

## MERCHANDISE LICENSE AGREEMENT

This LICENSE AGREEMENT ("**Agreement**") is made and entered into as of January 1, 2018 (the "**Effective Date**"), by and between MATTEL EUROPA B.V., a Netherlands corporation with its principal place of business at Gondel 1, 1186 MJ Amstelveen, The Netherlands ("**Licensor**"), its licensor, and Mattel, Inc. ("**Mattel**") (collectively, the "**Mattel Parties**" and each a "**Mattel Party**"), and SNEZHNIY BARS DISTRIBUTION LTD., a company with its principal place of business at 80/16 Leningradskiy Avenue, Premises 1, 4th Floor, Room 56, Moscow, 125315, Russian Federation ("**Licensee**"). No rights of any kind in or to the Property (defined below) shall vest in Licensee and Licensor shall have no obligation to Licensee hereunder, unless and until this Agreement has been executed by an authorized signatory of Licensee and accepted and executed by an officer of Licensor; and the Advance set forth in Part C of the Deal Terms has been paid in full. Subject to the immediately preceding sentence, this Agreement consists of the following (all of which are incorporated by this reference and made a part of this Agreement): (1) these Deal Terms, and all Exhibits attached hereto, (2) the Standard Terms and Conditions, and (3) previously executed Confidentiality Agreement between the parties.

### DEAL TERMS

A. **PROPERTY.** The "**Property**" shall mean and include only the following copyright objects:

(a) **ENCHANTIMALS** and associated names, logos, designs, images, copyrights, artwork, characters, concepts, titles, and other creative elements, only as shown in Licensor's then current Style Guide developed for such Property, or other material owned and/or controlled by Licensor and furnished by Licensor for use with such Property, and approved in writing by Licensor in accordance with the terms of this Agreement, but specifically excluding any entertainment property based on the ENCHANTIMALS brand; and

For the avoidance of doubt, the "**Property**" shall not include: (i) any and all trademarks, logos, images, copyrights and other proprietary or personal rights that are: (a) not owned and/or controlled by Licensor; or (b) associated with the name, voice and/or likenesses of any performer and any music featured in any Barbie Entertainment Property; and (ii) any goods or services created by or for Licensor that are based on, contain, or otherwise related to the Property listed above in this Section A.

B. **PRODUCTS.** The "**Products**" are the types of goods or services, to be created by or for Licensee hereunder based upon the Property, together with all corresponding components, parts, subparts, accessories, containers, and packaging materials as set forth in Exhibit 1 attached hereto and incorporated herein by this reference.

C. **ADVANCE.** The amount Licensee shall pay to Licensor as an advance against Royalties (the "**Advance**") pursuant to Section 3.1 of the Standard Terms and Conditions is . Full and timely payment of the Advance by Licensee is a condition precedent to Licensee's right to exercise any rights hereunder. Said Advance shall be payable immediately upon Licensee's receipt of an invoice from Licensor.

D. **GUARANTEES.** The minimum Royalties that Licensee is obligated to pay to Licensor (the "**Guarantees**") are set forth below:

With respect to the **Enchantimals** Property, the Guarantees are as set forth below:

<u>Period or Year</u>	<u>Period or Year</u>	<u>Countr(ies)</u>	<u>Guarantee</u>	<u>Due Date</u>
<u>Beginning</u>	<u>Ending</u>			
January 1, 2018	December 31, 2019	Russia		Advance
January 1, 2018	December 31, 2019	Russia		April 1, 2018
January 1, 2018	December 31, 2019	Russia		July 1, 2018
January 1, 2018	December 31, 2019	Russia		October 1, 2019
January 1, 2018	December 31, 2019	Russia		January 1, 2019

**TOTAL GUARANTEES:**

The Royalties relating to one Property, one period ("Period") or one calendar year ("Year"), country or group of countries may not be credited towards the satisfaction of any Guarantee for any other Property, Period, Year, country or group of countries.

- E. **ROYALTY RATES.** The royalty rates from which royalties are calculated pursuant to Section 3 of the Standard Terms and Conditions (the "**Royalty Rates**") are as follows:

The "**Standard Royalty Rate**" is % of Net Sales (as defined in the Standard Terms and Conditions) for all Sales of Products where Licensee bears all costs associated with the transportation, shipping, and/or importation of such Products.

The "**F.O.B. Royalty Rate**" is % of Net Sales (as defined in the Standard Terms and Conditions) for all Sales of Products by Licensee to third parties where Licensee does not bear all costs associated with the transportation, shipping, and/or importation of such Products.

The "**Distributor Royalty Rate**" is % of Net Sales (as defined in the Standard Terms and Conditions) for all Sales of Product by Licensee to Distributors (regardless of who bears the costs associated with the transportation, shipping, and/or importation of such Products).

If no F.O.B. Royalty Rate or no-Distributor Royalty Rate is set forth above (the rate for sales made to any distributor that does not sell directly to the end-consumer or that sells to retail stores or outlets, or F.O.B.), such rate(s) shall be equal to the Standard Royalty Rate plus

- F. **REPORTS AND PAYMENTS.**

(1) All reports should be sent to Licensor at the following addresses:

By E-mail: [mbepemea.finance@mattel.com](mailto:mbepemea.finance@mattel.com)

By FAX: +31-20-503-0415, F.A.O. Licensing Finance

By Courier: Mattel Europa B.V., F.A.O. Licensing Finance, Godel 1, 1186 MJ Amstelveen,  
THE NETHERLANDS

By Mail: Mattel Europa B.V., F.A.O. Licensing Finance, P.O. Box 576, 1180 AN Amstelveen  
THE NETHERLANDS

(2) All payments will be made by wire transfer to Licensor's account set forth below, or as directed, in writing, by Licensor from time to time.

- G. **NON-EXCLUSIVE.** Notwithstanding anything to the contrary herein, any and all licenses and rights granted to Licensee in this Agreement are non-exclusive.

- H. **TERRITORY.** Subject to Section 1.2 of the Standard Terms and Conditions, the "**Territory**" for this license shall consist of the following countries:

➤ Russia

- I. **CHANNEL(S) OF DISTRIBUTION.** Subject to Section 1.2 of the Standard Terms and Conditions, in light of the Licensee's distribution capabilities as of the Effective Date, this license is limited to a license to sell through the following checked **Channel(s) of Distribution**:



	Mass Market (including but not limited to Hypermarket, Cash and Carry, Toy Specialty Stores, Department Stores, Stationery, Gift Stores, Specialty Stores,
<u>X</u>	Supermarkets)
<u>X</u>	Duty Free *
<u>X</u>	The Internet

- J. **TERM.** The term of this Agreement (the "**Term**") will commence on the Effective Date and expire on December 31, 2019; provided all conditions set forth herein are met, unless sooner terminated as provided for in the Standard Terms and Conditions. Notwithstanding, all Product development and any other performance under this Agreement also shall be covered under the Term of the Agreement even if such Product development or other performance occurs prior to the Effective Date of this Agreement. There shall be no automatic extension or renewal of this Agreement. Further, Licensor shall not be required to give notice to Licensee of Licensor's intention not to extend the Term of this Agreement. No oral promise or other action (including delivery of Style Guides) shall be deemed to renew or extend the Term of this Agreement. Any product development that may be undertaken by Licensee as a result of its receipt of such new Style Guide shall be at Licensee's own risk. In case any copyright objects included into the Property are registered as trademarks, the parties undertake to conclude and register a separate trademark license agreement in relation to such trademark registrations and which shall supersede and replace this Agreement in relation to such copyright objects.
- K. **MARKETING DATES.** The "**Marketing Dates**" that Licensee must comply with for each country or countries of the Territory are as follows:
- RUSSIA
- JANUARY 1, 2018
- L. **MINIMUM ADVERTISING & MARKETING EXPENDITURES.** The minimum advertising expenditures that Licensee is required to make each Period or Year (the "**Minimum Advertising Expenditures**") are as follows:
- % of the previous Year's Total Net Sales or the Total Net Sales required to achieve the Guarantee for such Year, whichever is greater, for Advertising on the premises of retailers through the use of, including among other things, departmental signage, end cap displays, custom merchandising, custom corrugates, and other in-store promotions (collectively, "**Retail Specific Promotions**"); and for Advertising through the use of, including among other things, print, radio, public relations, television, the Internet, or other media designated by Licensor from time to time in its sole discretion (collectively, "**Media**"). All Minimum Advertising Expenditures must be pre-approved in writing by Licensor. Notwithstanding anything in this Agreement to the contrary, any funds spent by Licensee on Licensee-controlled channels of Advertising (including but not limited to a Licensee-owned web site, television channel, radio station, or publication) may not be applied towards the satisfaction of any Minimum Advertising Expenditures.
- "**Total Net Sales**" means the aggregate amount of Net Sales for all Products in all Sales Classes.
- M. **BRAND DEVELOPMENT INITIATIVES.** N/A.
- N. **APPROVALS:**
- (1) **Product:** As more fully set forth in Section 5 of the Standard Terms and Conditions, Licensee shall submit Product materials at all Stages of Development as directed by Licensor in writing.
  - (2) **Advertising:** As more fully set forth in Section 5 of the Standard Terms and Conditions, Licensee shall submit all Advertising Materials as directed by Licensor in writing.
  - (3) **Publicity and Announcements.** No announcements, press releases, or publicity about the existence or any terms of this Agreement, the relationship of the parties hereto, or the Products shall be made by or on the behalf of Licensee without the prior written approval of Licensor in each instance.

- O. **PROPRIETARY NOTICES.** Licensee shall cause to be imprinted, irremovably and legibly on Advertising and on every Product Manufactured, distributed, or sold under this Agreement, the copyright notices, trademark notices, and other proprietary legends and notices ("**Proprietary Notices**") set forth below. The Proprietary Notices shall be placed on all articles of each Product (provided only that Proprietary Notices need not be placed on those containers and packaging materials that do not use any of the Property), and on each Advertisement, but only in the locations, sizes, typefaces, and colors approved by the Licensor.

[Name of each Property appearing on the Product] and associated trademarks are owned by Mattel, Inc. and used under license from Mattel Europa, B.V.  
© 20\_\_ [year of first publication by Licensee]  
Mattel, Inc.

- P. **LEGAL NOTICES.** Except as expressly set forth herein to the contrary, any requests, notices, and other communications permitted or required to be given hereunder shall be in writing and be deemed validly given (a) upon delivery, if personally delivered with service fees prepaid, (b) upon delivery, if delivered, with fees prepaid, by a reputable overnight courier, (c) three (3) business days following deposit in the United States mail, first class, postage prepaid, and (d) the following business day, if transmitted by facsimile or e-mail (with confirming copy sent simultaneously by another method permitted above). Either party, by means of a notice properly given hereunder, may change any of its addresses for purposes of receiving future notices hereunder. The addresses for notice for Licensor and Licensee are as follows:

If to Licensor: Mattel Europa, B.V.  
c/o Mattel, Inc.  
333 Continental Boulevard  
El Segundo, CA 90245-5012  
U.S.A.  
Attn: Legal Department  
Fax: (310) 252-3861

If to Licensee:  
Snezhniy Bars Distribution Ltd.  
80/16 Leningradskiy Avenue, Premises 1, 4th Floor  
Room 56, Moscow, 125315, Russian Federation  
Attn: Tatiana Krutova  
Email: kttatiana@mail.ru

- Q. **ADDITIONAL DEAL TERMS.** The following additional terms and conditions are also applicable under this Agreement as more fully set forth in the applicable sections of the Standard Terms and Conditions:

1. Requirement to Obtain Insurance. As more fully set forth in Section 12.1 of the Standard Terms and Conditions, Licensee shall carry General Liability and Products Liability Insurance in the following amount:

2. Failure To Pay On Another Agreement. As more fully set forth in Section 15.8 of the License Agreement, Licensor shall have the right to unilaterally and immediately terminate the Agreement described herein, as of right and without notice, if all monies owed under any other agreements currently in place between Licensee and Licensor are not paid in accordance with such agreements. Such monies include but are not limited to royalties, minimum guarantees and invoices.

3. Advertising Design, Format and Direction. With respect to any advertising campaign for the Products, Licensor's creative format and direction shall be used unless otherwise authorized in writing by Licensor. In addition, Licensee shall pay to Licensor Licensor's normal and customary fee associated with said creative format and direction.

4. Refresh (Redesign). Licensee shall "refresh" (redesign) the product line one time per Year of the Term.

5. English/Russian License Agreement: In the event of any inconsistencies between this Agreement and any other Agreements between the parties, the Terms of this Agreement shall control.

- R. **DISCLAIMER.** Licensor expressly disclaims the making of, and Licensee acknowledges that it has not received or relied, on any representations, written or oral, about the potential success or profitability of this Agreement.



- S. **DEFINITIONS.** Capitalized terms used but not defined in these Deal Terms are defined in the Standard Terms and Conditions.
- T. **STANDARD TERMS AND CONDITIONS.** The parties agree that except as expressly modified herein in these Deal Terms, the attached Standard Terms and Conditions, and Exhibits shall be deemed part of this Agreement. In the event of inconsistency between these Deal Terms and the Standard Terms and Conditions, these Deal Terms shall govern.
- U. **PRIMARY OBJECT.** The primary object of this Agreement is the license of Property for the purpose of merchandising under the terms and conditions herein.

By signing in the spaces provided below, Licensors and Licensee agree to be bound by all of the terms and conditions contained in this Agreement. This Agreement shall be effective as of the Effective Date set forth above.


