

MODEL INTELLECTUAL PROPERTY SECURITY AGREEMENT
INITIAL WORKING DRAFT

Background

This draft Model Intellectual Property Security Agreement (MIPSA) is designed for use as a stand-alone security agreement in which a single debtor grants a security interest in intellectual property collateral (i.e., copyrights, patents and trademarks) to a single secured party, to secure a commercial loan to the debtor. The model agreement is not designed as a supplement to a general all-assets security agreement, and is not drafted to accommodate a collateral agent and/or multiple debtors. The draft agreement at this point is generic in form and does not address issues related to non-U.S. collateral or particular industries or types of business. Additional options may be added later.

The Model Intellectual Security Agreement Task Force is a joint project of the Commercial Finance Committee and the Uniform Code Committee of the American Bar Association Section of Business Law. Further information about the Task Force is available on the Task Force's website

<http://apps.americanbar.org/dch/committee.cfm?com=CL190051>.

Drafting Process – *kiiac* document assembly

The Task Force is using an innovative document assembly process provided via *kiiac*, a software program that collects legal documents filed with EDGAR and maintains a database of standard and alternative provisions in various kinds of contracts. An explanation of the Task Force's anticipated use of the *kiiac* approach is available on the Task Force's website. Task Force members may access the *kiiac* database at www.kiiac.com:82. The user name is *ABAguest* and the password is *k11ac*.

Initial Draft

CAVEAT: This initial draft is based on a composite document generated by *kiiac*, using clauses and language statistically common in IP security agreements in the EDGAR database, and is therefore internally inconsistent. Some of the source documents are limited to one type of collateral, while some cover all IP collateral in general. Some provisions in the draft are alternative examples of language addressing similar issues. Most captions are derived from *kiiac*. Some Section captions are included as placeholders for provisions that do not seem to be specific to IP collateral.

Previous Task Force Meetings. The granting language and collateral descriptions were discussed in the Task Force meeting in April 2011. Examples of language for excluded collateral (in Section 2.2) are included for future consideration in light of discussions at that meeting.

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MODEL INTELLECTUAL PROPERTY SECURITY AGREEMENT
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This Intellectual Property Security Agreement (“Security Agreement”) is dated as of [AGREEMENT DATE] (“Effective Date”) and is made by [DEBTOR NAME], a [DEBTOR JURISDICTION ENTITY] (“Debtor”), in favor of [SECURED PARTY NAME] (“Secured Party”).

Background

Secured Party has agreed to make certain loans (“Loans”) to Debtor, on the terms and conditions set forth in the Loan Agreement between Debtor and Secured Party dated the Effective Date (“Loan Agreement”) and the promissory note issued by Debtor to Secured Party dated the Effective Date (the “Note”). One of the conditions to Secured Party’s agreement to make the Loans is Debtor’s execution and delivery of this Agreement.

Agreement

NOW, THEREFORE, in order to induce Secured Party to make the Loans and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and intending to be legally bound, Debtor agrees as follows:

Definitions.

Defined Terms.

In addition to the terms defined in the Background or elsewhere in this Agreement, the following terms have the following meanings herein:

“Collateral” is defined in Section 2 of this Agreement.

“Contracts” means all contracts, leases, licenses, undertakings, franchise agreements or other agreements, whether oral or in written or electronic form, related in any way to any Intellectual Property, and all rights of Debtor under any of the foregoing.

“Copyright Office” means the U.S. Copyright Office.

“Copyrights” means any (a) copyrights, whether registered or unregistered, (b) copyright registrations or applications in any IP Filing Office, (c) continuations, renewals, or extensions thereof, (d) rights to receive royalties, revenues, income or other payments related to any of the foregoing, and (e) causes of action and rights to claim, sue for or collect damages for, or enjoin or obtain other legal or equitable relief for, infringement (whether past, present or future) of any of the foregoing.

“Event of Default” is defined in Section 6 of this Agreement.

“Governmental Authority” means any federal, state, municipal, national, or other government, governmental department, commission, board, bureau, court, agency or instrumentality, or political subdivision thereof, or any entity or officer exercising executive, legislative, judicial, regulatory, or administrative functions of or pertaining to any government or any court, in each case whether associated with a state of the United States, the United States, or a foreign entity or government.

“Intellectual Property” means any Copyrights, Trademarks, Patents and other intellectual property, whether or not embodied in any tangible medium, including trade secrets, internet domain names, proprietary or confidential information, software and programming codes, inventions, technical information, procedures, designs, know-how, databases, expertise, experience, process, model, drawing, and records.

“IP Collateral” means all Intellectual Property, IP Licenses, Contracts and Related Property.

“IP Filing Office” means the PTO (for Patents and Trademarks), the Copyright Office (for Copyrights), or any similar office or agency in any Jurisdiction.

“IP License” means any Contract in which Debtor directly or indirectly grants or is granted a license or other right, whether exclusive or non-exclusive, (i) to use or develop any Intellectual Property, (ii) to receive royalties, revenues, income or other payment related to any Intellectual Property, or (iii) to exercise any other right with respect to any Intellectual Property.

“Jurisdiction” means any jurisdiction creating or recognizing rights in Intellectual Property, including the United States, any State, any foreign country or any subdivision thereof.

“Lien” means any mortgage, lien, deed of trust, charge, pledge, security interest or other encumbrance.

“Loan Documents” means the Note, the Loan Agreement, this Agreement and any other agreement now or hereafter executed in connection therewith.

