subject to the terms and conditions of this Agreement and shall in no event be in excess of an aggregate of Two (2) hours per month.
- Unless otherwise mutually agreed upon by the parties hereto and this Agreement so modified, Consultant shall provide the consulting services only at, and in connection with, the KinderJam program.

7. Payments to Licensor - In consideration for the license granted by Licensor, Licensee shall pay Licensor the license fees and/or royalties in the amounts and in accordance with the payment terms set forth below. Any amounts not paid within 30 days after they are due shall accrue interest at the lesser of 2.5% per month and the maximum rate allowed by law.

- Licensee hereby agrees to pay to Licensor an initial fee as follows:
- US \$995 (Nine Hundred Ninety Five US Dollars) Training and Startup Material Fee prior to the start of training; and
- Yearly Royalties Fees payable in One (1) sum at the time of purchase or Twelve (12) equal, monthly installments, beginning the 1st day of the calendar month, no later than 60 calendar days after the payment of the KinderJam Training and Startup Material Fee.

8. Taxes. Licensee is solely responsible for the payment of any taxes (including sales or use taxes, intangible taxes and property taxes and any taxes which may be owing in respect of the transactions enabled through use of the Licensed Trademark) resulting from Licensee's acceptance of this Agreement and use of the Licensed Trademark, exclusive of taxes based on Licensor's net income. Licensor reserves the right to have Licensee pay any such taxes as they fall due to Licensor for remittance to the appropriate authority. Licensee agrees to indemnify, defend and hold harmless Licensor from all claims and liability arising from Licensee's failure to report or pay any such taxes.

9. Records; Audit. Licensor reserves the right, upon reasonable prior notice to Licensee and during



Licensee's normal business hours, to audit Licensee's use of the Licensed Trademark and to inspect all of the accounting and sales books and records of Licensee relevant to any payments due under this Agreement to the calculation of amounts owed by Licensee under this Agreement, provided that (i) any such inspection and audit shall be conducted during regular business hours in such a manner as not to interfere with normal business activities; (ii) in no event shall audits be made more frequently than twice per calendar year; and (iii) in the event that any audit shall reveal an underpayment of more than Five Percent (5%) of the amounts due to Licensor for any payment period, Licensee will promptly pay such additional amounts due to Licensor and will reimburse Licensor for the reasonable cost of such audit. Licensor's right to review Licensee's books and records shall extend for a period of two (2) years after termination or expiration of this Agreement.

10. Indemnification.

(a). By Licensor.

- **Indemnity.** Licensor, at its own expense, shall indemnify, defend and hold harmless Licensee, its successors and assigns, and their officers, directors, employees, representatives and agents from and against any and all claims, actions, demands, liabilities, losses, damages, judgments, settlements, costs and expenses (including reasonable attorneys' fees) (any or all of the foregoing hereinafter referred to as "Losses") insofar as such Losses (or actions in respect thereof) arise out of or are based on a claim that use of the Licensed Trademark in accordance with this Agreement infringes any valid U.S. copyright or trademark.
- **Limitations.** Notwithstanding clause (i) above, Licensor shall have no obligation to Licensee with respect to any action brought by Licensor based on any third party unauthorized use of the Licensed Trademark.
- **Options.** If the Licensed Trademark becomes, or in the opinion of Licensor may become, the subject of a claim of infringement, Licensor may, at its option: (i) procure for Licensee the right to use such Licensed Trademark free of any liability; (ii) replace or modify such Licensed Trademark to make them non-infringing; or (iii) remove such Licensed Trademark, or any part thereof, from the scope of this Agreement. Licensor shall not be liable for any costs or expenses incurred by Licensee in connection with any potential claim of infringement without its prior written authorization.

THE FOREGOING STATES THE SOLE AND EXCLUSIVE LIABILITY OF LICENSOR FOR ANY INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS.

(b). By Licensee

Indemnity. Licensee, at its own expense, shall indemnify, defend and hold harmless Licensor, and its officers, directors, employees, representatives and agents from and against any and all Losses insofar as such Losses (or actions in respect thereof) arise out of or are based on (i) use of the Licensed Trademark (except to the extent such claims are subject to Licensor's obligation under Section 9(a)(i)), and shall pay all settlements entered into and damages awarded against Licensee (including reasonable attorneys' fees) to the extent based on such action.

(c). **Procedure.** All indemnification obligations under this Section 9 shall be subject to the following requirements: (i) the indemnified party shall provide the indemnifying party with prompt written notice of any claim; (ii) the indemnified party shall permit the indemnifying party to assume and control the defense of any action; (iii) the indemnified party shall provide assistance in connection with such defense as reasonably requested by Licensor at Licensor's expense; and (iv) neither party shall enter into any settlement or compromise of any claim without the other party's prior written consent. In addition, the indemnified party may, at its own expense, participate in its defense of any claim.