**LICENSOR**

**MATTEL EUROPA B.V.**

By:  **Director Mattel Europa B.V.**  
Name: Rene van den Polder  
Title: 1186MJ Amstelveen  
Date: The Netherlands  
Date Signed: 27/1/2018  
Signature: 

**LICENSEE**

**SNEZHNIY BARS DISTRIBUTION LTD.**

By:   
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date Signed: 27/1/2018

Mattel Law Department	
Initials	Date
EB	2/1/2018

## STANDARD TERMS AND CONDITIONS

### 1. RIGHTS GRANTED TO LICENSEE AND LIMITATIONS.

**1.1 License Grant.** In accordance with the terms set forth herein, Licensor hereby grants to Licensee, and Licensee hereby accepts, for the Term of this Agreement a personal, non-transferable, non-assignable, non-exclusive, limited license and right to: (a) develop, or have developed by one or more third parties, each a **"Contributor"**, the Products; (b) manufacture and assemble (collectively, **"Manufacture"**) or have Manufactured by one or more manufacturers or sub-manufacturers (collectively, **"Manufacturer"**) the Products; (c) advertise and promote Products in the Territory (collectively, **"Advertising"**); and (d) put all Products on the market in the Territory with a view to offer to sell, and distribute Products to third parties such as retailers, wholesalers, distributors and sub-distributors solely for re-sale and re-distribution by such Distributors (each, a **"Distributor"**) in accordance with the terms of this Agreement. Distributors may not sell or distribute Products to third parties for re-sale and re-distribution in the European Economic Area unless and until the specific Products which are the subject of such re-sale or re-distribution agreement have first been delivered to the Territory. Contributors, Manufacturers and Distributors shall be collectively known as **"Contractors."**

**1.2 Sales Outside of Territory.** Licensee shall not Advertise or otherwise actively approach customers for the Product by, for instance: the sending of direct e-mail, unsolicited e-mails; or visits including participation in Trade Fairs where Licensee would specifically target customer groups or customers or territory/ies outside the Territory; or advertising in media, on the internet or other promotions including those in Trade Fairs, which would not be of a general nature but would be targeted to a specific customer group or customers or territory/ies outside the Territory; or using territory based banners on third party websites; or paying a search engine or a search engine optimizer to have its own website being found more easily in a particular territory or by a particular customer group. Licensee shall not establish any branch or agency or maintain any distribution depot for the Product, outside the Channels of Distribution or in any country which is outside the Territory where intellectual property rights exist in respect of the Product, whether in the name of Licensor or any registered user or other licensee of Licensor. Notwithstanding the foregoing, nothing in this Agreement shall be construed as preventing Licensee from accepting bona fide unsolicited orders for the Product from customers or potential customers outside the Channels of Distribution, but within the European Economic Area, or outside the Territory, but within the European Economic Area, for Sale within the European Economic Area. Licensor reserves the right to impose restrictions on active and passive sales from time to time where such restrictions may be objectively necessary for reasons such as safety or health, or in order to protect legitimate economic expectations, for example, the first to sell a new brand or the first to sell an existing brand or a new market within the European Economic Area, in order to recoup the costs of its investments within the first two years of the launch of such Products. Licensor and Licensee agree that the rights granted herein and the restrictions contained herein shall be subject to the laws of the Territory and the Treaty for the Functioning of the European Union (if applicable) and all rules, regulations, directives, laws and legislation (if applicable) associated therewith as the same may be in force from time to time. Licensee shall also not knowingly sell Product to third parties who intend or are likely to resell them outside the European Economic Area, and will take all necessary precautions against such resale to the extent permitted by law.

**1.3 No Rights to Other Marks or Mattel Logo; General Reservation of Rights.** Licensee shall not have the right to use and shall not use any of the Property or any other Licensor-owned or Licensor-controlled trademarks or properties on any business sign, business card, letterhead, or stationery, as part of the name or logo for Licensee's business or any division thereof, or as part of a URL or other Internet address. Licensee is not granted any license or right, either express or implied, to use or otherwise exploit the "Mattel" name or logo (in any form) in any manner or for any purpose whatsoever other than as set forth in the Proprietary Notices as required herein. All licenses and rights not expressly granted to Licensee herein are reserved exclusively to Licensor.

**1.4 No Product Placement, Tie-In or Bundling Arrangements.** Licensee shall not enter into any agreement or arrangement with any third party, regarding (a) the use or placement of the Property or any Product with or in any theatrical program, television program, motion picture, audiovisual program, live stage or arena show or similar entertainment event or production (collectively, **"Entertainment Productions"**), (b) commercial tie-in of any Product with any other good or service, (c) the joint marketing or advertising of any Product together with any other good or service, (d) the sale or distribution of any Product together with any other good or service in a single package or at a single price, or (e) the use of any Product as a premium, promotion, giveaway, or in any other fashion where the primary intent is to promote a third party or any other good or service.



2. **DISTRIBUTION OF PRODUCTS TO LICENSOR.** Licensee shall sell Products to Licensor, exclusive of the required free Product samples specified in Section 3.4 herein, at a price not to exceed Licensee's best wholesale price to customers, provided that the quantities and all other conditions of Licensor's orders are identical. Licensee shall pay the applicable Royalty Rate on such Sales.

3. **FINANCIAL OBLIGATIONS OF LICENSEE.**

3.1 **Advance.** Immediately upon receipt of an invoice issued by Licensor, Licensee shall pay to Licensor the non-refundable Advance as set forth in Part C of the Deal Terms. Licensee may credit or apply the Advance against Royalties payable under Section 3.3, as they become due, until Licensee has recouped the full amount of the Advance (without interest), provided that Licensee may not credit and apply any of the Advance against Royalties for Sales of Products during any Sell-Off Period.

3.2 **Guarantees.** Each Guarantee set forth in Part D of the Deal Terms is the minimum guaranteed aggregate amount of Royalties payable to Licensor with respect to the applicable Product, Property, Territory and the applicable Period or Year as applicable. Licensee may credit or apply the Advance and Royalties earned under Section 3.3, as they become due, until Licensee has recouped the full amount of the Guarantee (without interest), provided that Licensee may not credit and apply against the Guarantee any Royalties for Sales of Products during any Sell-Off Period nor any Royalties for Sales made outside the Channels of Distribution / Territory in contravention of Section 1.2 of this Agreement.

3.3 **Royalties; Definition of "Sales".** In consideration of the licenses and rights granted to Licensee herein, Licensee hereby agrees to pay Licensor royalties ("**Royalties**") on all Sales of Products by Licensee during the Term and during any Sell-Off Period. For purposes of this Agreement, "**Sales**" shall occur for particular Products (or, a Product is deemed "**Sold**") when the first of the following three (3) events occurs in connection with any exploitation of the Products: (a) an invoice for such Products is issued to the purchaser; (b) such Products are shipped to the purchaser, or (c) Licensee receives payment for such Products.

3.3.1 **Royalty Calculations.** For purposes of this Agreement, all Product Sales to which a particular Royalty Rate applies (i.e., all Product Sales to which the Standard Royalty Rate, FOB Royalty Rate, Distributor Royalty Rate and Direct to Consumer Royalty Rate applies) comprise a particular "**Sales Class**." Royalties for each Quarter shall be determined following the end of such Quarter by multiplying the Royalty Rate applicable to each Sales Class by the amount of Net Sales applicable to such Sales Class during such Quarter and adding together the results of each such calculation.

3.3.2 **Net Sales, Net Retail Sales and Permitted Deductions Defined.**

(a) "**Net Sales.**" Unless otherwise set forth in the Deal Terms, "**Net Sales**" is defined as ( ) percent ( ) of the gross amount that Licensee bills for Sales of Products (the "**Gross Billed Amount**"), less only the following: (a) freight charges when billed and stated separately on the invoice; (b) any Sales, value-added, excise or similar taxes included in the Gross Amount and, under applicable law, Licensee must collect from purchasers and pay to taxing authorities; (c) permitted volume discounts granted in the ordinary course of business; and (d) reasonable documented returns that are actually accepted and for which a bona-fide credit or refund is issued (provided that the total amount deducted for all returns of Products Sold in any Quarter may not exceed ( ) of Gross Billed Amount in such Quarter).

(b) "**Net Retail Sales.**" In the case of Sales made by Licensee directly to the end-consumer ("**Net Retail Sales**"), unless otherwise set forth in the Deal Terms, Net Retail Sales shall be defined as the higher of either the (i) actual retail price paid by the end-consumer, or (ii) the suggested retail price for the retail sale of the Product to the end-consumer on all Sales of the Product, less only the following: (a) Sales, value-added, excise or similar taxes that under applicable law, Licensee must collect from purchasers and pay to taxing authorities; and (b) reasonable documented returns that are actually accepted and for which a bona-fide credit or refund is issued (provided that the total amount deducted for all returns of Products Sold in any calendar Quarter may not exceed ( ) of Gross Billed Amount in such Quarter). All deductions set forth in 3.3.2(a) and (b) shall be collectively referred to as "**Permitted Deductions**".

(c) **Support for Permitted Deductions.** For purposes of calculating Net Sales or Net Retail Sales under this Agreement, for any particular Sale, the Net Sales or Net Retail Sales price at which Royalties are calculated for each Product SKU, shall not, without Licensor's prior written consent, include Permitted Deductions of more than ( ) below the weighted average Net Sales or Net Retail Sales price of such Product SKU over the Term. All



Permitted Deductions for a particular Sale must be itemized separately on the invoice for such Sale. Licensee must have supporting documentation for each Permitted Deduction in a form that Licensor deems sufficient, in its sole discretion, or such Permitted Deduction will not reduce Net Sales or Net Retail Sales. If a Permitted Deduction applies to both a Product and other items, Licensee must demonstrate to Licensor's satisfaction what portion of such Permitted Deduction should be applied to such Product, otherwise, the amount of such Permitted Deduction shall be based upon the proportionate share of the gross billed amount that consisted solely of such Product. If Licensee deducts a Permitted Deduction prior to fixing the gross billed amount, it may not be deducted again. Licensee shall not undermine the brand image, strategic marketing and premium position of the Property and the quality of the Products. Licensee shall not engage in market-flooding, which involves the release of an abnormally large volume of Products into the market over a short period of time. Nothing contained in this Agreement shall be deemed to restrict Licensee, the retailers and any Distributors from setting prices in their sole discretion, or providing any legal discount, allowance or return to their customers as they may choose, and such policies will in no way affect their relationship with Licensor. Licensor and Licensee agree that the obligations contained herein shall be subject to the laws of the Territory and the Treaty for the Functioning of the European Union (if applicable) and all rules, regulations, directives, laws and legislation associate (if applicable) therewith as the same may be in force from time to time.

**3.3.3 No Other Deductions.** Only Permitted Deductions and no other deductions of any kind are permitted to reduce Net Sales or Net Retail Sales, including but not limited to deductions for stated cash discounts, early payment discounts, early delivery or warehousing discounts, co-op advertising credits, or any other Advertising expenditure, freight or transportation costs, except as specifically set forth in Section 3.3.2, commissions, any reserves of any kind, costs incurred in the Manufacture, marketing, distribution, or sale of Products, bad debts, uncollectible accounts, overhead expenses, or any other discounts, customer rebates, allowances, costs, or expenses of any nature whatsoever.

**3.4 Applicable Royalties for Non-Arms' Length Transactions; Royalty-Free Conveyances.** Royalties for Sales made by Licensee to any of Licensee's subsidiaries or other affiliated or related persons or entities (including but not limited to Licensee's employees), and any other Sales by Licensee that, from a third party's perspective, would not qualify as "arm's length," shall be calculated using the greater of (a) the actual gross billed amount for such Sale, or (b) the applicable average gross billed amount defined as the average gross billed amount since the Effective Date for Sales of the same Product in the same Sales Class). The applicable Royalty Rate shall either be the Distributor Royalty Rate or the Standard Royalty Rate, as determined by the nature of the transaction. Licensee shall not pay Royalties on Products that are provided to retailers or Distributors free of charge as sales samples ("Sales Samples"), provided that no more than percent ( ) of the total number of units of any particular Product Sold to a retailer or Distributor may be provided as Sales Samples.

### **3.5 Required Reports.**

**3.5.1 Royalty Reports.** Within thirty (30) days following the end of each calendar quarter (each calendar quarter in any given Year being referred to herein as a "Quarter"), Licensee shall provide to Licensor the following reports ("Reports") in forms designated by Licensor: (a) a detailed report, regarding Sales, Royalties and Brand Development Initiative obligations having accrued during such Quarter, (b) a true and full report of Minimum Advertising Expenditures made during said Quarter; and (c) a true and full report of all Sales made, by retailer. Each of the Reports shall be furnished to Licensor regardless of whether any activity has occurred during the relevant Quarter. Licensee will submit separate Reports for each Property and each country of the Territory.

**3.5.2 Forecast Report.** Within one-hundred and twenty (120) days prior to the beginning of each Year, or as otherwise directed by Licensor, Licensee shall provide to Licensor a forecast of the expected Net Sales and Royalties for each Quarter of the succeeding Year for each country included in the Territory ("Forecast Report"). Thereafter, within forty-five (45) days prior to the end of each Quarter, Licensee shall provide to Licensor an updated forecast of the expected Net Sales and Royalties for such Quarter for each country included in the Territory. The timely submission of the Forecast Report is a material part of this Agreement and failure to remit said Forecast Report may result in termination of this Agreement.