“Material Adverse Effect”

“Patents” means any (a) letters patent of the United States or any other Jurisdiction, (b) patent applications, petty patents, patents of addition and other filings in any IP Filing Office, (c) continuations, continuations-in-part, renewals, divisions, extensions and reexaminations thereof, (d) rights to receive royalties, revenues, income or other payments related to any of the foregoing, and (e) causes of action and rights to claim, sue for or collect damages for, or enjoin or obtain other legal or equitable relief for, infringement (whether past, present or future) of any of the foregoing.

“Proceeds” means whatever is receivable or received from or upon the sale, lease, license, collection, use, assignment, exchange or other disposition, whether voluntary or involuntary, of any IP Collateral, including “proceeds” as defined in UCC Section 9-102(a)(64) and, including (i) any accounts, chattel paper, instruments, general intangibles, cash and other proceeds payable in respect of any of the IP Collateral, (ii) any proceeds of any insurance, indemnity, warranty or guaranty payable with respect to any of the IP Collateral, (iii) any and all claims and payments (in any form whatsoever) made or due and payable in connection with any requisition, confiscation, condemnation, seizure or forfeiture of all or any part of the IP Collateral by any Person acting under color of governmental authority, and (iv) any and all other amounts paid or payable under or in connection with any of the IP Collateral or for or on account of any damage or injury to or conversion of any IP Collateral by any Person.

“PTO” means the U.S. Patent and Trademark Office.

“Related Property” means, with respect to any Intellectual Property, (i) all accounts, deposit accounts, general intangibles, instruments, investment property and other personal property at any time constituting, evidencing or arising under or with respect to such Intellectual Property, (ii) all substitutions and replacements for any of the foregoing, and (iii) all Debtor’s books, records, information and data with respect to any of the foregoing.

“Requirements of Law”

“Secured Obligations” means all liabilities, obligations, or undertakings owing by Debtor to Secured Party of any kind or description arising out of or outstanding under, advanced or issued pursuant to, or evidenced by the Loan Agreement or any of the other Loan Documents, whether for the payment of money or otherwise, whether direct or indirect, absolute or contingent, due or to become due, voluntary or involuntary, whether now existing or hereafter arising, and including all interest (including interest that accrues after the filing of a case under the Bankruptcy Code) and any and all costs, fees (including attorneys fees), and expenses that Debtor is required to pay pursuant to any of the foregoing, by law or otherwise.

“State” means any of the states of the United States.

“Trademarks” means (a) any marks, whether or not registered, including trademarks, service marks, tradenames, corporate names, company names, business names, trade styles, designs, logos, colors, sounds, trade dress, and any other source identifiers, (b) the goodwill of the business symbolized by or associated with the foregoing, (c) any trademark registrations, applications and other filings in any IP Filing Office, (d) any renewals and extensions thereof, (e) any rights to receive royalties, revenues, income or other payments related to any of the foregoing, and (f) causes of action and rights to claim, sue for or collect damages for, or enjoin or obtain other legal or equitable relief for, infringement, dilution or unfair competition (all whether past, present or future) of or with respect to any of the foregoing.

“UCC” means the Uniform Commercial Code, as in effect from time to time in the State of [*****] or, with respect to any particular matter, the Uniform Commercial Code as in effect in such other jurisdiction as may be required by law to govern such matter.

UCC Terms.

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

Grant of Security Interest.

Collateral.

As collateral security for the payment and performance when due (whether at stated maturity, by acceleration or otherwise) of all the Secured Obligations, Debtor hereby grants to Secured Party a security interest in all of Debtor's present and future right, title and interest in, to and under the following, whether now existing or hereafter acquired or arising (the "Collateral"):

Copyrights;

Trademarks;

Patents;

IP Licenses and other Contracts;

Other Intellectual Property;

Related Property; and

Proceeds.

Excluded Collateral.

[Alternative Example – IP including Trademark ITU] Notwithstanding any recording of Secured Party's security interest made in the any IP Filing Office, this Agreement shall not constitute a grant of a security interest in any property to the extent that such grant of a security interest is prohibited by any rule of law, statute or regulation or is prohibited by, or constitutes a breach or default under or results in the termination of any contract, license, agreement, instrument or other document evidencing or giving rise to such property, or

would result in the forfeiture of Debtor's rights in the property including, without limitation, any Trademark applications filed in the PTO on the basis of Debtor's "intent-to-use" such trademark, unless and until acceptable evidence of use of the Trademark has been filed with the PTO pursuant to Section 1(c) or Section 1(d) of the Lanham Act (15 U.S.C. 1051, et seq.), to the extent that granting a lien in such Trademark application prior to such filing would adversely affect the enforceability or validity of such Trademark application.

[Alternative Example -- Trademark ITU Application.] Notwithstanding anything to the contrary set forth in this Agreement, the term "Trademark" does not include any United States intent-to-use trademark applications to the extent that, and solely during the period in which, the grant of a security interest therein would impair, under applicable federal law, the registrability of such applications or the validity or enforceability of registrations issuing from such application.

[Alternative Example – Contracts Requiring Consent]. Notwithstanding anything to the contrary set forth in this Agreement, "Collateral" shall not include any asset, now owned or hereafter acquired or arising, to the extent that the creation or attachment of a security interest in such asset would require the consent of any third party under a Contract to which Debtor is a party in order for Debtor to avoid a breach of or default under the Contract if the requirement of consent under the Contract for the creation or attachment of the security interest is enforceable under applicable law and such consent has not been obtained, provided, however, that the "Collateral" shall include and the security interests hereunder shall immediately attach to any Contract upon receipt of any required consent or amendment to such Contract modifies such Contract to eliminate the requirement for any required consent.

