

サマライズ講座（要約英日文法）契約書篇

第4講 提出課題

課題文 Trademark License Agreement（商標ライセンス契約書）を読み、同契約書の要約文を「条項順要約」および「内容別要約」の2通りで作成して下さい。

TRADEMARK LICENSE AGREEMENT

This Trademark License Agreement (the "Agreement") is made and effective as of September 1, 2007,

BETWEEN: **KAPPA Manufactures Inc.** (the "Licensor"), a corporation organized and existing under the laws of the State of Delaware, with its head office located at:

5500 Madison Ave., New York, NY 10016

AND: **KENNEDY Production Corporation** (the "Licensee"), a corporation organized and existing under the laws of the State of New York, with its head office located at:

123 Americas Ave., New York, NY 10016

RECITALS

WHEREAS, simultaneously with this Agreement, the parties hereto have entered into a license agreement (the "License Agreement") whereby Licensor has granted Licensee an exclusive license in the United States, Mexico and Canada ("Territory") to sell all existing versions of a software program known as "KAPPA Software" (the "Software") and all related documentation;

WHEREAS, Licensor is the owner of certain trademarks, including without limitation, any logos, designs, variations or translations thereof relating to the Software, identified on Schedule A (collectively, the "Mark") and the exclusive right to use and license the use thereof;

WHEREAS, Licensee desires to use the Mark on the terms and conditions set forth in this Agreement in connection with its distribution of the Software, and Licensor desires to license such Mark to Licensee on the terms and conditions set forth in this Agreement;

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements contained herein, the parties hereto agree as follows:

1. LICENSE

Licensor hereby grants to Licensee the non-exclusive, non-transferable license to use the Mark on or in connection with the Software in the Territory.

2. TERM

This Agreement and the license granted hereunder shall commence on the date hereof and shall continue until terminated in accordance with the provisions of this Agreement.

3. ROYALTIES

Licensee agrees to pay to Licensor the following royalties for the trademark license granted in Article 1 hereof:

- a. For Marks attached to the Software and its wrapping, boxes and enclosed documentations (“Products):

Running Royalty of 10 cents (\$0.10) per Product

- b. For advertising material, promotion material and other sales material relating to the Software that uses the Mark (“Sales Material”):

Royalty of 1,000 dollars (\$1000.00) per Year (“Yearly Royalty”)

4. PAYMENT

4.1 REPORTING

Within thirty(30) days after each calendar quarter (e.g. from March 31, June 30, September 30 and December 31), Licensee shall prepare and deliver to Licensor a report showing the number of Software sold in the Territory together with the total Running Royalty amount for such calendar quarter.

4.2 REMITTANCE

- a. Within sixty (60) days after March 31, June 30 and September 30 of each year, Licensee shall remit such Running Royalty for the applicable calendar quarter to the following Licensor’s bank account by wire transfer.

Account No.:1234567
West New York City Branch
Bank of New York

- b. Within sixty (60) days after December 31 of each year, Licensee shall remit such Running Royalty for such calendar quarter together with the Yearly Royalty to the above Licensor’s bank account by wire transfer.

4.3 RECORDS

During the term of this Agreement and three (3) years thereafter, Licensee shall keep accurate and complete records of all information necessary to compute the royalties to be paid by Licensee hereunder and such records shall be open for inspection by Licensor at all reasonable times during normal business hours of Licensee.

5. MARKS

- a. Licensee hereby acknowledges Licensor's right, title and interest in and to the Mark and Licensor's exclusive right to use and license the use of the Mark and agrees not to claim any title to the Mark or any right to use the Mark except as permitted by this Agreement. Licensee

shall prominently display the Mark on all versions of the Software and shall include legends with respect to Licensor's trademarks and trade names as are or may be required by applicable federal, state and local trademark laws or which may be reasonably requested by Licensor.

- b. Licensee shall at no time adopt or use, without Licensor's prior written consent, any variation of the Mark, including translations, or any mark likely to be similar to or confusing with the Mark.

6. QUALITY STANDARDS

Licensee shall furnish to Licensor prior to any use, for the approval of Licensor, copies of any version of the Product to be sold by Licensee using the Mark (the "Samples") and copies of any Sales Materials. Licensor shall have the right to approve or disapprove any or all Samples or Sales Materials. Any Samples and/or Sales Materials submitted to Licensor shall be deemed approved unless Licensor notifies Licensee to the contrary within 15 days after receipt of such Samples and/or Sales Materials. Licensee shall not distribute, sell or advertise any version of the Product unless and until the Sample for such versions of the Software has been approved or deemed approved by Licensor pursuant to this Section 5.