**3.5.3 Report Requirements.** Each Report (except for the Forecast Report) shall be signed by a duly authorized officer of Licensee, certifying on behalf of Licensee that such Report is truthful and accurate. All Reports shall be sent to Licensor's address set forth in Section F of the Deal Terms. The Reports shall provide all information necessary to ensure Licensee is complying with its obligations, including the Property licensed, the country(s) of the Territory in which Products were Sold, the stock number and descriptions of each Product item, the total amount of each Product item Sold by retailer, the unit price of the Product items Sold, and all Permitted Deductions as set forth in Section 3.3.2 above.



with a distinction between standard, F.O.B. and any Distributor Sales as set forth in Section 3.3.1 herein. Such Reports shall also include a list of Sales to subsidiaries and affiliates and all transactions not at arm's length. The Reports are a material part of this Agreement and failure to remit said Reports on time may result in termination hereof by Licensor. Receipt or acceptance by Licensor of any of the Reports furnished pursuant to this Agreement or of any sums paid hereunder will not preclude Licensor from questioning the correctness, truth and/or accuracy thereof at any time. In the event that any inconsistencies or mistakes are discovered in such Reports or payments, Licensee shall immediately notify Licensor, correct such inconsistencies or mistakes, and render the appropriate payments due, if any.

**3.5.4 Royalty Shortfall and Advertising Shortfall.** Within thirty (30) days following the end of each Period or Year, Licensee shall provide to Licensor a detailed report regarding Royalty Shortfalls and Advertising Shortfalls accrued for such Period or Year in a form designated by Licensor. In addition, Licensee annually, or as otherwise reasonably requested by Licensor, will make commercially reasonable efforts to provide to Licensor retail sell-through data concerning sales of the Products, by account, as may be readily available from Licensee's purchasers, Distributors, and/or retailers of the Products; provided that Licensee will not be required to supply any information that is protected by a third-party non-disclosure agreement or to the extent doing so would violate any applicable law.

**3.6 Payments.** All payments remitted to Licensor shall be made in Russian Ruble unless otherwise specified herein. Should it be necessary that currency be converted, all conversions shall be calculated at the applicable exchange rate in effect at the Central Bank of Russian Federation on the day of payment. All payments made by Licensee to Licensor shall be made from Licensee's own bank account located at a bank in Licensee's own country of organization. No third party accounts or accounts in third countries should be used unless expressly approved by a duly signed written amendment to the Agreement. Failure to comply with this Section 3.6 will constitute a material breach of the Agreement by Licensee and Licensor may terminate the Agreement immediately. Licensee acknowledges and agrees that a termination of this Agreement under this Section 3.6 shall be due solely to Licensee's material breach of its obligations hereunder and none of the Mattel Parties shall have any further obligation to Licensee whatsoever, including, but not limited to, any obligation to provide or pay any damages, termination compensation or indemnity that may be allowed under applicable law. Any payment hereunder not paid when due in accordance with the terms of this Agreement, ("Late Payments"), shall bear interest from the due date until received by Licensor at the rate of \_\_\_\_\_% above the Netherlands legal rate. The obligation to pay, and the payment of, such interest will not operate to extend any payment due date, and Licensor waives no rights by accepting late payment with or without interest. Interest under this section will be due and payable on the date the outstanding balance is paid to Licensor. Licensee shall make the following payments:

**3.6.1 Quarterly Payments – Royalty and Brand Development Initiative.** Licensee shall submit full payment for all Royalties and all Brand Development Initiative obligations that accrued during each Quarter within thirty (30) days following each such Quarter along with the Report.

**3.6.2 Annual Payments – Royalty Shortfall.** If the Guarantee exceeds the Royalties earned for the same Product in the same Period or Year, Licensee shall pay to Licensor the difference between such Guarantee and such Royalties (in addition to payment of such Royalties). Licensee shall pay this difference (the "Royalty Shortfall") within thirty (30) days following the earlier of (a) the end of such Period or Year, (b) the last day of the Term, or (c) the date of termination of this Agreement. The Guarantee for any partial calendar year shall not be pre-rated or reduced in any way.

**3.6.3 Annual Payments - Advertising Shortfall.** If Licensee does not meet or exceed all Minimum Advertising Expenditures required for a particular Period or Year, Licensee shall pay to Licensor within thirty (30) days following the earliest of (a) the end of such Period or Year, (b) the last day of the Term, or (c) the date of termination of this Agreement, the difference between the minimum amount Licensee was required to spend in such Period or Year and the actual amount Licensee spent in such Period or Year (such difference being referred to herein as the "Advertising Shortfall").

**3.7 Taxes.** Any applicable tax on the Manufacture, distribution and/or Sale of the Products, including, but not limited to, customs taxes and duties, imposts, importation costs and value added, excise or any other Sales tax, shall be borne solely by Licensee. All payments to be made pursuant to this Agreement by Licensee shall be added to the amount of such payments and paid in addition thereto. Such payments shall be exclusive of any value added tax or any equivalent tax ("VAT"), which Licensor is liable to pay in relation to any act or undertaking pursuant to this Agreement. Licensee agrees to withhold and timely pay in the name of Licensor any withholding tax applicable to any Royalty payment made, and agrees to provide Licensor with certified copies of the corresponding tax receipts no later than ten (10) days after the date on which each withholding tax payment is actually made.



**3.8 Further Assurances.** If requested by Licensor, Licensee shall immediately provide to Licensor all financial statements and other information and materials that Licensor reasonably believes is necessary to verify that Licensee is and will continue to be able to completely fulfill each and every obligation under this Agreement.

#### **4. RECORD KEEPING OBLIGATIONS OF LICENSEE.**

**4.1 Record Keeping.** Licensee shall keep, maintain, and preserve (at its principal place of business) complete, truthful, and accurate records so as to fully verify Licensee's compliance with all of its duties and obligations under this Agreement, including compliance with its reporting and payment obligations. If Licensee fails to keep, maintain, and preserve such records, Licensor may (in Licensor's sole discretion and in addition to any other remedies Licensor may have under applicable law as well as this Agreement) require Licensee to pay the highest amount paid or due to be paid by Licensee during the Term for a similar type of payment. Records Licensee must keep, maintain and preserve include, but are not limited to, the following: (a) financial records, including but not limited to, Sales invoices and credit notes, supporting documentation for any off-invoice deductions taken, general ledgers, and financial statements (Licensee must be prepared to demonstrate the reconciliation between Sales register totals, general ledger Sales postings, and total Sales reflected in its financial statements); (b) stock records, including but not limited to, listings of all Products and their SKU numbers, inventory reports reflecting inventory stock balances by Product, purchase and/or manufacturing records by Product, and costing records or other evidence supporting Product allocation of multiple Product pre-packs and assortments Sold; (c) selling records, including but not limited to, catalogs, price lists, customer contracts reflecting the specific deductions included in net billed prices, and evidence of any Royalty-free conveyances of Products expressly permitted herein as well as Licensor's Approval thereof; (d) advertising records, including but not limited to, Advertising materials of the type described in Sections 5.4.1 and 5.4.2 of this Agreement, media invoices, and other records supporting Licensee's Minimum Advertising Expenditures and Brand Development Initiatives; (e) manufacturing records to support licensee's compliance with the GMP; and (f) Product safety and quality records that meet the Safety Standards, including but not limited to quality and safety test reports, inspection documents, Testing Documentation, defective returns information, and consumer call logs.

In addition to the above, for purposes of verifying Licensee's compliance with its Minimum Advertising Expenditure obligations herein, Licensee shall maintain invoices, records and/or such other supporting documentation for all Minimum Advertising Expenditures in accordance with the terms of this paragraph. For the avoidance of doubt, if Licensee conducts an activity not dedicated solely to promoting the Products, the invoice must indicate what portion of the amount is attributable to the promotion of the Products in order for such allocation to be attributable towards Licensee's Minimum Advertising Expenditure.

**4.2 Inspection and Audit Rights.** Licensor or its authorized representatives shall have full access to any and all records involving Licensee's actions in relation to this Agreement, to examine them, and to make copies of them during normal business hours upon ten (10) days advance written notice by Licensor. Licensee agrees to preserve and keep available for Licensor all such records for a period of three (3) years after the termination or expiration of this Agreement, except where a longer period is required by applicable law. Licensee shall ensure that its privacy policy and other relevant documents and data collection practices and policies specifically reserve to Licensee the right to share such information with Licensor pursuant to the provisions hereof. If any underpayment is identified as a result of this examination, Licensee shall pay to Licensor, within ten (10) days of written demand, the amount of any undisputed underpayment, together with interest as provided under Section 3.6 above, which shall accrue from the original due date. In addition, if the audit discloses an underpayment of percent or more of the amount actually reported and paid during the period audited, Licensee shall reimburse Licensor for the entire cost of the audit to Licensor upon receipt of invoice.

#### **5. LICENSOR'S APPROVAL AND CONTROL RIGHTS.**

**5.1 Right of Approval.** As a condition of the rights granted herein, Licensee must obtain Licensor's Approval, which shall be given or withheld in Licensor's sole discretion on all uses of the Property and Created Materials. As defined herein, "Approval(s)" or "Approved" shall mean that any consent, or authorization by Licensor must be (i) given prior to the matter to which it relates, (ii) in a writing that is signed by a duly authorized employee of Licensor, and (iii) identifies, with specificity, the matter to which it relates. Licensor shall use reasonable efforts to respond to each request for approval within fifteen (15) business days of its receipt of such request, including all required samples and/or materials. Licensor's silence or failure to respond to a request for approval shall in no event be deemed Approval. In no event shall Licensor be liable for any costs, expenses, losses, or damages resulting from any Approval or disapproval delays by Licensor, and no such delays shall excuse any performance by Licensee hereunder. Licensor's Approval shall in no way waive, modify, or



limit Licensee's obligations (a) to comply with all applicable Laws, and (b) to ensure that each Product equals or exceeds all Safety Standards; nor shall any such Approvals, constitute or imply any representation or belief by Licensor that the materials or actions so Approved comply with any applicable Laws and/or Safety Standards.

**5.2 Conformance with Style Guides.** Licensee shall strictly comply with all terms and conditions regarding trademarks, logos, artwork, designs, colors, spacing, etc., as stated in Licensor's then-current style guides associated with the Property ("Style Guides"). Additionally, Licensee shall strictly comply with Licensor's then-current legal specifications for the Products and Advertising (including policies on Internet usage) as communicated by Licensor. In the performance of this Agreement, Licensee shall be required to purchase certain artwork from Licensor from time to time as reasonably required by Licensor, including but not limited to the Style Guides. Licensee shall remit to Licensor its then normal and customary charge for providing such artwork within thirty (30) days of receipt thereof. Furthermore, if Licensee requests and Licensor provides additional finished artwork for Licensee's use, Licensee agrees to remit to Licensor its then normal and customary charge for providing such artwork.

**5.3 Approval Process for Products.** Licensee must submit to Licensor, free of charge, for Licensor's review and Approval samples of all materials at each stage in the development and creation of each Product ("Stages of Development"), below before engaging in any manufacturing, distributing, offering for sale, selling, advertising or promotion of the Product. Licensee shall not advance to the next Stage of Development for any Product unless Licensee receives Licensor's Approval. Samples of all proposed Product materials, including but not limited to the proposed Product itself, packaging, labeling, and any component part or subpart thereof, shall be submitted to Licensor at the following Stages of Development:

**5.3.1** For all Product other than sculpted Product, Licensee shall submit and obtain Approval at the following Stages of Development: (a) at Initial Concept, a detailed description of the intended Product and a summary of Licensee's planned exploitation of the intended Product; (b) at Final Art, two (2) color copies of a fully-detailed art board of the artwork for the intended Product; (c) two (2) fully functional prototypes of the intended Product as it will be Manufactured; and (d) two (2) units of Manufactured samples submitted no less than annually.

**5.3.2** For all sculpted Product, Licensee shall submit and obtain Approval at the following Stages of Development: (a) at Initial Concept, a detailed description of the intended Product and two (2) color copies of a fully-detailed art board of the artwork and the sculpted image(s) for the intended Product, (b) the name and relevant work history of sculptor, (c) at Rough Sculpt, two (2) copies of the preliminary, unpainted sculpted image(s), (d) at Final Sculpt, two (2) copies of the final, unpainted sculpted image(s), (e) at Final Art, two (2) color copies of the final artwork for the intended Product (including two (2) copies of the final, painted sculpted image(s)), (f) two (2) fully functional prototypes of the intended Product as it will be Manufactured, and (g) two (2) units of Manufactured samples submitted no less than annually.

**5.3.3 Addresses for Submission of Samples.** All of the materials to be provided at each of the above Stages of Development shall be sent to the people and addresses set forth in Part N of the Deal Terms. In addition, two (2) additional samples of each Manufactured Product, free of charge, from each Manufacturer, must be sent by Licensee no less than annually to: (i) Product Integrity, Attn: Product Integrity, Mattel UK Ltd. - Vanwall Business Park, Vanwall Road, Maidenhead, Berkshire, U.K., SL6 4UB; and (ii) Product Coordinator, Mattel, Inc., 333 Continental Boulevard, El Segundo, CA 90245-5012, U.S.A. Licensor reserves the right to request additional samples of the Products at no cost to Licensee on a regular basis, but not more frequently than quarterly, to verify compliance of the Products with the provisions of this Agreement. Except where Licensor's request for samples is to monitor compliance after a prior non-conformity, Licensee shall not be obligated to provide more than twenty (20) samples of a Product, on an annual basis, without charge to Licensor.

**5.3.4 No Deviation.** Licensee shall not create, Manufacture, offer to sell, sell, or distribute any Product in any form that deviates from the Approved sample units without obtaining Licensor's Approval to such modification. In the event Licensor approves such modification, to such modification, two (2) additional samples of the modified finished Product shall be sent to: (i) Product Integrity, Attn: Product Integrity, Mattel UK Ltd. - Vanwall Business Park, Vanwall Road, Maidenhead, Berkshire, U.K., SL6 4UB; and (ii) Product Coordinator, Mattel, Inc., 333 Continental Boulevard, El Segundo, CA 90245-5012, U.S.A.