[Alternative Example – Nonassignable Contracts] Notwithstanding anything to the contrary set forth in this Agreement, in no event shall the Security Interest attach to any license, contract or agreement to which a Debtor is a party or any of its rights or interests thereunder if, to the extent and for so long as the grant of such security interest shall constitute or result in a breach or termination pursuant to the terms of, or a default under, any such license, contract or agreement (other than to the extent that any such term would be rendered ineffective, or is otherwise unenforceable, pursuant to Sections 9-406, 9-407,

9-408 or 9-409 of the UCC or any other applicable Requirement of Law); provided that, to the extent severable, the Security Interest shall attach immediately to any portion of such license, contract or agreement that does not result in any such breach, termination or default, including any Proceeds of such license, contract or agreement Secured Obligations constitutes a breach of or a default under any agreement pursuant to which such Lien has been created; provided that the Security Interest shall attach immediately to any such asset (x) at the time the provision of such agreement containing such restriction ceases to be in effect and (y) to the extent any such breach or default is not rendered ineffective by, or is otherwise unenforceable under, any Requirements of Law.

Representations and Warranties.

Debtor represents and warrants to Secured Party as follows, as of the date hereof:

Debtor's Existence, Power, Authority.

Title to/Rights in Collateral.

No Other Liens.

Perfected First Priority Liens.

Debtor Information for Perfection.

No Consents Required for IP Licenses.

No consent of any party to any IP License constituting Collateral is required, or purports to be required, to be obtained in connection with the execution, delivery and performance of this Agreement that has not been obtained. Each IP License constituting Collateral is in full force and effect and constitutes a valid and enforceable obligation of Debtor and (to the knowledge of Debtor) each other party thereto except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditor's rights generally and by general equitable principles (whether enforcement is sought by proceedings in equity or at law). No consent or authorization of, filing with or other act by or in respect of any Governmental Authority is required in connection with the execution, delivery, performance, validity or enforceability of any of the IP

Licenses constituting Collateral by any party thereto other than those which have been duly obtained, made or performed and are in full force and effect. Neither Debtor nor (to the knowledge of Debtor) any other party to any IP License constituting Collateral is in default in the performance or observance of any of the terms thereof. Debtor's right, title and interest in, to and under each IP License constituting Collateral are not subject to any defense, offset, counterclaim or claim that would be reasonably expected, either individually or in the aggregate, to have a material adverse effect on the value of the Collateral.

IP Collateral in Effect.

[Example – All IP Collateral] All existing Copyrights, Patents, Trademarks and IP Licenses comprising the Collateral are listed on Schedule I hereto. Debtor shall amend Schedule I from time to time in accordance with Section *** below to reflect any additions to or deletions from this list. Except as set forth on Schedule I, none of the Patents, Trademarks or Copyrights have been licensed to any third party.

[Example -- Registered Copyrights.] Schedule A lists all existing registered Copyrights and Copyright IP Licenses in which Debtor has an interest. The Copyright applications and registrations described in Schedule A have been duly filed with and issued by the Copyright Office. No other Copyright applications or registrations in which Debtor has an interest have been filed with or issued by the Copyright Office.

[Example -- Patents Only.] Schedule B lists all existing Patents and Patent IP Licenses in which Debtor has an interest. Each material Patent and patent application listed in Schedule B is subsisting and has not been adjudged invalid, unpatentable or unenforceable, in whole or in part, and, to the best of Debtor's knowledge, is valid, patentable and enforceable. Each of the material Patent IP Licenses listed in Schedule B is validly subsisting and has not been adjudged invalid or unenforceable, in whole or in part, and, to the best of Debtor's knowledge, is valid and enforceable. Debtor has notified Secured Party in writing of all uses of any item of Patent or Related Property material to Debtor's business of which Debtor is aware which could reasonably be expected to lead to such item becoming invalid or unenforceable.

[Example – Trademarks Only] Schedule C lists all existing Trademarks and Trademark IP Licenses in which Debtor has an interest. Each material trademark registration and trademark application listed in Schedule C is subsisting as of the date hereof and has not been adjudged invalid, unregistrable or unenforceable, in whole or in part, and, to the best of Debtor’s knowledge, is valid, registrable and enforceable. Each of the Trademark IP Licenses listed in Schedule C is validly subsisting and has not been adjudged invalid or unenforceable, in whole or in part, and, to the best of Debtor’s knowledge, is valid and enforceable. Debtor has notified Secured Party in writing of all uses of any Trademark and Related Property of which Debtor is aware which could reasonably be expected to lead to such item becoming invalid or unenforceable, including unauthorized uses by third parties and uses which were not supported by the goodwill of the business connected with the applicable Trademark I.

No Knowledge of Existing or Threatened Claims.

[Example – All IP Collateral] No claim has been made and is continuing or, to the best of Debtor’s knowledge, threatened, that Debtor’s use of any material IP Collateral is invalid or unenforceable or violates or may violate the rights of any person. To the best of Debtor’s knowledge, there is currently no infringement or unauthorized use of any material IP Collateral listed in Schedule I.

No Previous Assignments or Releases.

Debtor has not made a previous assignment, sale, transfer or agreement constituting a present or future assignment, sale, transfer or encumbrance of any of the Collateral, except with respect to exclusive IP Licenses granted in the ordinary course of business or as permitted by this Agreement.

No Financing Statements.

No financing statement, notice of security interest or other instrument similar in effect covering all or any part of the Collateral is on file in any IP Filing Office or other filing or recording office, except in favor of Secured Party.

Proper Statutory Notices on Products.

Debtor has marked its products subject to Copyrights, Patents or Trademarks with the copyright symbol ©, trademark registration symbol ®, the numbers of all appropriate patents, the common law trademark symbol ™, the designation “patent pending,” or other notices required or permitted by law, as applicable, to the extent reasonably and commercially practicable.