7. INFRINGEMENT

- a. Licensee shall notify Licensor promptly of any infringement or unauthorized use of the Mark by any third party of which Licensee becomes aware. Licensor shall have the sole right, at its expense, to bring any action on account of any such infringement or unauthorized use, and Licensee shall cooperate with Licensor, as Licensor may request, in connection with any such action brought by Licensor. If Licensor does not undertake such action within 30 days after it receives notice from Licensee of such alleged infringement, Licensee may prosecute the same, at its expense, provided that no settlement shall be made without the prior written approval of Licensor.
- b. Licensor shall have the sole right, at its expense, to defend and settle any action that may be commenced against Licensor or Licensee alleging that the Mark infringes any rights of third parties. Licensee shall promptly discontinue its use of the Mark alleged to infringe rights of such third parties. If Licensor does not give notice to Licensee of its intent to defend or settle such action within 30 days after it receives notice of such alleged infringement, Licensee may defend the same, at its expense, provided that no settlement shall be made without the prior written approval of Licensor.

8. INDEMNIFICATION

Licensee, at its expense, shall defend and indemnify and hold Licensor harmless from and against any and all liabilities, claims, causes of actions, suits, damages and expenses, including reasonable attorneys' fees and expenses, which Licensor becomes liable for, or may incur or be compelled to pay by reason of claims (i) of infringement of any patent, copyright or trademark or (ii) any actions, whether of omission or commission, that may be committed or suffered by Licensee or any of its directors, officers, agents, or affiliates in connection with Licensee's performance of this Agreement.

9. TERMINATION

- a. Licensor shall have the right to terminate this Agreement upon prior written notice to Licensee, effective immediately upon Licensee's receipt of said notice, if Licensee sells or otherwise disposes of substantially all of its business or assets to a third party or parties or if control or

ownership of Licensee is in any manner transferred; provided, however, that Licensee may assign any of its rights and obligations hereunder to any parent, subsidiary or affiliated company of Licensee.

- b. Except as otherwise provided herein, Licensee shall have the right to terminate this Agreement at any time upon 30 days prior written notice for any reason.
- c. Either party shall have the right to terminate this Agreement upon the following:
 - i. If either Licensor or Licensee defaults in the performance or observance of any of the terms or conditions of this Agreement and such default is not remedied within 30 days after written notice specifying the nature of the default is received by the defaulting party, then the non-defaulting party shall have the right to terminate this Agreement by written notice to the defaulting party;
 - ii. If any of the following events occur: (1) insolvency or the making by a party to this Agreement of an assignment for the benefit of creditors; (2) the filing by or against a party hereto of, or the entry of an order for relief against a party hereto in, any voluntary or good faith involuntary proceeding under any bankruptcy, insolvency, reorganization or receivership law, which filing or order shall not have been vacated within 10 days from the entry thereof; (3) the appointment of a receiver for all or a substantial portion of such party's property and such appointment shall not be discharged or vacated within 10 days of the date thereof, then the other party to the Agreement shall have the right to terminate this Agreement by written notice to the party affected by such occurrence.

10. EFFECTS OF AND PROCEDURE ON TERMINATION

Upon the termination of this Agreement all rights of Licensee under the licenses granted hereunder shall terminate and automatically revert to Licensor and Licensee shall immediately discontinue the use of the Mark and thereafter shall no longer use or have the right to use the Mark or any variation or simulation thereof, or any word or mark similar thereto, or to (directly or indirectly) develop, create, market, distribute, sell, license or sublicense, or advertise the Product or any other products in connection with the Mark. Sections 4 and 8 shall survive the termination of this Agreement.

11. ASSIGNMENT

Neither this Agreement nor all or any portion of the rights licensed to Licensee herein shall be assigned by either party without the prior written consent of the other party which consent shall not be unreasonably withheld. The rights and obligations of the parties hereto shall inure to the benefit of, and be binding and enforceable upon, the respective successors and assigns of the parties.

12. ENTIRE AGREEMENT

This Agreement constitutes the entire understanding of the parties hereto concerning the subject matter hereof, all prior understandings having been merged herein. This Agreement cannot be modified or amended except by a writing signed by the parties hereto.

13. NOTICES

Any notice, request or other communication to any party by any other party as provided for herein shall be given in writing and shall be deemed given on the date (i) actually received and acknowledged, (ii) 5

days after mailing by registered mail, return receipt requested, postage prepaid, or (iii) 1 day after remittance by facsimile. The places to which notices are to be given hereunder may be changed from time to time by written notice to all other parties as aforesaid.

14. GOVERNING LAW; JURISDICTION

This Agreement shall be governed by, and interpreted under, the laws of the State of New York applicable to contracts made and to be performed therein, without giving effect to the principles of conflicts of law. Except in respect to an action commenced by a third party in another jurisdiction, the parties hereto hereby agree that any legal suit action or proceeding arising out of or relating to this Agreement must be instituted in a federal or state court location in the State of New York.

15. WAIVER

No waiver by any party of any breach of any provision hereof shall constitute a waiver of any other breach of that or any other provision hereof.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates set forth first above, with full knowledge of its content and significance and intending to be legally bound by the terms hereof.

LICENSOR

LICENSEE

Authorized Signature

Authorized Signature

Print Name and Title

Print Name and Title

Date

Date