**5.3.5 Duration of Approvals.** All Approvals granted herein in respect of any Pre-Production Prototype Product sample shall expire six (6) months from the date on which Approval is given. If Licensee fails to Manufacture an Approved Product within such period of time, the Approval shall be automatically withdrawn, and the Licensee will be



required to resubmit the Product for Approval prior to Manufacture. In the event Licensee timely begins Manufacture, all Product Approvals are valid only for the calendar year the Approval is granted, unless otherwise specified by Licensor in writing. If Licensee wishes to Manufacture a Product in any subsequent Year then, within thirty (30) days prior to the start of such Year, Licensee shall provide Licensor with ten (10) additional sample units of such Product from each Manufacturing facility and new, current Testing Documentation, and shall request Licensor's Approval for that subsequent Year. Licensor shall be under no obligation whatsoever to grant such Approval and, without limiting the foregoing, Licensor may, as a condition to any such Approval, require Licensee to "update", "refresh", or otherwise modify such Product for the subsequent Year.

#### 5.4 Approval Process for Advertising.

**5.4.1 General.** All Advertising containing, depicting, or referring to the Products or Property conducted hereunder by Licensee must be in compliance with the standards of the Children's Advertising Review Unit of the National Advertising Division of the United States' Better Business Bureau ("CARU"), or applicable national or EU legislation. Licensee shall not use, reproduce, publish, distribute, display or conduct any Advertising of the Products unless and until Licensee receives Licensor's Approval. Licensee shall, at no cost to Licensor, provide to Licensor five (5) samples of all proposed Advertising materials, including but not limited to any proposed display in any venue, including trade fairs, trade dress, publicity, press release and merchandising materials, in their final form, together with a detailed description of their intended use to the people and addresses set forth in Section N of the Deal Terms. Without limiting Licensor's right of Approval, Licensor may disapprove of any Advertising that Licensor believes does not fully comply with CARU standards, or applicable EU legislation, further Licensor's strategic marketing objectives for the corresponding Property, including but not limited to, Advertising that targets a specific customer group or customers located outside the Territory, Advertising that downgrades brand equity in the Products, Advertising that would disrupt other advertising campaigns in the Territory or elsewhere, and Advertising that has the potential to infringe the rights of any party including but not limited to other Contributors and parties and contributors to other agreements related to the Property or products of the same type as the Products whether in the Territory or elsewhere.

**5.4.2 Internet Advertising.** Licensee may display, Advertise and/or sell the Products on or in connection with the Worldwide Web, provided that Licensee strictly adheres to the Approval terms of this Agreement, including but not limited to the following: (a) prior to publication or display on the Internet by Licensee of any web page which displays, mentions, describes, or uses the Property or Products, or prior to Licensee agreeing with any Internet third party, including Internet search platforms or other Internet referencing service provider, on the provision of services which involve the use of any Licensor IP right as keywords and/or keyword combinations, Licensee must: (i) submit to Licensor clear and legible copies of such web page, together with sufficiently detailed descriptions or samples of all concepts, storyboards/layouts, designs, copy/content, structure/icons, and functionality to be utilized for the proposed web page and a list of keywords and/or keyword combinations that Licensee intends to provide to an Internet referencing service provider; (ii) provide Licensor with a truthful, complete, and accurate description of how Licensee plans to use the web page, access to the development site, and access to the completed website; and (iii) obtain Licensor's Approval to the above.; (b) all proposed Advertising by Licensee on the Internet and all web pages containing, depicting, or referring to the Products or Property must comply with all relevant guidelines and regulations for the advertising and sale of products to children, including, if applicable, the guidelines and regulations established by the United States Children's On-Line Privacy Protection Act of 1998 ("COPPA"), and the standards of the Children's Advertising Review Unit of the National Advertising Division of the United States' Better Business Bureau ("CARU"), as well as any other applicable legislation, EU directive and generally accepted code of conduct, including self-regulatory advertising codes; and (c) Licensee will not be permitted to: (i) link from Licensee's web pages featuring the Property or Products to any third party web page; provided, however, that Licensee will be permitted to link other pages of Licensee's web site to third party web pages; (ii) link web pages featuring the Property or Products to Licensor-created web sites, unless Licensee has obtained Licensor's Approval for use of said link; (iii) use the Property on any web site that disparages Licensor, its Products, or its services, goes against the goodwill of the Licensor, the value, brand image, strategic marketing and reputation of the Property, infringes on Licensor's intellectual property rights, or violates any applicable Laws; or (iv) use the Property in any manner that implies sponsorship or endorsement of Licensee or its other products by Licensor.

**5.5 Withdrawal of Approvals.** In addition to any other remedies available to Licensor, Licensor may immediately withdraw in writing its Approval of any Product or Advertising and/or its authorization to ship for any Product, at any time if Licensor believes that (i) it constitutes or relates to any breach of this Agreement; (ii) its use or other exploitation would infringe upon, or could reasonably be claimed to infringe upon, the rights of any party including any party under other agreements related to the Property or Products whether within or outside the Territory; (iii) the quality of the Product originally Approved has deteriorated in later production runs; or (iv) if any Product or Advertising has been modified in any



way whatsoever from that previously Approved. All Products and Advertising for which Licensor's Approval and/or its authorization to ship has been withdrawn shall be withdrawn from the market immediately by Licensee and either given to Licensor or destroyed (as required by Licensor in its sole discretion). Licensor shall not be liable to Licensee or any third party for any costs, expenses, losses, or damages caused by Licensor's withdrawal of any Approval or authorization to ship.

## 6. PRODUCT INTEGRITY.

**6.1 Product Quality.** Licensee warrants and represents that the Products shall be first rate, of high quality and have a style and appearance that is best suited for their exploitation to the best advantage of, and to the protection and enhancement of, the Property and the goodwill pertaining thereto. Licensee shall not offer to sell, sell, or distribute any Products that are seconds, irregulars, or otherwise imperfect, and Licensee shall use its best efforts to prevent others from doing any of the foregoing.

**6.2 Compliance with Safety Standards.** All Products will be Manufactured, Advertised, Sold, imported, exported, assembled, and distributed in accordance with all applicable laws, rules, regulations and treaties (collectively, "Laws"). Licensee warrants and represents that each Product shall equal or exceed all voluntary and mandatory industry and government standards, requirements, regulations, and Laws applicable in each region in which such Product is Sold, whether international, federal, state, or local, regarding the safety, fitness for use, testing, and labeling of goods and services, including all safety standards and requirements specified by Licensor for the manufacture and sale of the Products (collectively, the "Safety Standards"). In addition, if Licensee sells Products in several countries in the Territory, Licensee shall comply with the highest Safety Standards applicable in any one of those Territories. Notwithstanding the generality of the foregoing, Licensor, at its sole discretion, may specify additional written requirements regarding the Manufacture of Products to which Licensee hereby agrees to comply. If there is any disagreement between Licensee and Licensor regarding compliance with the Safety Standards, Licensor's decision shall be final and Licensee shall fully comply with such decision. All Products must be accompanied with Licensee contact information (e.g., a toll-free phone number) in order to allow reasonable consumer access to Licensee for inquiries or complaints relating to the Products.

**6.3 Testing Documentation.** Notwithstanding anything in this Agreement to the contrary, no Approval pursuant to Section 5 shall be deemed granted by Licensor unless and until Licensee, at Licensee's sole expense, provides the following to Licensor not more than two (2) weeks after each initial production run, or after a change to previously Approved materials and, thereafter, at least annually, the following: (a) Certificate and Test Report from Approved Laboratory. A certificate from an approved independent testing laboratory approved by Licensor certifying that the Product at issue, which was produced at the manufacturing facility at issue, complies with all Safety Standards; and (b) a corresponding detailed test report from such approved independent testing laboratory (collectively, "Testing Documentation.") The Testing Documentation must specifically describe the Product and the manufacturing facility at issue that is covered, including but not limited to the date the Product was Manufactured. All Testing Documentation shall be sent to: Attn: Product Integrity, Mattel UK Ltd. - Vanwall Business Park, Vanwall Road, Maidenhead, Berkshire, U.K., SL6 4UB. For purposes of this Agreement, "approved" independent testing laboratories means ACTS, ITS, SGS, and any other independent testing laboratory with an A2LA or HOKLAS accreditation or equivalent international accreditation. If Licensee wishes to use a laboratory other than those described above, Licensee shall obtain Licensor's Approval prior to utilizing such a laboratory via electronic mail sent to: QEApproval\_EUHL@Mattel.com for Hardlines; and QEApproval\_EUSL@Mattel.com for Softlines. If Licensor does not approve the laboratory, any Products certified by such laboratory shall be considered unapproved Product until the situation is properly remedied.

**6.4 PI Samples.** Licensee shall not offer to sell, sell, or distribute any Product Manufactured until Licensor Approves sample units for such Product that were Manufactured at such Manufacturing facility in the initial production run. Licensee shall provide to Licensor, not more than one (1) week after the initial production run, two (2) sample units that are in the form that consumers would receive them (i.e., with full packaging and in any containers). The sample units shall be sent to the following address: Attn: Product Integrity, Mattel UK Ltd. - Vanwall Business Park, Vanwall Road, Maidenhead, Berkshire, U.K., SL6 4UB. Licensee shall also submit (2) two samples to the above address within ten (10) days of any change in the design of the Product.

**6.5 Notice of Lawsuits and Investigations and Corrective Action.** Within seven (7) days following Licensee's notice, receipt, or promulgation (as applicable), Licensee shall give Licensor written notice (along with corresponding documents and materials) of: (a) any product liability claim made, suit filed, or injuries disclosed with respect to any Product or Advertisement; (b) any recall or potential recall of any Product; (c) any investigations, directives, or inquiries regarding any Product commenced or issued by any public or non-public international, federal, state, or local agency or national organization (a "Consumer Agency"); (d) any correspondence sent by Licensee to, or received by Licensee from any



Consumer Agency regarding any Product or any Advertising; or (c) any adverse publicity for, or public criticism of, the Property, any Product, any Advertisement relating to the Property or any Product, or Licensee. Thereafter, Licensee shall promptly notify Licensor of any and all material developments relating to such matter (along with corresponding documents and materials). Licensee shall, at its sole cost and expense, conduct, implement, comply with, and take all actions requested by Licensor, any Consumer Agency and/or any governmental agency in connection with (a) Product recalls, returns, refunds, replacements, repairs, and upgrades; (b) corrections of Product defects and safety hazards; (c) violations of Safety Standards or other applicable laws; (d) negative publicity or any other matter described above; and (e) marketing, publicity, or public relations programs and campaigns related to any of the foregoing. Licensee's conducting, implementing, complying with, or taking any such actions so requested by Licensor shall in no event alter or limit Licensee's liability for the underlying matter in connection with which Licensor requested any such actions. Licensee agrees to pay to Licensor, upon demand, any expenses (including attorney's fees) incurred by Licensor in connection with a recall or potential recall of the Products, or any other matters relating to this Paragraph.

## **7. GLOBAL SUSTAINABILITY**

**7.1 Facility Declaration.** Licensee shall immediately notify Licensor about the engagement of any Manufacturer for the manufacture of the Products. Set forth in Exhibit 2 (hereinafter, the "**Facility Declaration**") is a listing of all Manufacturing facilities, including but not limited to any Manufacturing sub-contractors, that Licensee intends to utilize for the Manufacture of the Products, as declared to Licensor by Licensee as of the Effective Date hereof. Licensee shall immediately notify Licensor each time it stops using or adds a Manufacturer for the Products prior to commencing use of any third party Manufacturer so Approved by Licensor and added. Licensee shall also provide (or cause its Contractors to provide) all information requested by Licensor in connection with its Manufacturing. All notices and information requested shall be directed to the attention of Corporate Responsibility, Mattel, Inc., 333 Continental Blvd., El Segundo, California 90245, Fax: 310-252-4744, E-mail: ([China.Export@Mattel.com](mailto:China.Export@Mattel.com)).

**7.2 Requirements for Manufacturers.** Licensee shall ensure that all Manufacturers of the Products abide by the terms and conditions of this Agreement (which by their nature would apply to such Manufacturer(s)). Specifically, Licensee shall abide by, and shall cause all of its Contractors to abide by, Licensor's Global Manufacturing Principles ("GMP"), which may be modified by Licensor from time to time. Licensor will endeavor to post the most current version of the GMP on the Internet within the web site located at <http://www.Mattel.com>, and a copy shall be provided to Licensee upon request. Pursuant to Licensor's GMP, and notwithstanding anything in this Agreement to the contrary, in connection with the Manufacture, assembly, and distribution of the Products: (a) no "Child" labor will be used; (b) all employees of Licensee and its Contractors will be provided with a workplace environment that is safe, healthy, and in compliance with local laws; (c) no prison or forced labor will be used and all employees of Licensee and its Contractors will work on a voluntary basis, and not be subject to physical or mental punishment of any kind; and (d) Licensee and its Contractors shall comply with all applicable wage laws and fair employment practices, including but not limited to the practice of non-discrimination on the basis of race, religion, national origin, political affiliation, sexual preference, or gender (except when required by any applicable law to treat a specific group of individuals differently). As used herein, the term "Child" means a person younger than sixteen (16) years of age, or younger than the minimum age designated in the jurisdiction of Manufacture or distribution for employees who Manufacture or distribute products, if such minimum age is older than sixteen (16). Licensee and each Contractor shall provide any and all information requested by Licensor to ensure GMP compliance. In addition, Licensee shall ensure that Manufacturer will not Manufacture the Products for anyone but Licensee, will not distribute, sell, transport, or otherwise dispose of the Products to anyone other than Licensee, and will not Manufacture the Products herein at any facilities other than the facilities listed above, and will not utilize any sub-contractors other than the ones listed above. Finally, upon the earlier of (a) notification to Manufacturer from either Licensee or Licensor that Licensor has disapproved of Manufacturer; or (b) the termination or expiration of the license agreement between Licensee and Licensor, Manufacturer agrees that it will immediately cease and desist in the Manufacture of any Product(s) and will immediately deliver to Licensee (or Licensor, if so instructed by Licensor) all molds, plates, engravings or other devices used to reproduce the Property in Manufacturer's possession or control, or will give satisfactory of the destruction thereof.