Covenants.

Restrictions on Disposition of Collateral.

Restrictions on Liens on Collateral.

Changes in Location, Etc.

Payment of Taxes, Assessments, Etc.

Maintenance of Records.

Rights of Audit and Inspection.

Compliance with Laws, Etc.

Registration of Intellectual Property Rights.

Subject to Debtor’s reasonable business judgment, (i) Debtor shall promptly register (to the extent not already registered) the most recent version of any Copyright, Patent, Trademark or (if applicable) IP License with the applicable IP Filing Office, including applications for renewal, affidavits of use, affidavits of noncontestability and opposition and interference and cancellation proceedings and (ii) Debtor shall register with the applicable IP Filing Office all additional rights and interests developed or acquired by Debtor in Intellectual Property or other Collateral after the date of this Agreement.

Notification of Changes in Intellectual Property.

Additional Interests Acquired. Debtor shall promptly advise Secured Party in writing of any right or interest acquired by Debtor in any Copyright, Patent, Trademark or IP License not listed on Schedule I hereto, and shall amend such Schedule to reflect any such additional rights.

PTO Applications and Registrations. Debtor shall promptly give Secured Party written notice of any applications or registrations filed with or issued by the PTO with respect to the Collateral, including the date of such filing and any registration or application numbers.

Copyright Applications and Registrations. Debtor shall give Secured Party not less than 30 days prior written notice of the filing of any applications or registrations with respect to the Collateral with the Copyright Office, including the title of such Copyrights to be registered, as such title will appear on such applications or registrations, and the date such applications or registrations will be filed, and (ii) prior to the filing of any such applications or registrations, shall execute such documents as Secured Party may reasonably request to maintain the perfection and priority of its security interest in such Copyrights, and upon the request of Secured Party, shall file such documents simultaneously with the filing of any such applications or registrations. Upon filing any such applications or registrations with the Copyright Office, Debtor shall promptly provide Secured Party with (x) a copy of such applications or registrations, (y) evidence of the filing of any documents requested by Secured Party to be filed, and (z) the date of such filings.

Secured Party's Right to Perform. Secured Party may audit the Collateral, at reasonable times and upon reasonable notice, to confirm compliance with Section ** and this Section **. Secured Party shall have the right, but not the obligation, to take, at Debtor's sole expense, any actions that Debtor is required under this Section to take but which Debtor fails to take, after five (5) days' notice to Debtor (provided that no such notice shall be required if an Event of Default has occurred and is continuing). Debtor shall reimburse and indemnify Secured Party for all reasonable costs and reasonable expenses incurred in the reasonable exercise of its rights under Section ** or this Section.

Debtor's Responsibility for Intellectual Property; Maintenance of Collateral.

[Alternative Example] Debtor's Obligation to Enforce and Defend Rights; Duties of Debtor. Debtor shall (a) protect, defend and maintain the validity and enforceability of its Copyrights, Patents and Trademarks, and (b) use its commercially reasonable efforts to detect infringements of its Copyrights,

Patents and Trademarks and promptly advise Secured Party in writing of material infringements detected.

[Alternative Example] Responsibility for Intellectual Property. Debtor assumes all liabilities and responsibility in connection with all Intellectual Property, and the obligations of Debtor hereunder or under the Notes shall in no way be affected or diminished by reason of the loss, destruction, damage or theft of any of the Intellectual Property or its unavailability for any reason.

[Alternative Example] Debtor Remains Obligated on Contracts. Notwithstanding anything contained in this Agreement to the contrary, Debtor expressly agrees that it shall remain liable under each of its Contracts and IP Licenses to observe and perform all the conditions and obligations to be observed and performed by it thereunder and that it shall perform all of its duties and obligations thereunder, all in accordance with and pursuant to the terms and provisions of each such Contract and IP License. Secured Party shall not have any obligation or liability under any such Contract or IP License by reason of or arising out of this Agreement or the granting to Secured Party of a lien therein or the receipt by Secured Party of any payment relating to any such Contract or IP License pursuant hereto, nor shall Secured Party be required or obligated in any manner to perform or fulfill any of the obligations of Debtor under or pursuant to any such Contract or IP License, or to make any payment, or to make any inquiry as to the nature or the sufficiency of any payment received by it or the sufficiency of any performance by any party under any such Contract or IP License, or to present or file any claim, or to take any action to collect or enforce any performance or the payment of any amounts which may have been assigned to it or to which it may be entitled at any time or times.

[Alternative Example – Patents Only] Maintenance of the Patent Collateral. Debtor agrees to take all necessary steps, including, without limitation, in the PTO or in any court, to (i) maintain each Patent and each Patent IP License identified on Schedule B hereto, and (ii) pursue each patent application, now or hereafter identified in Schedule B hereto, including, without limitation, the filing of divisional, continuation, continuation-in-part and substitute applications, the filing of applications for reissue, renewal or extensions, the payment of maintenance fees, and the participation in interference, reexamination, opposition, infringement and misappropriation proceedings, except in each

case in which Debtor has reasonably determined that any of the foregoing is not of material economic value to it. Debtor agrees to take corresponding steps with respect to each new or acquired Patent or any rights obtained under any Patent IP License, in each case, which it is now or later becomes entitled, except in each case in which Debtor has reasonably determined that any of the foregoing is not of material economic value to it. Any expenses incurred in connection with such activities shall be borne by Debtor.

[Alternative Example – Trademarks Only] Maintenance of the Trademark Collateral.