11. Proprietary and Confidential Information.

(a) In the course of implementing the terms of this Agreement, each party may or will be made aware of Confidential Information of the other party relating to the Products (i.e., including, but not limited to curriculums, planning, audio and visual licensing, etc.) , the Licensed Rights (i.e., including but not limited to trademarks and copyrights developed and utilized at each KinderJam location), the license and arrangement created under this Agreement, present or anticipated products, processes, know-how, customers, sales, business affairs, contractual arrangements, identities of employees, agents or representatives or similar information, certain proprietary and confidential or trade secret information including (but not limited to) inventions, curriculums, trade secrets, technical or scientific information, market research data, market plans, concepts, test results, and customer and sales information. During and after the Term, each party shall maintain in strict confidence and shall not disclose, except to its employees who must have access to it in order to exercise its rights and license under this Agreement, or as expressly permitted by any written agreement between Licensee and Licensor, or as required by law, any Confidential Information. Each party shall take every reasonable precaution to protect the confidentiality of the Confidential Information, consistent with the higher standard of care that such party exercises with respect to its own confidential information or the standard of care that an ordinarily prudent business would exercise to protect its own confidential information.

(b) The restrictions and obligations applicable to Licensee and Licensor and Consultant relating to proprietary confidential information and trade secrets shall not apply to any information which: (i) is known to Licensee, Licensor and /or Consultant prior to receipt thereof under this Agreement, as evidenced by written records; (ii) is disclosed to Licensee, Licensor and Consultant in good faith by a third party who is in lawful possession thereof and who has the right to make such disclosure; (iii) is or shall have become part of the public domain, by publication or otherwise, through no fault of Licensee, Licensor and/or Consultant; or (iv) is required by law or applicable court or administrative order to be disclosed. Except as otherwise provided herein, the disclosure of any such confidential information does not give any express or implied right or license to Licensee, nor does it give any express or implied right or license to such information for any purposes other than relating to the purposes of this Agreement.

12. Independent Contractors. It is intended and agreed by the parties hereto that the Licensee, is a licensee of the Company hereunder. Licensee shall not in any way act or hold itself out to the public as an agent of Licensor, and Licensee shall have no power to incur any obligations of any kind on behalf of Licensor. Similarly, the Consultants agree that they are independent contractors to Licensee, and that they will provide consulting services to Licensee as independent contractors, and shall not in any way act or hold themselves out as agents of Licensee, and Consultants shall have no power to incur any obligations of any kind on behalf of Licensee. The parties hereto do not intend to form a partnership or joint venture, and no such partnership or joint venture is formed by this Agreement.

13. Non-Solicitation. During the initial term of this Agreement and any extension thereof, and for twelve months thereafter, Licensee may not solicit any employee or representatives of the Licensor, without the prior written consent of the Licensor, which consent may be withheld or delayed in Licensor's sole discretion.

14. Purchase of Goodwill and Products. Upon the termination of this agreement and/or any extensions, should Licensor decide to own and operate the location specifically operated by Licensee pursuant to this agreement /or any other location established by Licensee pursuant to this agreement, Licensor agrees to compensate Licensee for additional goodwill established to Licensed Rights and any and all products, apparel and any other materials contained at said location only, which said amount shall be determined and negotiated in good faith at the date of said expiration.

15. Representations, Warranties and Covenants.



(a) El Brown Training Solutions represents warrants and covenants to the Licensee as follows:

- This Agreement has been duly and validly executed and delivered by the Company and constitutes the legal, valid and binding obligation of the Company, enforceable against it in accordance with its terms.
- The execution, delivery and performance by the Company of this Agreement and the consummation by it of the transaction contemplated hereby will not, with or without the giving of notice, the lapse of time or both, conflict with or violate (a) any provision of law, rule or regulation to which the Company is subject, (b) any order, judgment or decree applicable to the Company or binding upon any of Company's assets or properties, or (c) any agreement or other instrument applicable to the Company or binding upon any of Company's assets or properties.

(b) The Licensee represents and warrants to the Company as follows:

- This Agreement has been duly and validly executed and delivered by the Licensee and constitutes the legal, valid and binding obligation of the Licensee, enforceable against it in accordance with its terms.
- The execution, delivery and performance by the Licensee of this Agreement and the consummation by it of the transactions contemplated hereby will not, with or without the giving of notice, the lapse of time or both, conflict with or violate (a) any provision of law, rule or regulation to which the Licensee is subject, (b) any order, judgment or decree applicable to the Licensee or binding upon its assets or properties, (c) any provision of the organizational or operating documents of the Licensee, or (d) any agreement or other instrument applicable to the Licensee or binding upon its assets or properties.