**7.3 Requirements for Distributors.** Licensee shall submit to Licensor a list of all Distributors being utilized for distribution of the Products, and shall inform Licensor each time it changes or adds a Distributor, as well as when a particular Distributor is no longer being utilized. Licensee will ensure that all Distributors of the Products abide by the terms and conditions of this Agreement (which by their nature would apply to such Distributor(s)). Specifically, Distributors shall not: (a) make any modifications to the Product(s) (including but not limited to modifications to the containers and packaging) or alter, remove, or tamper with any of Licensor's trademarks used on or in relation to the Product(s); (b) use or omit to use any of Licensor's trademarks in any way which might prejudice their distinctiveness or



validity or the goodwill of Licensor therein or in any way cause damage, whether directly or indirectly, to the premium position of any of Licensor's brands; (c) use, in relation to the Product(s), any trademarks, characters, property, or Proprietary Notices other than the trademarks, Property, and Proprietary Notices already in use on or in relation to the Products, upon Distributor's receipt of said Products; (d) use or register in its own name in the Territory, any trademarks similar to Licensor's trademarks as to be likely to cause public confusion, deception or dilution in relation to Licensor's trademarks; (e) use or attempt to use or associate other trademarks, characters, or property with Licensor's trademarks or Property, either on the Product(s) or on their promotional, advertising, or display materials; (f) reproduce any tobacco brand or logo or any unlicensed brand or logo on the Product(s), their packaging or advertising; and (g) use any of Licensor's trademarks on any business sign, business cards, stationary, or any other business materials, use any of Licensor's trademarks as the name of any Distributor's business or any division thereof, or use any of Licensor's trademarks as part of a URL or other Internet address. To the extent applicable, Distributors shall also comply with Licensee's GMP.

**7.4 Disapproval of a Contractor.** Licensor may disapprove of any Contractor at any time by written notice to Licensee if Licensor has reason to believe, in its sole discretion, that such Contractor has (i) breached any term or condition in this Agreement, (ii) has acted in any manner that could in any way negatively impact Licensor, the Property or the Products under this Agreement, or (iii) is otherwise infringing upon any other Licensor intellectual property right. If Licensor disapproves of any Contractor, Licensee shall immediately end its engagement of, and other interaction with, such Contractor with respect to any activities related to this Agreement. Licensor shall not be liable to Licensee, to the Contractor at issue, or to any other third party for any costs, expenses, losses, or damages caused by Licensor's disapproval in accordance with this section.

**7.5 Liability for a Contractor.** All Contractors will be considered to be acting as agents of, and under the authority, of Licensee, and Licensee shall be vicariously liable for any misuse of the Property and/or the Products and/or any other breach of this Agreement by any Contractor. If a Contractor engages in any activity that Licensee itself may not engage in hereunder, Licensee shall cause such Contractor to stop such activity immediately. Any breach by a Contractor of the requirements set forth herein, shall constitute a material breach by Licensee hereunder. In addition to any other costs or damages, Licensee shall pay all costs (including administrative costs) incurred by Licensor in connection with investigating or taking any actions against any Contractor as a result of any of the following: (i) because Licensee failed to notify Licensor about that Contractor's engagement for the Manufacture and/or distribution of the Products; and/or (ii) in order to prevent any misuse of the Property and/or any illegal manufacture, sale or distribution of Products committed by such Contractor, or to otherwise enforce any of the provisions of this Agreement.

**7.6 Contractor On-Site Inspections.** Licensor may, or may have third party auditors chosen by Licensor conduct, at any time, including after the Term, one or more unannounced on-site inspections of any facilities used, or intended to be used, by Licensee or Contractor in connection with the Manufacture and/or distribution of any Products for the purpose of verifying Contractors' compliance with all terms of this Agreement. Licensee shall pay all fees and related costs for such inspections within thirty (30) days of receipt of an invoice. If the results of any such inspections are unsatisfactory to Licensor, Licensor may do one or more of the following: (a) require corrective action plans and require that discrepancies be corrected in a timely manner; (b) perform one or more re-audits of the facility at any time or from time to time (all such re-audits shall be at Licensee's sole expense); (c) disapprove of the Manufacturer or Distributor of any Products at the facility; or (d) place the facility on its "Global Manufacturing Principles Watch List." If a facility is placed on the "Global Manufacturing Principles Watch List," such facility shall be subject to periodic progress review visits, by Licensor or its designated agent to evaluate compliance with the GMP. A facility placed on the Global Manufacturing Principles Watch List shall be disapproved for any new Licensor business. Licensor reserves the right to disapprove a Contractor or the distribution (as applicable) of any Products at any facility on the "Global Manufacturing Principles Watch List." The foregoing is not intended to limit in any way Licensor's remedies under this Agreement or otherwise at law or in equity for failure by Licensee or any Contractors to comply with the GMP or any other requirement of this Agreement.

**7.7 Contractor Obligations.** In addition to the above requirements, in its agreements with its Contractors, Licensee shall ensure that the following requirements are in place:

**7.7.1 Foreign Corrupt Practices – Contractor Certification.** Contractor must certify that: (a) it has not, directly or indirectly, given, offered, agreed, or promised to give any Inappropriate Consideration (defined below) in connection with this Agreement; and (b) it will not, directly or indirectly, give, offer, agree, or promise any Inappropriate Consideration in connection with this Agreement. Contractor further certifies that: (i) it is not owned or controlled by, or affiliated with, any national, state, provincial, or local government department, agency, or instrumentality; (ii) it is not owned or controlled by any Public Official; and (iii) none of the Contractor's officers, directors, employees, or agents is a Public Official, except as specifically permitted under the laws of any relevant jurisdiction. "Inappropriate



**Consideration**: means any payments or contributions of goods or services, and any other things of value and other consideration to any Public Official (defined below) or to any third party under circumstances in which Contractor knows or should know that all of any portion of that consideration will be paid over to any Public Official for the purpose of: (A) influencing any act or decision of a Public Official in his or her official capacity; or (B) inducing a Public Official to use his or her influences with the government in order to assist in obtaining or retaining business for or with, directing business to, or securing any unfair advantage for Mattel or any of its agents or any third party. "Public Official" means: (i) any officer, employee, or agent of any government department, agency, or instrumentality or any international organization, (ii) any other person acting on behalf of a government department agency or instrumentality or any international organization, (iii) any officer or employee of any political party, and (iv) any candidate for political office.

## 8. INTELLECTUAL PROPERTY.

**8.1 Ownership of Property, Created Materials and all IP Rights Thereto.** Subject only to the limited, non-exclusive licenses and rights expressly granted to Licensee hereunder, as between Licensee and the Mattel Parties, all right, title, and interest in and to the Property, all IP Rights in or related to the Property, the Created Materials and all goodwill associated therewith now and in the future, is and shall remain exclusively owned and controlled by, and reserved to, Mattel, throughout the universe and in perpetuity, and Licensee shall neither acquire nor assert ownership or control of or any interest in any of the foregoing, and all uses thereof by or for Licensee or a Contractor pursuant to this Agreement shall inure to the sole and exclusive benefit of, and be on behalf of, Mattel. Licensee acknowledges that nothing contained in this Agreement shall give Licensee, any Contractor, or any other third party any continuing right, title, or interest in, to, or under any of the Property, Created Materials, or any IP Rights therein or related thereto.

For purposes of this Agreement, "**IP Rights**" means all forms of intangible property rights therein, including all goodwill thereto, such as patent rights, copyrights, mask work rights, Moral Rights, trademark (including trade dress), service mark, trade name, design and domain name rights, rights under unfair competition law, trade secret rights, privacy rights, publicity rights, and all other intellectual and industrial property rights which now exist or hereafter come into existence under the Laws of any jurisdiction throughout the universe, including but not limited to all rights in, to, and under all applications, registrations, renewals, reissues, extensions, restorations, continuations, divisionals, and the like pertaining to any of the foregoing, in each case whether registered or unregistered to the extent permitted by applicable law.

For purposes of this Agreement, "**Created Materials**" means any and all tangible and intangible property rights, which now exist or hereafter come into existence under the Laws of any jurisdiction throughout the universe, in and to any and all things, works, materials, inventions, materials or elements, directly or indirectly created, made, conceived, reduced to practice or developed by or for Licensee or a Contractor, that are used in connection with, exist in, result from, relate to or arise out of the Agreement, the Products or Licensee's performance under the Agreement, including any Licensee contributions to a Mattel style guide to the extent permitted by applicable law. For the avoidance of doubt, these rights to include, but are not limited to, (a) adaptations, translations, variations, representations, depictions, embodiments, reproductions, versions, or other derivative works of, or based upon, the Property; (b) compilations or collective works of the Property; (c) improvements, additions, or modifications to the Property; (d) goods and services confusingly similar to the good and services that are or will be provided under the Property; (e) specifications, designs, discoveries, inventions, products, modifications, technical information, procedures, processes, know-how, developments, drawings, notes, documents, sound recordings, software applications ancillary or derivative media reproductions, information and other materials; (f) trademarks and other distinctive indicia; and (g) any and all goodwill associated from use thereof. Licensee represents and warrants that it will not exploit or otherwise use the Created Materials, or any aspect or portion thereof, outside the scope of this Agreement.

**8.2 Assignment.** In the event that all Created Materials and all IP Rights thereto are not deemed to already automatically vest in Mattel, Licensee hereby agrees to unconditionally grant, transfer, convey, and assign, to Mattel all of Licensee's present and future right, title, interest, on an exclusive basis, throughout the universe freely transferable to third parties, and, in perpetuity (or for the maximum term allowed by the current - or future, if no longer applicable law), in, to, and under all such Created Materials and all IP Rights related therein or thereto, for the duration of their protection by the applicable law, including any rights of reproduction (i.e., right to reproduce the Created Works in any physical fixation by any process permitting it to be communicated to the public), rights of representation public broadcasting, including the right to make the Created Works available to the public (i.e., right to show or release the Created Materials to the public by any means whatsoever, whether currently in existence or devised in the future, including but not limited to videos, telematics, television, exhibitions, computer diskettes or on-line services), rights of distribution and rights of adaptation.



Further, Licensee shall obtain in advance, from each third party that will create or contribute to the creation of any Created Materials, a duly executed irrevocable, unconditional, and perpetual assignment of each such third party's entire present and future right, title, and interest in, to, and under all such Created Materials and all IP Rights therein or related thereto, to the extent permitted under the law governing the agreement with such a third party, so that the foregoing assignment by Licensee shall vest all rights in and to such Created Materials in Mattel free of any claim, interest or rights from third parties to the extent possible under applicable law. To the extent Licensee is not able to obtain an assignment of each such third party's future right, title, and interest to such Created Materials and all IP Rights therein or related thereto, Licensee undertakes to confirm, as need be, and in a separate agreement, if necessary, the assignment to Mattel of all IP Rights therein or related thereto under the same terms and conditions as provided in this Agreement. To the extent permitted by applicable law, Licensee also vests all rights in Mattel free of any charge, claim, interest or rights from any third parties in all, including but not limited to, documents, sketches, drawings, plans, notes or computer files exchanged during meetings and/or resulting from meetings, regardless of the presence of one or more representatives of a Mattel Party, relating to the creation of Created Materials. In this respect, Licensee shall send to Mattel a copy of any such aforementioned material exchanged during these meetings and/or resulting from them immediately upon request.

**8.3 Waiver of Moral Rights.** To the extent allowed by applicable law, Licensee hereby irrevocably transfers and assigns to Mattel and waives and agrees to never assert, any and all Moral Rights that Licensee may have or come to have in or with respect to any Created Materials and works that employ them. "Moral Rights" means any right to claim authorship of a work or to be identified as the author of a work, to recapture or suppress the work or to oppose a distortion of the work and any similar right existing under any Law.

**8.4 Further Assistance.** Licensee shall provide all assistance reasonably requested by the Mattel Parties in the acquisition, prosecution, preservation, protection, and defense of Mattel's rights with respect to the Property and Created Materials (and all of Mattel's IP Rights therein or related thereto). Such assistance shall include, but shall not be limited to, executing documents, testifying, registering as a licensee of the Property, and otherwise cooperating with the Mattel Parties and its nominees in obtaining, prosecuting, preserving, protecting, and defending patents, copyrights, trademarks, domain names, and all other IP Rights in the Property and Created Materials in any countries throughout the world. In the event the Mattel Parties are unable to secure within three (3) days Licensee's signature on any document necessary to apply for, obtain, prosecute, preserve, protect, defend, or enforce any of Mattel's rights to the Property, Created Materials (and all IP Rights related therein or thereto), regardless of the cause for such inability, Licensee hereby designates and appoints Mattel as Licensee's attorney-in-fact (which appointment shall be deemed coupled with an interest and therefore irrevocable) to act for Licensee and in Licensee's stead, to execute and file any such documents, and to do all other lawfully permitted acts that further the application for or issuance, prosecution, preservation, protection, defense, or enforcement of such rights.

**8.5 Deed of transfer.** To the extent legally necessary, this Agreement is also the embodiment of the Deed of Transfer for any transferred IP Rights. Mattel accepts all transfer of such IP Rights under this Agreement.