Debtor agrees to take all necessary steps, including, without limitation, in the PTO or in any court, to (i) maintain each Trademark registration and IP License identified on Schedule C hereto, and (ii) pursue each Trademark application now or hereafter identified in Schedule C hereto, including, without limitation, the filing of responses to office actions issued by the PTO, the filing of applications for renewal, the filing of affidavits under Sections 8 and 15 of the United States Trademark Act, and the participation in opposition, cancellation, infringement and misappropriation proceedings, except, in each case in which Debtor has reasonably determined that any of the foregoing is not of material economic value to it. Debtor agrees to take corresponding steps with respect to each new or acquired trademark registration, trademark application or any rights obtained under any Trademark IP License, in each case, which it is now or later becomes entitled, except in each case in which Debtor has reasonably determined that any of the foregoing is not of material economic value to it. Any expenses incurred in connection with such activities shall be borne by Debtor.

[Alternative Example – IP Collateral] Maintenance of Collateral.

Except to the extent failure to act could not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, with respect to any registration or pending application of each item of Collateral, Debtor agrees to take, at its expense, all reasonable steps, including, without limitation, in the PTO, Copyright Office and any other governmental authorities located in the United States, to (i) maintain the validity and enforceability of any registered Collateral in full force and effect, and (ii) pursue the registration and maintenance of each Patent, Trademark, or Copyright registration or application, including, without limitation, the payment of required fees and taxes, the filing of responses to office actions issued by the PTO, Copyright Office or other governmental authorities, the filing of applications for renewal

or extension, the filing of affidavits under Sections 8 and 15 of the U.S. Trademark Act, the filing of divisional, continuation, continuation-in-part, reissue and renewal applications or extensions, the payment of maintenance fees and the participation in interference, reexamination, opposition, cancellation, infringement and misappropriation proceedings.

Duties of Secured Party. Notwithstanding any provision contained in this Agreement, Secured Party shall have no duty to exercise any of the rights, privileges or powers afforded to it, nor be responsible to Debtor or any other Person for any failure to do so or delay in doing so. Except for the accounting for moneys actually received by Secured hereunder or in connection herewith, Secured Party shall have no duty or liability to exercise or preserve any rights, privileges or powers pertaining to the Collateral.

Product Quality.

Debtor agrees to maintain the quality of any and all products in connection with which the Trademarks are used, consistent with commercially reasonable business practices. Upon the occurrence of an Event of Default, Debtor agrees that Secured Party, or a conservator appointed by Secured Party, shall have the right to establish such additional product quality controls as Secured Party, or said conservator, in its reasonable judgment, may deem necessary to assure maintenance of the quality of products sold by Debtor under the Trademarks.

No Abandonment of Collateral.

Debtor shall not allow any of its Copyrights, Patents or Trademarks to be abandoned, forfeited or dedicated to the public without the prior written consent of Secured Party.

Infringement of Collateral.

In the event that Debtor becomes aware that any item of the Collateral which Debtor has reasonably determined to be material to its business is infringed or misappropriated by a third party, Debtor shall promptly notify Secured Party promptly and in writing, in reasonable detail, and shall take such actions as Debtor or Secured Party deems reasonably appropriate under the circumstances to protect such Collateral, including suing for infringement or misappropriation and for an injunction

against such infringement or misappropriation. Any expense incurred in connection with such activities shall be borne by Debtor. Debtor will advise Secured Party promptly and in writing, in reasonable detail, at their respective addresses set forth in the Loan Agreement, of any adverse determination or the institution of any proceeding (including the institution of any proceeding in the PTO or any court) regarding any item of the Collateral which has a Material Adverse Effect.

Future Rights in IP Collateral / After-Acquired Collateral / Authorization to Supplement / Agreement Applies to Future Intellectual Property.

[Alternative Example] New Patents, Trademarks and Copyrights. Debtor represents and warrants that the Patents, Trademarks, and Copyrights listed on Schedules A, B, and C, include all of the patents, patent applications, trademark registrations, trademark applications, service marks registrations, service mark applications, registered copyrights and copyright applications, now owned or held by Debtor. If, prior to the termination of this Agreement, Debtor shall (i) create or obtain rights to any new patents, trademarks, trademark registrations, trademark applications, trade names, trade styles, service marks, service marks registrations, or service mark applications, or (ii) become entitled to the benefit of any patent, trademark, trademark registration, trademark application, trade name, trade style, service mark, service mark registration, service mark application, the provisions of Section ** above shall automatically apply thereto and Debtor shall give Secured Party prompt written notice thereof. Debtor hereby authorizes Secured Party to modify this Agreement by (a) amending Schedules A, B, and/or C, as the case may be, to include any future patents, trademark registrations, trademark applications, service mark registrations, service mark applications, registered copyrights and copyright applications that are Patents, Trademarks or Copyrights under Section ** above, or under this Section ** (whether or not any such notice from Debtor has been sent or received), and (b) filing, in addition to and not in substitution for this Agreement, a supplement or addendum to this Agreement containing on Schedule B therein, as the case may be, such registered trademarks, trademark applications, service marks, registered service marks and service mark applications that are Trademarks under Section ** above or this Section ** and to take any action Secured Party otherwise deems appropriate to perfect or maintain the rights and interest of Secured Party, under this Agreement with respect to such Patents, Trademarks and Copyrights.

[Alternative Example] New Trademarks. Debtor represents and warrants that, based on a diligent investigation by Debtor, the Trademarks listed on Schedule C constitute all of the federally registered Trademarks, and federal applications for registration of Trademarks (other than “intent to use” applications until a verified statement of use is filed with respect to such applications) now owned by Debtor. If, before Debtor’s Liabilities shall have been satisfied in full or before the Loan Agreement has been terminated, Debtor shall (i) become aware of any existing Trademarks of which Debtor has not previously informed Secured Party, or (ii) become entitled to the benefit of any Trademarks, which benefit is not in existence on the date hereof, the provisions of this Security Agreement above shall automatically apply thereto and Debtor shall give to Secured Party prompt written notice thereof. Debtor hereby authorizes Secured Party to modify this Security Agreement by amending Schedule C to include any such Trademarks.