16. Non-Competition.

- The Licensee hereby acknowledges that the relationship between the Company and its employees and its customers, clients and business associates are of significant value to the Company, and that the provisions of this Section 15 are necessary to safeguard the value of the Company's customer and business relationships by protecting the Company against Licensee's competitive use of customer and business relationships which the Company has and/or may develop. Accordingly, Licensee covenants and agrees that it shall not, at any time during the Term (including any extensions or renewals) and for a period of three (3) years thereafter, directly or indirectly engage in, or have any interest (except for ownership of up to 5% of the stock in a publicly owned company) in any person, firm, corporation or business (whether as an employee, officer, director, agent, security holder, joint venturer, partner, creditor, consultant or otherwise) that operates or manages a Music and Movement program for preschool aged children.

(b) The Licensee further covenants (in addition to covenants contained in Section 13 hereof) and agrees that at no time will it, directly or indirectly, interfere with, disrupt, or attempt to disrupt, the relationship, contractual or otherwise, between the Company and any customer, client, advertiser, author, distributor, creditor, bank, supplier, lessor, lessee, employee or independent contractor of the Company.

17. Instructor and Operations Requirements.

(a) Each KinderJam instructor must wear a KinderJam uniform whenever conducting a KinderJam class or promoting the KinderJam program.

- All KinderJam instructors must follow the KinderJam curriculum and use approved KinderJam manipulatives and instruments.
- All KinderJam instructors must complete the KinderJam on-line training course to become a licensed KinderJam instructor.



- Licensee and KinderJam instructors must obtain at least \$500,000.00 general liability insurance to conduct classes.
- KinderJam instructors will be listed on a directory located on the KinderJam website.
- Pursuant to Section 2(e), KinderJam instructors must use approved KinderJam marketing material.
- Each KinderJam instructor class must be advertised as “KinderJam with Ms./Mr. First Name”. (Ex. Sarah Smith’s KinderJam is “KinderJam with Ms. Sarah”)
- KinderJam Instructor must adhere to the business policies and curriculum as written in the KinderJam Training and Policy manual found on kinderjam.org and kinderjamcentral.com.

18. Relationship of the Parties. Nothing in this Agreement is to be construed as creating an agency, partnership, or joint venture relationship between Licensor and Licensee.

19. Entire Agreement. This Agreement including the Exhibits contains the entire understanding among the parties hereto with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements and understandings, inducements or conditions, express or implied, oral or written, except as herein contained. The express terms hereof control and supersede any course of performance and/or usage of the trade inconsistent with any of the terms hereof. This Agreement may not be modified or amended other than by an agreement in writing.

20. Preparation of Agreement. Each party to this Agreement acknowledges that: (i) the party had the advice of, legal counsel separate and independent of legal counsel for any other party hereto; (ii) the terms of the transactions contemplated by this Agreement are fair and reasonable to such party; and (iii) such party has voluntarily entered into the transactions contemplated by this Agreement without duress or coercion. Each party further acknowledges that such party was not represented by the legal counsel of any other party hereto in connection with the transactions contemplated by this Agreement, nor was he or it under any belief or understanding that such legal counsel was representing his or its interests. Each party agrees that no conflict, omission or ambiguity in this Agreement, or the interpretation thereof, shall be presumed, implied or otherwise construed against any other party to this Agreement on the basis that such party was responsible for drafting this Agreement.

21. Cessation of Corporate Existence. Notwithstanding any other provision of this Agreement, in the event of the reorganization, merger or consolidation of the Licensee with one or more corporations as a result of which the Licensee is not the surviving corporation, or the sale of substantially all the assets of the Licensee or of more than fifty percent (50%) of the then outstanding stock of the Licensee to another corporation or other entity in a single transaction, this Agreement and the License granted hereunder shall terminate immediately forthwith.

22. Amendment and Waiver. Neither the failure nor any delay on the part of any party hereto to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege, nor shall any waiver of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver shall be effective unless it is in writing and is signed by the party asserted to have granted such waiver.

23. Notices. All notices, requests, consents and other communications which are required or permitted hereunder shall be in writing, and shall be delivered by registered U.S. mail, postage prepaid (effective three (3) days after mailing) or sent by facsimile or electronic mail, with a confirmation copy simultaneously sent by U.S. mail, postage prepaid (effective upon transmission), at the addresses set forth on the signature page. Notice of change of address shall be given in the same manner as other



communications.