**8.6 Delivery of Materials.** Licensee shall deliver to Licensor, immediately upon any of the Mattel Parties' request and at no cost whatsoever to any of the Mattel Parties, any and all materials comprising or relating to the Property, Created Materials (and all IP Rights relating therein or thereto) reasonably requested by the Mattel Parties.

**8.7 No Other Registrations or Contest by Licensee.** Licensee shall not at any time during or after the Term perform any act or omission that may adversely affect the validity or enforceability of any IP Right owned by or licensed to Mattel. Licensee shall not register or attempt to register in any country or jurisdiction throughout the world any of the IP Rights in the Property or Created Materials (or in any aspect or portion thereof), or anything confusingly or substantially similar thereto. Licensee shall immediately notify Licensor of any such registrations that are pending as of the Effective Date and, at Licensor's request, Licensee shall either (a) execute and deliver, or cause to be executed and delivered, to Licensor such assignments and other documents as Licensor may require to transfer to Mattel all rights in and to such registrations; or (b) immediately cease and abandon such registrations. Licensee shall not challenge, dispute, deny, or contest, directly or indirectly Mattel's exclusive ownership of all IP Rights in the Property and Created Materials and the validity thereof.

**8.8 Third Party Infringement.** Licensee shall promptly notify Licensor in writing (including all relevant details) of any infringement or suspected infringement of any IP Rights in the Property or Created Materials of which Licensee becomes aware. Upon receipt, Licensor, in the first instance, or any of the Mattel Parties, in the second instance, may, but are not required to, take action against any such infringers or suspected infringers. Licensee shall not institute any suit or take any action (other than notifying Licensor) on account of such infringement or suspected infringement. Licensee shall



cooperate fully in any action taken by the Mattel Parties, with no remuneration but at no significant expense to Licensee. If the Mattel Parties take any action, any settlement proceeds, damages, or other recovery shall be for the sole benefit and account of the aggrieved Mattel Party or Parties.

**8.9 Maintenance of Licensor's Goodwill.** Licensee acknowledges the importance and great value of the goodwill associated with Licensor and the Property. During and after the Term, Licensee shall uphold Licensor's good name and protect Licensor's rights in the Property and all associated rights and interests, and shall not engage in any illegal, indecent, immoral, harmful, or scandalous behavior, nor engage in other activities that may directly or indirectly damage the Mattel Parties' or the Property's reputation or goodwill.

## **9. REPRESENTATIONS AND WARRANTIES.**

**9.1 Of Licensee.** In addition to all other representations and warranties contained in this Agreement, Licensee hereby represents and warrants to Licensor as follows: (a) Licensee is an entity duly organized, validly existing, and in good standing under the laws of the territory of its formation, has the right, power, and authority to execute and deliver this Agreement and to perform its obligations hereunder, and has by all necessary action duly and validly authorized the execution and delivery of this Agreement and the performance of its obligations hereunder; (b) this Agreement is the valid and legally binding obligation of Licensee, enforceable in accordance with its terms, subject to bankruptcy, reorganization, insolvency, moratorium, and similar Laws and to general principles of equity that are within the discretion of courts of applicable jurisdiction; (c) the execution, delivery, and performance by Licensee of this Agreement does not and will not (i) conflict with or violate any applicable Laws, or (ii) conflict with or result in any breach of, or constitute a default under, any note, security agreement, commitment, contract, or other agreement, instrument, or undertaking to which Licensee is a party or by which any of its property is bound; (d) Licensee will not cause or allow any liens or encumbrances to be placed against, nor will Licensee grant any security interest in, (a) any of the Property, Products, Advertising, or Created Materials (or any IP Rights therein or related thereto); or (b) with regard to the Products, any of Licensee's inventory, contract rights, or accounts receivables (or the proceeds thereof); (e) none of the Products will cause harm when used as instructed, with ordinary care, and for their intended purposes; (f) Licensee will exercise all of its rights and perform all of its obligations under this Agreement in an ethical manner, in accordance with the terms and intent of this Agreement, and in compliance with all applicable Laws; (g) Licensee and its Contractors will comply with all applicable Laws, including but not limited to laws applicable to the conduct of its business, any applicable U.S. laws and regulations, including the Foreign Corrupt Practices Act, and similar local laws, if any, which forbid illegal payments to government officials, and any applicable laws and regulations of The Netherlands and the Territory. Additionally, Licensee shall ensure that all Products as marketed, Sold and distributed are distributed in compliance with all relevant copyright, trademark, design right, registered design and other relevant laws in the Territory; (h) Licensee will exercise its best efforts throughout the entire Term to market, promote, and distribute the Products and to maximize Product demand, supply, and Sales and the amount of Royalties payable to Licensor hereunder; (i) all IP Rights in the Created Materials that are created by or for Licensee (excluding the underlying Property that Licensor supplies to Licensee and any materials from the public domain) is wholly original with Licensee or a Contributor (as applicable), and does not and shall not infringe upon any IP Rights of Licensor or any third party and Licensee has obtained all necessary assignment rights, as well as any and all other rights as set forth in Section 8 and elsewhere herein to the extent possible under the applicable law; and (j) as of the Effective Date hereof, the Facility Declaration set forth in Exhibit 2 contains a complete and accurate listing of all Manufacturing facilities, including but not limited to any Manufacturing sub-contractors, that Licensee intends to and/or is utilizing for the Manufacture of the Products; and no other Manufacturing facility will be utilized for such Manufacture without Licensee's immediately notifying Licensor and otherwise fully complying with the provisions of Section 7 above.

**9.2 Of Licensor.** Licensor hereby represents and warrants to Licensee as follows: (a) Licensor is a corporation duly organized, validly existing, and in good standing under the laws of the state of its incorporation, has the right, power, and authority to execute and deliver this Agreement and to perform its obligations hereunder; (b) this Agreement is the valid and legally binding obligation of Licensor, enforceable in accordance with its terms, subject to bankruptcy, reorganization, insolvency, moratorium, and similar Laws and to general principles of equity that are within the discretion of courts of applicable jurisdiction.



## 10. INDEMNIFICATION.

**10.1 By Licensee:** Licensee hereby agrees to indemnify, hold harmless, and defend the Mattel Parties, their subsidiaries and affiliated and related companies, and each of their present and future officers, directors, shareholders, employees and agents against and with respect to any and all claims, damages demands, causes of action, liabilities, losses, costs and expenses (including but not limited to reasonable attorneys' fees, litigation expenses, and expert witness fees) (collectively, "**Losses**") arising out of, based upon, or relating to or pertaining to any activities by Licensee or any Contractor under or relating to this Agreement, including but not limited to any actual or alleged: (a) defect (whether obvious or hidden and whether or not present in any sample unit Approved by Licensor) in any Product, (b) personal injury, (c) property damage, (d) infringement of any rights of any third party or other injury caused by the development, possession, use, Manufacture, sale, Advertising, distribution, or other exploitation of any Product, (e) breach by Licensee of any covenant, representation, or warranty contained in this Agreement or in any license agreement with any Contractor, (f) breach by any Contractor of a Contractor's Agreement, or any term or condition in this Agreement applicable to such Contractor; or (g) failure of the Products or by Licensee to comply with applicable Laws. Only if requested by Licensor, Licensee shall undertake, at Licensee's sole cost and expense, the defense of any covered claim asserted by a third party with counsel reasonably acceptable to Licensor, and Licensor shall reasonably cooperate in such defense and make available all personnel, records, and materials reasonably requested by Licensee in connection therewith at Licensee's sole expense. If Licensor does so request that Licensee undertake such defense, Licensor shall still be entitled to participate in any such defense at Licensee's sole expense. Licensor shall not be liable for any claim settled without its consent, which consent may not be unreasonably withheld, delayed, or conditioned.

**10.2 By Licensor:** Licensor hereby agrees to indemnify, hold harmless, and defend Licensee, its subsidiaries and affiliated and related companies, and each of their present and future officers, directors, shareholders, employees and agents against and with respect to any and all Losses arising out of any breach on Licensor's part of any covenant, representation, or warranty contained in this Agreement. Licensor, with counsel reasonably acceptable to Licensee, shall have the right to undertake the defense of any such claim asserted by a third party, and Licensee shall reasonably cooperate in such defense and make available all personnel, records, and materials reasonably requested by Licensor in connection therewith at Licensor's reasonable expense. Licensee shall be entitled to participate in such defense, but shall not be entitled to indemnification with respect to the costs and expenses of such participation if Licensor undertakes and continues the defense of the covered claim with counsel reasonably satisfactory to Licensee. Licensee shall not be liable for any claim settled without its consent, which consent may not be unreasonably withheld, delayed, or conditioned. Notwithstanding, no warranty or indemnity is given by Licensor - and Licensor will therefore not accept any liability or responsibility whatsoever - with respect to any demand, cause of action, damages, liability, cost or expense arising from any claim that use by Licensee of the Property infringes on any trademark right of any third party or otherwise constitutes unfair competition by reason of any prior rights acquired by such third party. It is expressly agreed that it is the sole responsibility of Licensee to carry out such investigations as it may deem appropriate to establish that the Products, packaging, promotional and advertising material which are Manufactured or created hereunder, including any use made of the Property therewith, do not infringe such right of any third party, and Licensor shall not be liable to Licensee if such infringement occurs.

**10.3 Notification Requirement.** A party seeking indemnification pursuant to Section 10.1 or 10.2 above (the "**Indemnified Party**") shall give reasonably prompt written notice to the party from whom such indemnification is sought (the "**Indemnifying Party**") of the assertion of any claim, or the commencement of any action, suit, or proceeding in respect of which indemnity may be sought hereunder, and shall give the Indemnifying Party such information with respect thereto as the Indemnifying Party may reasonably request, but no failure to give such notice shall relieve the Indemnifying Party of any liability hereunder, except to the extent that the Indemnifying Party has suffered actual prejudice thereby.

**11. LIMITATION OF LIABILITY.** EXCEPT FOR EACH PARTIES RESPECTIVE INDEMNIFICATION OBLIGATIONS AS SET FORTH IN SECTION 10 ABOVE, IN NO EVENT SHALL EITHER PARTY, ITS SUBSIDIARIES OR AFFILIATED OR RELATED COMPANIES, OR ANY OF THEIR PRESENT OR FUTURE OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, OR AGENTS (COLLECTIVELY, THE "**NON-INJURED PARTIES**"), BE LIABLE TO THE OTHER PARTY HERETO FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, SPECULATIVE, OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOSS OF PROFITS OR USE, BUSINESS INTERRUPTION, OR LOSS OF GOODWILL, IRRESPECTIVE OF WHETHER SUCH DAMAGES ARISE OTHERWISE AND WHETHER OR NOT SOME OR ALL OF THE NON-INJURED PARTIES HAVE ADVANCE NOTICE OF THE POSSIBILITY OF SUCH DAMAGES. THE LIMITATIONS SET FORTH IN THIS SECTION SHALL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. THE PARTIES HERETO ACKNOWLEDGE AND AGREE



THAT THE LIMITATIONS SET FORTH IN THIS SECTION WERE AN ESSENTIAL ELEMENT IN SETTING CONSIDERATION UNDER THIS AGREEMENT.

**12. INSURANCE.** Licensee, at its sole cost and expense, and in form satisfactory to Licensor, shall obtain from reputable and solvent insurers licensed to do business in the jurisdiction in which Licensee activities pursuant to this Agreement will take place, insurance as provided below:

**12.1 General Liability and Products Liability Insurance.** Licensee shall maintain general liability and products liability insurance (in the form of Public Liability, Commercial General Liability, Accident, Products Liability or equivalent insurance), covering third party claims for bodily injury and property damage arising all of all activities of and Products manufactured, distributed, sold or otherwise disposed of by Licensee pursuant to this Agreement. Such insurance shall provide limits of not less than the amount set forth in Section Q of the Deal Terms per occurrence and an annual aggregate limit in an amount satisfactory to Licensor, but in no event shall the aggregate limit be less than the amount set forth in Section Q of the Deal Terms. Licensee shall maintain such coverage during the Term of this Agreement and any Sell-Off Period, and for an additional period of 36 months after final distribution, sale, or other disposal (whichever is later) of all Products in Licensee's control or possession. Such insurance shall provide contractual liability and cross liability coverage. Such insurance shall either (1) include Licensor, its subsidiaries and affiliates, and their respective officers, directors, shareholders, employees and agents as Additional Insureds and stipulate that the insurance afforded such Additional Insureds shall apply as primary insurance and that no other insurance maintained by any of them shall be called upon to contribute to a loss covered thereunder, or (2) shall include an indemnity to principals clause, include Licensor, its subsidiaries and affiliates as principals, and stipulate that the insurance afforded such principals shall apply as primary insurance and that no other insurance maintained by any of them shall be called upon to contribute to a loss covered thereunder.

**12.2 Media Liability.** If applicable, and is set forth in Section Q of the Deal Terms, Licensee shall maintain insurance for media liability, such as infringement of copyright, trademark, trade dress, title or slogan, arising from any Products manufactured, distributed, sold, or otherwise disposed of by Licensee. Such insurance shall provide (i) that Licensor is an additional insured under such insurance, but only for liability arising from Licensee's activities and only for liability for which coverage is otherwise afforded by such insurance, and (ii) contractual liability and cross liability coverage for claims by additional insureds against other insureds. Such insurance may be written on an "occurrence" or "claims made" basis, but in either case shall be maintained at all times during the Term of this Agreement and any Sell-Off Period, and for a period of thirty-six (36) months after final distribution, sale, or other disposal (whichever is later) of all Products in Licensee's control or possession.