[Alternative Example] Additional Collateral. The provisions of this Agreement shall automatically apply to any such additional property or rights described in Section ** above, all of which shall be deemed to be and treated as “IP Collateral” within the meaning of this Agreement. Upon the acquisition by Debtor of any additional IP Collateral, Debtor shall promptly deliver to Secured Party an updated Schedule A, B, and/or C (as applicable) to this Agreement and hereby authorizes Secured Party to file, at Debtor’s expense, such updated Schedule as set forth in Section **.

[Alternative Example] Additional Filings. Debtor shall execute and deliver, and have recorded, any and all agreements, instruments, documents and papers as Secured Party may reasonably request to evidence Secured Party’s security interest in any IP Collateral (including, without limitation, filings with the PTO, the Copyright Office or any similar office), and Debtor hereby constitutes Secured Party as its attorney-in-fact to execute and file all such writings for the foregoing purposes, all such acts of such attorney being hereby ratified and confirmed; provided, however, that Secured Party’s taking of such action shall not be a condition to the creation or perfection of the security interest created hereby.

[Alternative Example] Authorization to Supplement. If Debtor shall obtain rights to any new trademarks, the provisions of this Trademark Security Agreement shall automatically apply thereto. Debtor shall give prompt notice in writing to

Secured Party with respect to any such new trademarks or renewal or extension of any trademark registration. Without limiting Debtors' obligations under this Section **, Debtors hereby authorize Secured Party unilaterally to modify this Agreement by amending Schedule C to include any such new trademark rights of such Debtor. Notwithstanding the foregoing, no failure to so modify this Trademark Security Agreement or amend Schedule C shall in any way affect, invalidate or detract from Secured Party's continuing security interest in all Collateral, whether or not listed on Schedule C.

Additional Agreements.

Further Assurances.

At any time and from time to time, upon the written request of Secured Party, and at the sole expense of Debtor, Debtor shall promptly and duly execute and deliver any and all such further instruments and documents and take such further action as Secured Party may reasonably deem necessary or desirable to obtain the full benefits of this Agreement, including, without limitation, (a) using commercially reasonable efforts to secure all consents and approvals necessary or appropriate for the grant of a security interest to Secured Party in any item of Collateral, (b) executing, delivering and causing to be filed any financing or continuation statements (including "in lieu" continuation statements) under the UCC with respect to the security interests granted hereby, (c) filing or cooperating with Secured Party in filing any forms or other documents required to be recorded with any IP Filing Office, or any actions, filings, recordings or registrations in any foreign jurisdiction or under any international treaty, required to secure or protect Secured Party's interest in the Collateral, (d) transferring the Collateral to Secured Party's possession (if a security interest in such Collateral can be perfected only by possession), and (e) at Secured Party's reasonable request, executing and delivering or causing to be delivered written notice to insurers of Secured Party's security interest in, or claim in or under, any policy of insurance (including unearned premiums).

Debtor's Use of Patents and Trademarks.

Debtor shall be permitted to control and manage the Patents and Trademarks, including the right to exclude others from making, using or selling items covered by the Patents and Trademarks and any licenses thereunder, in the same manner and with

the same effect as if this Agreement had not been entered into, so long as no Event of Default occurs and remains uncured.

Recordation.

Debtor authorizes and requests that the Register of Copyrights, the Commissioner for Patents and the Commissioner for Trademarks and any other applicable government officer record this IP Security Agreement.

Costs and Expenses.

Debtor agrees to pay all out-of-pocket fees, costs and expenses incurred in connection with any filing required hereunder, including without limitation, any financing statements, continuation statements, partial releases and/or termination statements related thereto or any expenses of any searches reasonably required by Secured Party. Debtor shall also pay all other claims and charges which in the reasonable opinion of Secured Party might prejudice, imperil or otherwise affect the Intellectual Property or the Security Interest therein. Debtor will also, upon demand, pay to Secured Party the amount of any and all reasonable expenses, including the reasonable fees and expenses of its counsel and of any experts and agents, which Secured Party may incur in connection with (i) the enforcement of this Agreement, (ii) the custody or preservation of, or the sale of, collection from, or other realization upon, any of the Intellectual Property, or (iii) the exercise or enforcement of any of the rights of Secured Party under the Note or Loan Agreement. Until so paid, any fees payable hereunder shall be added to the principal amount of the Note and shall bear interest at the Default Rate.

Indemnity.

Debtor agrees to defend, indemnify and hold harmless Secured Party and its officers, employees, and agents against (a) all obligations, demands, claims, and liabilities claimed or asserted by any other party in connection with the transactions contemplated by this Agreement and (b) all losses or expenses in any way suffered, incurred, or paid by Secured Party as a result of or in any way arising out of, following or consequential to transactions between Secured Party and Debtor, whether under this Agreement or otherwise (including without limitation, reasonable attorneys fees and expenses), except for losses arising from or out of Secured Party's

(or any Secured Party's officer's, employee's or agent's) gross negligence or willful misconduct.

Secured Party's Appointment as Attorney-in-Fact; Performance by Secured Party.