If to Licensor or Consultants:

KinderJam, LLC
1934 Old Gallows Road Suite 350
Tysons Corner, VA
Attn: El'Tanya Brown

with a copy to:

J. Maples & Associates, PLLC
244 6th Avenue West
Newark, NJ
Attn: Rashida Maples, Esq.

24. **Governing Law.** This Agreement shall be governed by, construed, interpreted and the rights of the parties determined in accordance with the laws of the State of Florida, without regard to conflict of law principles. Subject to the arbitration requirements of Section 10 (i) below, each party hereto hereby irrevocably submits to the jurisdiction of any Florida State or United States Federal Court sitting in Florida over any action or proceeding arising out of this Agreement, and each party hereby irrevocably agrees that all claims in respect of such action or proceeding may be held and determined in such Florida State or Federal Court. Each party hereto hereby waives any right to a jury trial in any legal proceeding related in any way to this Agreement. Each party hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in any other jurisdiction by suit on the judgment or in any other manner provided by law. Each party hereto hereby further waives, to the fullest extent permitted by law, any objection which he or it may now or hereafter have to the laying of venue in such State and any objection to any action or proceeding in such State on the basis of an inconvenient forum. Nothing herein shall affect the right of any party to bring any action or proceeding against any other party hereto or his property in the courts of any other jurisdiction.

25. **Arbitration.** Except for requests for injunctive relief, specific performance or enforcement of the award of an arbitrator, any and all disputes, controversies and claims arising out of or relating to this Agreement, or with respect to the construction of this Agreement, or concerning the respective rights or obligations hereunder of the parties hereto and their respective permitted successors and assigns shall be determined by arbitration by a single arbitrator, to be mutually agreed upon by the parties; provided, however, that if the parties cannot mutually agree on a single arbitrator within 10 days after receipt by the respondent of the notice of arbitration, the arbitrator shall be selected by the American Arbitration Association ("AAA"). The arbitration shall be conducted in Florida, Florida in accordance with and pursuant to the then existing rules of the AAA. The arbitration award shall be final and binding upon the parties and judgment thereon may be entered in any court of the State of Florida and federal courts in said state, the jurisdiction of which courts is hereby consented to by the parties for such purposes. The service of any notice, process, motion or other documents in connection with an arbitration award hereunder may be effectuated either by personal service upon a party or by certified or registered mail. The arbitrator shall not have the right to modify or amend any of the terms or provisions of this Agreement.

26. **Facsimiles.** Any facsimile signature of any party hereto or to any other agreement executed in connection herewith shall constitute a legal, valid and binding execution hereof by such party.

27. **Provisions Separable.** The provisions of this Agreement are independent of and separable from each other, and no provision shall be affected or rendered invalid or unenforceable by virtue of the fact that for any reason any other or others of them may be invalid or unenforceable in whole or in part.

28. **No Amendment.** No amendment to, or waiver of, any provision of this Agreement shall be effective unless in writing and signed by both parties. The waiver by any party of any breach or default shall not constitute a waiver of any different or subsequent breach or default.



29. Successors and Assigns. This Agreement and the licenses granted hereunder may not be assigned by Licensee, by operation of law or otherwise, without the prior written consent of Licensor, except that Licensor shall be entitled to assign this Agreement, or any of its rights hereunder, without Licensee's prior consent in connection with any merger or sale of all or all or substantially all of Licensor's assets. This Agreement shall be binding upon, and inure to the benefit of, the permitted successors and assigns of each party.

30. Force Majeure. Nonperformance by Licensor shall be excused to the extent that performance is rendered impossible by strike, acts of God, governmental acts or restrictions, failure of suppliers or any other reason where failure to perform is beyond the control of Licensor.

31. Severability. Each provision of this Agreement shall be considered severable and if, for any reason, any provision hereof is determined to be invalid and contrary to, or in conflict with, any existing or future law or regulation by any court or agency having valid jurisdiction, such provision shall be given the maximum permissible effect, and such invalidity or illegality shall not impair the operation or affect the remaining provisions of this Agreement, and the latter shall continue to be given full force and effect and bind the parties hereto and such invalid provisions shall be deemed not to be a part of this Agreement.

32. Headings. The section headings contained in this Agreement are included for convenience only, and shall not limit or otherwise affect the terms of this Agreement.

33. Counterparts. This Agreement may be executed in counterparts, both of which taken together shall constitute a single instrument.

34. Agreement Binding. Each party acknowledges that it has read this Agreement, understands its terms, and agrees to be bound by its terms and conditions

35. Rules of Construction. Rules of interpretation of ambiguities against the draft man, and other fictional legal theories or rules of contract construction shall not be applied to this Agreement, notwithstanding anything contained herein or in any applicable law.

36. Remedies. The remedies provided herein are cumulative, may be exercised successively or concurrently, and are exclusive of any other remedies provided by law.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and effective as of the date set forth on electronic signature.