**12.3 Evidence of Insurance.** At the time this Agreement is executed, or within a reasonable time thereafter, and within a reasonable time after insurance coverage is renewed or replaced, Licensee shall provide Licensor with a Certificate of Insurance showing that the insurance requirements set forth herein have been met. Licensee's failure to provide evidence of insurance, and/or Licensor's review, receipt or acceptance of evidence of insurance, shall not limit or relieve Licensee's obligation to comply with the requirements stated herein or otherwise constitute a waiver of the requirements stated herein. If Licensee fails to furnish a Certificate of Insurance, or if, at any time during the period when a particular Policy is required to be in effect, Licensor is notified of the change, cancellation, or lapse of such Policy, which change, cancellation, or lapse Licensee does not rectify within thirty (30) days of such Policy's status change, Licensor, in addition to all other remedies available to it hereunder or otherwise at law or in equity, may, at its option, obtain the insurance coverage provided by such Policy and bill Licensee for the amount of the premium thereof. Licensee shall remit such amount to Licensor within ten (10) days of receipt of notice from Licensor stating the premium cost. Such premium cost shall be in addition to any other payments due under this Agreement.

### **13. CONFIDENTIALITY.**

**13.1 "Confidential Information" Defined.** "Confidential Information" means information: (a) that is marked or identified, orally or in writing, as the confidential or proprietary information of the Mattel Parties prior to, upon, or promptly after receipt by Licensee; or (b) which Licensee should recognize from the circumstances surrounding the disclosure to be confidential. Without limiting the generality of the foregoing, the contents, terms, and conditions of this Agreement, the Style Guide, the Mattel Parties' marketing strategies and business plans, information regarding unreleased Licensor products, and all communications between the parties related to the foregoing are Confidential Information and may not be disclosed by Licensee.



**13.2 Scope.** In the performance of or otherwise in connection with this Agreement, the Mattel Parties may disclose Confidential Information to Licensee, or Licensee may otherwise create or receive Confidential Information. Nothing in this Agreement will be interpreted to confer upon Licensee any implied or express license to use the Confidential Information for any purpose, other than for the purpose of fulfilling its obligations hereunder. Without the prior written approval of Licensor (which may be revoked at any time in Licensor's sole discretion), Licensee shall not disclose, provide, disseminate, or otherwise make available any of the Confidential Information or any part thereof in any form whatsoever to any third party. Licensee will take all reasonable precautions to prevent disclosure of the Confidential Information to unauthorized persons or entities. Without limiting the generality of the foregoing, Licensee agrees that, if Licensee receives from the Mattel Parties any material non-public information regarding the Mattel Parties, it will comply with SEC Regulation FD (Fair Disclosure) and refrain from trading in Licensor's stock until that material non-public information is publicly disseminated.

**13.3 Limitations.** The obligations set forth above shall not apply to any: (a) information that now or later becomes publicly available through no fault of Licensee; (b) information that is obtained by Licensee from a third party (other than in connection with this Agreement) and such third party is violating no obligation of secrecy or confidentiality in providing such information to Licensee; (c) disclosure required by any applicable Law, provided that Licensee will use reasonable efforts to give advance notice to, and cooperate with, Licensor in connection with any such disclosure; and (d) disclosure with the written consent of Licensor. Licensor hereby consents to Licensee's disclosure of Confidential Information to Contractors, insurance brokers, lawyers, accountants, and financing sources, but only if, when, and to the extent reasonably necessary for Licensee to perform its obligations under this Agreement, and only if such third party expressly agrees to hold such Confidential Information in strict confidence and not use it for any purpose other than to assist Licensee with the performance of its obligations hereunder.

**14. BANKRUPTCY RELATED PROVISIONS.** To the extent permitted under applicable Law, Licensor may terminate this Agreement with immediate effect by giving written notice to Licensee in the event that: (a) Licensee makes any assignment for the benefit of its creditors, applies for an adjudication in bankruptcy or a suspension of payments, has a petition of bankruptcy filed against it by a third party, or is similarly prevented from or unable to fulfill its duties under this Agreement; (b) Licensee is declared bankrupt or granted a suspension of payments; (c) a pre-judgment or post-judgment attachment is levied on a substantial part of Licensee's assets and, in the event of a pre-judgment attachment, is not released or discharged within 30 days; (d) Licensee's business is transferred in whole or in part, liquidated, wound up, discontinued, or relocated abroad, or a decision is taken in this respect; (e) Licensee becomes insolvent or makes a composition or arrangement with its creditors; (f) Licensee has an administrative receiver or a receiver appointed over all or any part of its assets or undertaking; or (g) any event analogous to the events referred to in this Section 14 occurs with respect to the Licensee under the laws of the jurisdiction in which Licensee has its principal office.

## **15. TERMINATION.**

**15.1 Termination Defaults Subject to Cure.** Without prejudice to any other right or remedy available to Licensor under this Agreement or otherwise at law or in equity, Licensor shall have the right at any time to terminate this Agreement in its entirety by giving Licensee written notice thereof if Licensee fails to pay on time and in full any amount that has come due hereunder, or fails to deliver on time any Reports or Forecast Reports that have come due hereunder; provided that, with respect to Reports and Forecast Reports and all payments hereunder, other than the Advance, Licensee shall have fifteen (15) days after Licensor has given Licensee written notice of termination to cure any such failure and avoid termination.

**15.2 Termination Defaults Not Subject to Cure.** Without prejudice to any other right or remedy available to Licensor under this Agreement or otherwise at law or in equity, and subject to Paragraph 15.1 above, Licensor shall have the right at any time to immediately terminate this Agreement in its entirety by giving Licensee written notice thereof upon the occurrence of one or more of the following events, none of which may be cured: (a) Licensee fails to comply with or perform any of its obligations or covenants hereunder or breaches any term of this Agreement, including but not limited to: (i) failure to pay the Advance on time and in full; (ii) failure to strictly comply with the approval processes set forth in Section 5; (iii) failure to maintain in full force and effect the insurance coverage referenced in Section 12.1 above; (iv) failure to comply with all applicable Laws, or industry standards in accordance with Section 6 above; and (v) failure to comply with the requirements as set forth in Section 7; (b) the aggregate amount of Royalties earned fail to meet or exceed the amount of the Guarantees applicable to such Product, and Territory for such Year, with Licensor's right to terminate the Agreement pursuant to this section being exercisable no later than sixty (60) days after Licensor's receipt of the Report regarding Royalty Shortfalls for such Year; (c) Licensor suffers or incurs any Loss in respect of any matter for which



Licensee is obligated to indemnify Licensor hereunder; and (d) Licensee has made a material misrepresentation to Licensor or has omitted to state a material fact necessary to make a material statement made to Licensor not misleading.

**15.3 Change of Control.** Licensor may terminate this Agreement in its entirety immediately upon written notice to Licensee, without providing Licensee with an opportunity to cure, if there is a "Change in Control." A "Change of Control" shall be defined as any of the following: (a) the consummation of any transaction or series of transactions (including, without limitation, any merger or consolidation), as a result of which the shareholders of Licensee or its "Parent" (defined below) immediately prior to the transaction(s) beneficially own, directly or indirectly, after consummation of the transaction(s), less than \_\_\_\_\_ of the voting stock of Licensee or its Parent, measured by voting power rather than number of shares; (b) the sale, lease, transfer, conveyance or other disposition, in a single transaction or a series of transactions, of all or substantially all of the properties or assets of Licensee or its Parent; or (c) \_\_\_\_\_ or more of the members of the Board of Directors of Licensee (or its Parent) are not "Continuing Directors." "Continuing Director(s)" shall mean any member of the Board of Directors of Licensee (or its Parent) who (i) was a member of such Board of Directors on the date of this Agreement, or (ii) was nominated for election or elected to such Board of Directors with the approval of a majority of the Continuing Directors.

If Licensee has reason to believe that such a Change of Control has occurred or will occur in the reasonably foreseeable future, or if Licensee or its Parent proposes to enter into such a Change of Control transaction, Licensee shall give written notice thereof to Licensor. Within a reasonable time after receiving such notice, Licensor shall give Licensee written notice stating whether it approves or disapproves any such Change of Control or proposed Change of Control and, in the case of its disapproval thereof, whether it exercises its right of termination hereunder, if the Change of Control has already occurred, or will exercise its right of termination if the proposed Change of Control is subsequently made. If Licensor approves of such Change of Control and such Change of Control actually occurs or has already occurred, a transfer fee will be immediately payable to Licensor in an amount equaling \_\_\_\_\_ of all Net Sales generated under the Agreement within the preceding twelve (12) months, but in no case less than \_\_\_\_\_.

This fee will represent consideration to Licensor for, among other issues, Licensor's risk that Sales or Manufacturing may be delayed, approval and supervision of the use of the Property may be compromised, the possible risk associated with the new identity, relationships, credit standing, capabilities, and image associated with a new or altered Licensee, and Licensor's administrative expenses. Without limiting the generality of the foregoing, nothing in this section shall limit in any way the rights of Licensor under Section to disapprove assignments or other transfers of this Agreement or any rights hereunder. For purposes of this Agreement, Licensee's "Parent" shall mean any person or entity in control of Licensee directly or indirectly through one or more intermediaries.

**15.4 Special Termination Rights Relating to Trade Sanctions.** In addition to the termination rights provided for in this Section 15, in the event that any country included with the Territory, as specified in Section H hereof, becomes subject to any trade sanctions or other restrictions on commercial and/or financial transactions under the laws or regulations of the United States, Licensor may delete that country from the Territory by giving written notice thereof to Licensee. Immediately upon receipt of any such notice from Licensor, Licensee shall cease all sales of any Products in or to, and all other activities hereunder within, the country specified in Licensor's notice hereunder, and thereafter Licensee shall have no further rights whatsoever with respect to that country under this Agreement. Within ten (10) business days after the date of any such notice from Licensor, Licensee shall furnish Licensor with a certificate, signed by an officer of Licensee, confirming that Licensee has complied with its obligations under this Section 15.1.4 with respect to the cessation of activities in the country specified in that notice.

**15.5 Special Termination Rights for Failure to Comply with U.S. Export Control Laws.** Licensee agrees to comply strictly with all United States and European Union export control laws and regulations in the exercise of its rights, and the performance of its obligations, under this Agreement. Specifically, Licensee shall not export, re-export, transfer, divert or disclose any of the information furnished by Mattel hereunder to any person, firm or entity located in, or a resident or national of, any country that is subject to a United States Government export embargo, or that has been designated by the United States Government as a "terrorist supporting" country. In fulfilling its obligations under this Section 15.5, Licensee represents and warrants that it has a continuous obligation throughout the Term of this Agreement to provide Licensor with a complete list of all of Licensee's manufacturers and distributors for screening by Licensor against various United States Government lists of prohibited and restricted parties. Licensor shall notify Licensee as soon as reasonably practicable if any such manufacturer or distributor is, or is suspected of being, a prohibited or restricted party, and Licensee shall not supply, provide or make available to that prohibited or restricted party any of the Products or any information furnished hereunder by Mattel. Licensee acknowledges and agrees that any failure by Licensee to comply with the terms of this provision shall



constitute a material breach of this Agreement, entitling Licensor to terminate this Agreement immediately, without notice and without any further liability whatsoever, to Licensor.

**15.6 Special Termination Rights for Failure to Exploit Product.** In addition to any other remedies that may be available to Licensor, in the event that Licensee fails to meet its designated Marketing Date, or if during any Quarter following the Marketing Date, Licensee fails to Manufacture and distribute Products through each Territory and/or each of the Channels of Distribution Licensor may: (a) terminate this Agreement in its entirety, (b) terminate Licensee's rights and licenses solely with respect to the particular Products that were not Manufactured, offered for Sale, Sold and/or distributed, and/or (c) terminate Licensee's rights and licenses solely with respect to a particular Territory and/or Channel of Distribution to which Products were not offered for Sale, Sold and/or distributed, as required herein. Termination hereunder shall be in writing and shall be effective immediately with no time granted to Licensee for cure.

**15.7 Special Termination Rights for Violation of Federal Corrupt Practices Act.** Licensee will observe all laws and regulations applicable to the conduct of its business and to the performance of this Agreement including, but not limited to, the United States Foreign Corrupt Practices Act, as amended. Licensee hereby certifies that it has not paid, nor offered or agreed to pay, nor has caused to be paid, or offered or agreed to be paid, directly or indirectly, in respect of this Agreement, any political contributions, fees or commissions to any governmental employee or representative. Licensee further certifies that it will not, directly or indirectly, in connection with this Agreement and the business resulting therefrom, offer, pay, promise to pay, or authorize the giving of money or anything of value to any government official or representative, to any political party or official thereof or to any candidate for political office, or to any person, while knowing or being aware of a high probability that all or a portion of such money or thing of value will be offered, given or promised, directly or indirectly, to any government official, to any political party or to any candidate to political office, for the purpose of: (1) influencing any act or decision of such official, political party, party official, or candidate in his or its official capacity, including a decision to fail to perform his or its official functions; or (2) inducing such official, political party, party official, or candidate to use his or its influence with the government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality, in order to assist Licensor or Licensee in obtaining or retaining business for or with, or directing business to any third party. Licensee further agrees that if subsequent developments cause the certifications and information reported herein to be no longer accurate or complete, Licensee will immediately so advise Mattel. Licensee acknowledges and agrees that any failure by Licensee to comply with the terms of this provision shall constitute a material breach of this Agreement, entitling Licensor to terminate this Agreement immediately, without notice and without any further liability whatsoever, to Licensor.