Appointment. Subject to Section ** below, Debtor hereby irrevocably constitutes and appoints Secured Party, and any officer or agent of Secured Party, with full power of substitution, as its true and lawful attorney-in-fact with full, irrevocable power and authority in the place and stead of Debtor and in the name of Debtor or in its own name, from time to time at Secured Party's discretion, for the purpose of carrying out the terms of this Agreement, to take any and all appropriate action and to execute and deliver any and all documents and instruments which may be necessary or desirable to accomplish the purposes of this Agreement and, without limiting the generality of the foregoing, hereby gives Secured Party the power and right, on behalf of Debtor, without notice to or assent by Debtor to do the following:

- to ask, demand, collect, receive and give acquittances and receipts for any and all monies due or to become due under any Collateral and, in the name of Debtor, in its own name or otherwise to take possession of, endorse and collect any checks, drafts, notes, acceptances or other instruments for the payment of monies due under any Collateral and to file any claim or take or commence any other action or proceeding in any court of law or equity or otherwise deemed appropriate by Secured Party for the purpose of collecting any and all such monies due under any Collateral whenever payable;
- to pay or discharge any Liens, including, without limitation, any tax lien, levied or placed on or threatened against the Collateral, to effect any repairs or any insurance called for by the terms of this Agreement and to pay all or any part of the premiums therefor and the costs thereof, which actions shall be for the benefit of Secured Party and not Debtor;
- to (1) direct any person liable for any payment under or in respect of any of the Collateral to make payment of any and all monies due or to become due thereunder directly to Secured Party or as Secured Party shall direct, (2) receive payment of any and all monies, claims and other amounts due or to become due at any time arising out of or in respect of any Collateral, (3) sign and endorse any invoices, freight or express bills, bills of lading, storage or

warehouse receipts, drafts against debtors, assignments, verifications and notices in connection with any Collateral, (4) commence and prosecute any suits, actions or proceedings at law or in equity in any court of competent jurisdiction to collect the Collateral or any part thereof and to enforce any other right in respect of any Collateral, (5) defend any suit, action or proceeding brought against Debtor with respect to any Collateral, (6) settle, compromise or adjust any suit, action or proceeding described above, and in connection therewith, give such discharges or releases as Secured Party may deem appropriate, (7) license, or, to the extent permitted by an applicable IP License, sublicense, whether general, special or otherwise, and whether on an exclusive or non-exclusive basis, any Copyright, Patent or Trademark throughout the world for such term or terms, on such conditions and in such manner as Secured Party shall in its discretion determine and (8) sell, transfer, pledge, make any agreement with respect to or otherwise deal with any of the Collateral as fully and completely as though Secured Party were the absolute owner thereof for all purposes; and

to do, at Secured Party's option and Debtor's expense, at any time, or from time to time, all acts and things which Secured Party may reasonably deem necessary to protect, preserve or realize upon the Collateral and Secured Party's security interest therein in order to effect the intent of this Agreement, all as fully and effectively as Debtor might do.

Power Coupled With An Interest. Secured Party agrees that, except upon the occurrence and during the continuation of an Event of Default, it shall not exercise the power of attorney or any rights granted to Secured Party pursuant to this Section **. Debtor hereby ratifies, to the extent permitted by law, all that said attorney shall lawfully do or cause to be done by virtue hereof. The power of attorney granted pursuant to this Section ** is a power coupled with an interest and shall be irrevocable until the Secured Obligations are completely and indefeasibly paid and performed in full and Secured Party no longer has any commitment to make any Loans to Debtor.

Performance by Secured Party. If Debtor fails to perform or comply with any of its agreements contained herein and Secured Party, as provided for by the terms of this Agreement, shall perform or comply, or otherwise cause performance or compliance, with such agreement, the reasonable expenses, including reasonable attorneys' fees and costs, of Secured Party incurred in connection

with such performance or compliance, together with interest thereon at a rate of interest equal to the highest per annum rate of interest charged on the Loans, shall be payable by Debtor to Secured Party within five (5) business days of demand and shall constitute Secured Obligations secured hereby.

Security Interest Absolute/Other Security/Suretyship Waivers.

Term of Security Agreement/Release of Security Interest.

Reinstatement.

Events of Default.

[TO BE ADDED]

Rights And Remedies.

Remedies Upon Default.

General. Upon the occurrence of an Event of Default, Secured Party may exercise in addition to all other rights and remedies granted to it under this Agreement, the Notes or any other agreement between Debtor and Secured Party, and under any other instrument or agreement securing, evidencing or relating to the Secured Obligations, all rights and remedies of a secured party under the UCC. Without limiting the generality of the foregoing, Debtor expressly agrees that in any such event Secured Party, without demand of performance or other demand, advertisement or notice of any kind (except the notice specified below of time and place of public or private sale) to or upon Debtor or any other person (all and each of which demands, advertisements and notices are hereby expressly waived to the maximum extent permitted by the UCC and other applicable law), may (i) reclaim, take possession, recover, store, maintain, finish, repair, prepare for sale or lease, shop, advertise for sale or lease and sell or lease (in the manner provided herein) the Collateral, and in connection with the liquidation of the Collateral and collection of the accounts receivable pledged as Collateral, use any Trademark, Copyright, or process used or owned by Debtor and (ii) forthwith collect, receive, appropriate and realize upon the Collateral, or any part thereof, and may forthwith sell, lease, assign, give an option or options to purchase or sell or otherwise dispose of

and deliver said Collateral (or contract to do so), or any part thereof, in one or more parcels at public or private sale or sales, at any exchange or broker's board or at any of Secured Party's offices or elsewhere at such prices as it may deem best, for cash or on credit or for future delivery without assumption of any credit risk. To the extent Debtor has the right to do so, Debtor authorizes Secured Party, on the terms set forth in this Section ** to enter the premises where the Collateral is located, to take possession of the Collateral, or any part of it, and to pay, purchase, contact, or compromise any encumbrance, charge, or lien which, in the opinion of Secured Party, appears to be prior or superior to its security interest. Secured Party shall have the right upon any such public sale or sales, and, to the extent permitted by law, upon any such private sale or sales, to purchase the whole or any part of said Collateral so sold, free of any right or equity of redemption, which equity of redemption Debtor hereby releases. Debtor further agrees, at Secured Party's request, to assemble the Collateral and make it available to Secured Party at places which Secured Party shall reasonably select, whether at Debtor's premises or elsewhere. Secured Party shall apply the net proceeds of any such collection, recovery, receipt, appropriation, realization or sale as provided in this Section **, and only after so paying over such net proceeds and after the payment by Secured Party of any other amount required by any provision of law, need Secured Party account for the surplus, if any, to Debtor. To the maximum extent permitted by applicable law, Debtor waives all claims, damages, and demands against Secured Party arising out of the repossession, retention or sale of the Collateral. Debtor agrees that Secured Party need not give more than ten (10) days' notice of the time and place of any public sale or of the time after which a private sale may take place and that such notice is reasonable notification of such matters. Debtor shall remain liable for any deficiency if the proceeds of any sale or disposition of the Collateral are insufficient to pay all amounts to which Secured Party is entitled from Debtor, Debtor also being liable for the attorney costs of any attorneys employed by Secured Party to collect such deficiency.

Legal Restrictions. Debtor agrees that in any sale of any of such Collateral, whether at a foreclosure sale or otherwise, Secured Party is hereby authorized to comply with any limitation or restriction in connection with such sale as it may be advised by counsel is necessary in order to avoid any violation of applicable law (including compliance with such procedures as may restrict the

number of prospective bidders and purchasers, require that such prospective bidders and purchasers have certain qualifications and restrict such prospective bidders and purchasers to persons who will represent and agree that they are purchasing for their own account for investment and not with a view to the distribution or resale of such Collateral), or in order to obtain any required approval of the sale or of the purchaser by any governmental authority, and Debtor further agrees that such compliance shall not result in such sale being considered or deemed not to have been made in a commercially reasonable manner, nor shall Secured Party be liable nor accountable to Debtor for any discount allowed by the reason of the fact that such Collateral is sold in compliance with any such limitation or restriction.

Costs and Expenses. Debtor also agrees to pay all fees, costs and expenses of Secured Party, including, without limitation, attorneys' fees, incurred in connection with the enforcement of any of its rights and remedies hereunder.

Application of Proceeds.

Notification to Parties to Contracts.

Secured Party may at any time, upon the occurrence and during the continuance of any Event of Default, without notifying Debtor of its intention to do so, notify parties to Contracts that Debtor's right, title and interest in and under such Contracts have been assigned to Secured Party and that payments shall be made directly to Secured Party. Upon the occurrence and during the continuance of any Event of Default, upon the request of Secured Party, Debtor shall so notify such parties to such Contracts. Upon the occurrence and during the continuance of any Event of Default, Secured Party may, in its name or in the name of others, communicate with such parties to such Contracts to verify with such parties, to Secured Party's satisfaction, the existence, amount and terms of any such Contracts.

Limitation on Duties Regarding Preservation of Collateral.

Secured Party shall be deemed to have acted reasonably in the custody, preservation and disposition of any of the Collateral if it takes such action as Debtor requests in writing except during an Event of Default, but failure of Secured Party to comply with any such request shall not in itself be deemed a failure to act reasonably,

and no failure of Secured Party to do any act not so requested shall be deemed a failure to act reasonably.

Grant of IP License to Use Intellectual Property; Royalties.

[Alternative Example] For the purpose of enabling Secured Party to exercise rights and remedies under this Agreement at such time as Secured Party shall be lawfully entitled to exercise such rights and remedies, Debtor shall, upon request by Secured Party at any time after and during the continuance of an Event of Default, grant to Secured Party an irrevocable (until the termination of the Loan Agreement) nonexclusive license (exercisable without payment of royalty or other compensation to Debtors) to use, license or sublicense any of the Collateral now owned or hereafter acquired by such Debtor, and wherever the same may be located, and including in such license reasonable access to all media in which any of the licensed items may be recorded or stored and to all computer software and programs used for the compilation or printout thereof; provided, however, that nothing in this Section ** shall require Debtors to grant any license that is prohibited by any rule of law, statute or regulation or is prohibited by, or constitutes a breach or default under or results in the termination of any contract, license, agreement, instrument or other document evidencing, giving rise to or theretofore granted, to the extent permitted by the Loan Agreement, with respect to such property; provided, further, that such licenses to be granted hereunder with respect to Trademarks shall be subject to the maintenance of quality standards with respect to the goods and services on which such Trademarks are used sufficient to preserve the validity of such Trademarks. The use of such license by Secured Party may be exercised, at the option of Secured Party, during the continuation of an Event of Default; provided that any license, sublicense or other transaction entered into by Secured Party in accordance herewith shall be binding upon Debtors notwithstanding any subsequent cure of an Event of Default.

[Alternative Example] Debtor hereby agrees that the use by Secured Party of the Trademarks and IP Licenses as authorized hereunder in connection with Secured Party's exercise of its rights and remedies after the occurrence and during the continuance of an Event of Default shall be coextensive with Debtor's rights thereunder and with respect thereto and without any liability for royalties or other related charges from Secured Party to Debtor.

Duty To Hold In Trust.

Right of Set-Off.

General Terms.

[TO BE ADDED]

signature pages to follow

Schedule I: Copyrights, Patents and Trademarks [General]

Schedule A: Copyrights

Schedule B: Trademarks

Schedule C: Patents