**15.8 Cross Default.** The parties acknowledge and agree that any breach of this Agreement by Licensee shall constitute a material breach by Licensee of each and every other agreement now or hereafter existing between the parties, and Licensor shall have the right to immediately terminate by written notice any or all such other agreements in their entireties without providing Licensee with the opportunity to cure. Further, any breach by Licensee of any other agreement now or hereafter existing between the parties shall constitute a material breach by Licensee of this Agreement, and Licensor shall have the right to immediately terminate this Agreement and all other agreements now or hereafter existing between the parties in their entireties by written notice to Licensee.

**15.9 Obligations Upon Expiration or Termination.** Following the expiration or earlier termination of this Agreement, subject to Section 16 below, Licensee shall: (a) immediately cease and cause all Contractors to cease all activities under this Agreement with respect to the Property, including but not limited to the development, creation, Manufacture, offering for Sale, Advertising, Sale, and distribution of the Products; (b) immediately pay all Guarantee amounts set forth herein as well as any other monies that are due and owing hereunder; and (c) deliver to Licensor (at Licensee's expense), within thirty (30) days following such expiration or termination, all Created Materials, all Confidential Information, a duly completed and signed inventory report itemizing all Products (or components thereof) in Licensee's or a Contractor's possession. Licensor may perform one or more unrestricted, unannounced physical inspections of Licensee's and any Contractors' facilities to verify compliance with this section. Except as expressly provided in Section 16 below, upon the expiration or termination of this Agreement for any reason, neither Licensee nor any Contractor shall have any further right to exercise any of the licenses or rights otherwise granted to Licensee or a Contractor herein, and all such licenses and rights shall immediately revert to Licensor. With respect to any partial termination herein, the obligations of Licensee set forth in this section (and in Section 16 below) shall apply only with respect to the terminated portion, and then only to the extent reasonably applicable.

**16. SELL OFF PERIOD.** Provided that (a) Licensee has complied and continues to fully comply with all applicable terms and conditions in this Agreement, including but not limited to complete and timely payment of all amounts due hereunder; (b) the number of Products Licensee has in its stock does not exceed the average number of Products Licensee



has Sold in any Quarter during the Term; and (c) Licensee has provided Licensor with a duly completed and signed, itemized statement truthfully certifying the number of Products (or components thereof) in its stock as of the date requested by Licensor (which Licensor may verify with physical inspections, at Licensor's sole discretion). Licensor agrees that, at the expiration of this Agreement, Licensee shall have the non-exclusive right, for a period of not more than ninety (90) days thereafter, to dispose of all of the Manufactured and unsold Product(s) that are in Licensee's physical possession (and not at a Manufacturer's facilities) prior to such expiration, subject to the terms of this Agreement. Notwithstanding the foregoing, if Licensor may cancel and prevent any such sell-off period (the "Sell-Off Period") by providing Licensee with notice thereof at least six (6) months prior to the end of the Term. In no event will there be a Sell-Off Period following any early termination of this Agreement. Licensee expressly acknowledges that, during any Sell-Off Period, neither Licensee nor any third party has any right whatsoever to Manufacture or have Manufactured the Products, to receive shipments of the Products from any Manufacturer or other third party, or to engage in any Advertising. Further, nothing in this section shall be construed as authorizing Licensee to sell or distribute Products not Approved by Licensor or to sell Products in any manner that is otherwise forbidden under this Agreement. Full Royalties shall be due during any Sell-Off Period, but such Royalties shall not be applied towards the Guarantee. If Licensee or any Manufacturer or Distributor has any remaining inventory of Products following any Sell-Off Period (or, if no Sell-Off Period is granted, then following any expiration or termination of this Agreement), Licensee shall, at Licensor's sole option, immediately (a) make available such inventory to Licensor for purchase at or below Licensee's actual out-of-pocket cost of Manufacturing (excluding overhead expenses, Advertising costs, development costs, costs and expenses of distribution, and all other costs and expenses), (b) deliver (at Licensee's expense) to Licensor for destruction such remaining inventory, or (c) furnish to Licensor an affidavit attesting to the destruction of such remaining inventory.

#### 17. MISCELLANEOUS.

17.1 Assignment. Each Mattel-Party may at any time freely transfer, assign, encumber and delegate its respective rights and duties under the Agreement and the Agreement itself, in whole or in part. Further, Licensor may transfer to a third party or any other Licensor party by any means and for any purpose whatsoever any or all ownership rights in, to, or under any of the Property or the Created Materials, or any IP Rights therein or related thereto, provided that any such transfer shall be subject to Licensee's licenses and rights herein. In such event, Licensee shall cooperate to the extent necessary to effect such transfer, assignment, encumbrance or delegation expeditiously. The rights and obligations of Licensee under this Agreement are of a personal nature, and Licensee may not assign, sublicense (except as otherwise may be expressly set forth herein), or otherwise transfer any of its rights or obligations hereunder, for any purpose whatsoever, without the prior written consent of the Mattel parties. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their permitted successors and permitted assigns.

17.2 Licensor's Remedies; Attorneys' Fees. No remedy conferred on Licensor by any of the specific provisions of this Agreement is intended to be exclusive of any other remedy for Licensor, and each and every remedy for Licensor shall be cumulative and shall be in addition to every other remedy given to Licensor hereunder or now or hereafter existing at law or in equity or by statute or otherwise. The election of one or more remedies by Licensor shall not constitute a waiver by Licensor of the right to pursue other available remedies. In the event that Licensees engages in any unauthorized use of the Property in violation of any of the provisions of this Agreement, Licensor may recover all profits derived by Licensee from such unauthorized use, in addition to any other remedies available to Licensor hereunder or otherwise at law or in equity. In the event Licensor is required to take legal action against Licensee to recover Royalties or other amounts payable to Licensor hereunder, or to enforce any of the provisions of this Agreement, Licensee shall pay Licensor's attorneys' fees, expenses, and court costs.

17.3 Licensee's Remedies. In the event of a default, breach, or alleged default or breach under this Agreement by Licensor, Licensee's sole remedy shall be an action at law for damages, and in no event shall Licensee be entitled to rescind or terminate this Agreement, to seek or obtain injunctive or other legal or equitable relief, or to enjoin, interfere with, or restrain Licensor's use and exploitation of the Property, the Created Materials, the Products, or the Advertising. Licensee shall not be entitled to rescind or terminate this Agreement unless and only to the extent such entitlement is mandatory under applicable law. Licensee hereby waives and agrees not to assert any and all rights of offset, setoff, or counterclaim (or any other rights to set up reserves, make deductions, or withhold payment in whole or in part) that Licensee may have with respect to any and all sums payable by Licensee to Licensor under this Agreement (collectively, "Setoff Rights"). No act or omission of Licensor shall constitute a breach or default under the Agreement unless Licensee shall first give written notice thereof to Licensor setting forth such alleged breach or default and, within thirty (30) days after Licensor's receipt of such notice, Licensor has not (a) cured such breach or default or (b) commenced and diligently pursued efforts to cure such breach or default.



**17.4 Injunctive Relief.** The parties hereto acknowledge and agree that the provisions of this Agreement are essential for the protection of Licensor's legitimate business interests and are fair and reasonable in scope and content. The parties agree that an award of money damages would be inadequate for any breach of this Agreement by Licensee or any Contractor and that any such breach would cause Licensor irreparable harm. Accordingly, with respect to any breach of this Agreement by Licensee or any Contractor, in addition to any other remedies that may be available hereunder or otherwise at law or in equity, Licensor shall be entitled, without the requirement of posting a bond or other security, to equitable relief, including but not limited to injunctive relief and specific performance, and Licensee hereby agrees not to oppose the granting of such relief on the basis that Licensor has an adequate remedy at law.

**17.5 Survivals.** The respective obligations of the parties under this Agreement and other terms and conditions herein, which by their nature would continue beyond the expiration or termination of this Agreement, shall survive any such expiration or termination and continue in full force and effect. Without limiting the generality of the foregoing, Sections 2 (during any Sell-Off Period), 3, 4 (with regard to payment of amounts due, Reports, record keeping, inspection, and audits), 5.4 (during any Sell-Off Period), 8, 9, 10, 11, 12, 13, 14, 15, 16 and this Section 17 shall survive the expiration or earlier termination of this Agreement for any reason, and shall continue in full force and effect in perpetuity unless expressly stated otherwise.

**17.6 Waiver.** Either party may, by written notice to the other party, (a) extend the time for the performance of any of the obligations or other actions of the other party under this Agreement, (b) waive compliance with any of the conditions or covenants of the other party contained in this Agreement, or (c) waive performance of any of the obligations of the other party under this Agreement. With regard to the above, (i) no waiver or extension of time shall be effective unless expressly contained in a writing signed by the waiving party, and (ii) no alteration, modification, or impairment shall be implied by reason of any previous waiver, extension of time, or delay or omission in the exercise of rights or other indulgence.

**17.7 Section Headings; Construction of Agreement.** Section and subsection headings herein are for ease of reference only and shall not have any effect upon the construction of this Agreement or any of the terms or provisions hereof. Except as expressly provided herein, this Agreement is not intended to confer any rights, benefits, or remedies upon any person other than the parties hereto.

**17.8 Governing Law/Jurisdiction.** This Agreement and relationship of the parties will be governed by, and interpreted in accordance with, the laws of The Netherlands. Notwithstanding, Licensor may elect to enforce any of its rights hereunder under the laws of any country in the Territory or under the laws of the country of Licensee's domicile. Any dispute arising in connection with this Agreement shall be submitted to the competent court in Amsterdam. This Section 17.11 shall not limit the right of Licensor to initiate proceedings against Licensee in any other jurisdiction as set forth herein, nor shall it preclude Licensor from applying for injunctive relief in summary proceedings before the court of Amsterdam, The Netherlands or any other jurisdiction.

**17.9 Severability.** If any provision of this Agreement is found to be illegal or unenforceable, then such provision will be deemed severable from the remainder of this Agreement, and the remaining provisions will continue in full force and effect. The parties shall make any effort to reach agreement on a new clause that differs as little as possible from the invalid, illegal, not binding or unenforceable provision, taking into account the substance and purpose of this Agreement.

**17.10 Counterparts; Facsimile/Scan Signatures.** The Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original. Both parties agree to the use of faxed or electronically scanned signatures in order to expedite the execution of this Agreement.

**17.11 Relationship of Parties.** Nothing in this Agreement shall make the parties partners, joint venturers, or similarly associated with the business of the other. Each party expressly understands and agrees that the other party is an independent contractor with respect to the other in the performance of each and every part of this Agreement, and is solely responsible for all of its own employees and its own labor costs and expenses arising in connection therewith. Licensee has no right, power, or authority to agree or commit to any obligation or duty on behalf of Licensor, make any representations, promises, or commitments on behalf of Licensor, or otherwise bind, commit, or obligate Licensor in any manner. Licensee will not hold itself out as acting for or behalf, or as a representative or agent of, Licensor.

**17.12 Mattel Parties.** Any one or all of the Mattel Parties, their transferees, assigns, affiliates and delegates may exercise any of the termination, approval and enforcement rights under this Agreement, either separately or with one another. Licensor shall have the first right of enforcement as to intellectual property violations and may take any and all action needed to preserve its IP Rights in or to the Property and its IP Rights in and to the Created Materials. Apart from



Licensee's Royalty obligations, and notwithstanding anything to the contrary herein, Licensee's duties, warranties, acknowledgements, obligations and covenants under the Agreement are respectively owed and made to each Mattel Party, their transferees, assigns, affiliates and delegates, as though specifically set forth in each and every relevant Section of this Agreement. The foregoing terms shall apply to any Licensor-approved transfer, assignment, sublicense, encumbrance or delegation of rights and duties by Licensee, whether existing now or in the future.

**17.13 Entire Agreement.** This Agreement, which consists of the Confidentiality Agreement previously executed between the parties, the Deal Terms, these Standard Terms and Conditions, and all Exhibits referenced in or attached to any of the foregoing, represents and expresses the entire agreement of the parties hereto. It replaces and supersedes all prior contracts, representations, and understandings, written or oral, between the parties concerning the within subject matter. This Agreement may not be modified, amended, or in any way altered except by an instrument in writing signed by both Licensor and Licensee.



**EXHIBIT 1**

**PRODUCT LIST**

The following Products bearing Approved uses of the Property:

**Enchantimals Products limited to the following:**

- Cups
- Plates
- Bowls



**EXHIBIT 2**

**FACILITIES UTILIZED FOR MANUFACTURE OF THE PRODUCTS**

**Licensee's Own Manufacturing Facilities**

Name of Licensee's Own Manufacturing Facility(s):	Category of Products Being Manufactured:	Address of Licensee's Own Manufacturing Facility(s):	ECOC Program <i>Any established code of conduct program declared by Licensee to be in place at the Facility (i.e., GMP, Disney, WRAP, SA8000, etc.):</i>

**Third Party Manufacturing Facilities Engaged by Licensee**

Name of Third Party Manufacturing Facility(s):	Category of Products Being Manufactured:	Address of Third Party Manufacturing Facility(s):	ECOC Program <i>Any established code of conduct program declared by Licensee to be in place at the Facility (i.e., GMP, Disney, WRAP, SA8000, etc.):</i>

**Sub-Manufacturing Facilities Engaged by Licensee's Third Party Manufacturers**

Name of Third Party Sub-Manufacturing Facility(s):	Category of Products Being Sub-Manufactured:	Address of Third Party Sub-Manufacturing Facility(s):	ECOC Program <i>Any established code of conduct program declared by Licensee to be in place at the Facility (i.e., GMP, Disney, WRAP, SA8000, etc.):</i>

\*\*\*Licensee shall notify Licensor immediately in the event any Manufacturing facilities are added to or deleted from the above listing. Please ensure any additions or deletions to your Manufacturing Facilities during the Term are specified on Exhibit 2 and submitted direct to Corporate Responsibility at (China.Export@Mattel.com).\*\*\*