

# DESIGN SERVICES AGREEMENT

This Agreement, dated this \_\_ day of \_\_\_\_\_, 2004 is entered into by and between **International Corporation** (“IC”) and **Roger A. Brown** (“DESIGNER”). IC and DESIGNER agree as follows:

## **1.0** **The Design Services** (hereinafter the “Design Services” when referred to collectively).

1.1 The Design Services DESIGNER shall independently (i) explore, research and develop potential new products and any improvements or modifications of existing IC products (hereinafter the “Products”) for IC’s consideration and to (ii) if and when requested by IC, design new or improved (hereinafter the “Products”) products either alone or in conjunction with IC’s marketing department (collectively and individually, the “Design Services”). IC may change any Design Services to be performed (including, but not limited to, addition or deletion of Design Services, suspension of performance and changes in schedules for performance) by notifying DESIGNER of the change. All Products shall be listed in Appendix A, which is incorporated by reference herein and which shall be amended from time to time.

## **2.0** **Compensation**

2.1 Royalties IC shall pay DESIGNER for the Design Services compensation in the amount derived as follows: Royalties of 5 percent (5%) of IC’s Net Sale Price for Products sold in the U.S. and 3 percent (3%) for Products sold in countries outside the U.S., paid 30 days after the end of the proceeding quarter. The decision shall remain solely and completely with IC whether DESIGNER’S contribution to any specific product is sufficient to require the product to be listed in Appendix A as a Product. If the items do not lend themselves to proprietary protection, then the parties will renegotiate the appropriate royalty. Appropriate royalty, it being understood that IC cannot place itself at a competitive disadvantage if competitors may use the item without any royalty.

2.2 Payable by DESIGNER DESIGNER shall pay for all preliminary product concept development costs, including but not limited to preparing design sketches and presentations. Additional costs require pre-approval. In addition, DESIGNER shall pay for any audit performed for DESIGNER pursuant to paragraph 3.0.

2.3 Survival IC’s obligation to pay DESIGNER royalties pursuant to paragraph 2.1 shall survive the termination of this Agreement.

**3.0** **Audit Rights** DESIGNER shall have the right to audit IC’s books and records pertaining to calculation of royalties payable to DESIGNER pursuant to paragraph 2.1 provided that such audit shall be performed by a certified public accountant of DESIGNER choice and shall be done no more frequently than one (1) time each calendar year, upon reasonable advanced written notice, and at such time as is reasonably convenient to IC.

**4.0** **Term** The Term of these Design Services shall commence as of the date of this Agreement and shall automatically terminate thirty (30) days after written notice of termination of the Design Services is given by either party to the other party. Paragraphs 2.0, 5, 6, 7, 8 and 9 (together with all other provisions of this Agreement that may reasonably be interpreted or construed as surviving termination of the Term) shall survive termination of the Term.

4.1 In the event of termination of this Agreement by DESIGNER, IC shall be entitled to continue to exercise its rights under the license herein to the extent necessary to fulfill commitments, which IC had made to its customers prior to notice of cancellation to supply Products.

4.2 Regardless of the reason of termination, IC shall have nine (9) months to sell-off its inventory.

**5.0** **Performance by DESIGNER**

5.1 **No Infringement** In performing the Design Services, DESIGNER shall not infringe any patent, copyright, trademark or other proprietary right of any third party.

5.2 **Compliance With Laws** DESIGNER shall ensure that, to the best of his knowledge, the Design Services comply, with all applicable laws, ordinances, rules, regulations, orders, licenses permits and other requirements, now or hereafter in affect, of any governmental authority (including, but not limited to, such requirement as may be imposed upon IC and applicable to the Design Services). DESIGNER shall furnish such documents as may be required to effect or evidence such compliance.

5.3 **Information** DESIGNER shall provide IC with such information related to the Design Services as IC may reasonably request. DESIGNER shall make all of its books and records pertaining to the Design Services available for examination, copying and audit by IC upon reasonable advance written notice and at such time as is reasonably convenient to DESIGNER. Such examination, copying and audit shall be done no more frequently than one (1) time each calendar year.

**6.0** **Independent Contractor** DESIGNER shall at all times be an independent contractor, and not an affiliate, agent or representative of IC with regard to performance of the Design Services. DESIGNER shall not represent that it is, or hold itself out as, an affiliate, agent or representative of IC. DESIGNER shall not be authorized to enter into any contract or commitment on behalf of IC or to incur any obligation or liability of IC. This Agreement shall not be interpreted or construed as creating or evidencing any association, joint venture, or partnership among the parties or as imposing any partnership obligation or liability on any party.

## **7.0 Ownership and Proprietary Rights**

- 7.1 **Proprietary Rights in Products** DESIGNER acknowledges that some of the Products include, or may in the future include valuable patent, trademark, copyright and other proprietary rights of IC. IC reserves all exclusive worldwide patent, trademark, copyright and other proprietary rights related to the Products. Title to and ownership of the Products, and to any proprietary rights related to any Products, shall be vested in IC immediately upon creation of the Products in question. DESIGNER shall not infringe or violate, and shall take appropriate steps and precautions for the protection of, such rights. Without limiting the generality of the foregoing, DESIGNER shall, immediately upon IC's request, do all things necessary or appropriate (including but not limited to the execution and delivery of documents) to assist IC in obtaining or perfecting its patent, trademark, copyright or other proprietary rights in the Products or to transfer to IC or its designee any and all proprietary right in the Products which DESIGNER may have obtained by any means; provided that IC shall pay all costs associated with securing proprietary rights for the Products. IC may at any time replace, modify, or otherwise change the Products which may or may not affect its proprietary rights. If modification of a Product by IC is, in its sole judgement of a magnitude (that is, at least 25% different from the previous item) to remove its predecessor Product from Appendix A, IC's royalty payment obligation under paragraph 2.1 shall cease.
- 7.2 **Enforcement** The terms of this paragraph 7.2 apply to all obligations of the parties under paragraph 7.0 except for IC's obligations to pay all costs associated with securing proprietary rights for the Products. The parties hereby declare that it would be difficult, if not impossible, to measure in money the damages that shall accrue to either party by reason of the other party's failure to comply with or perform any of its obligations under this paragraph 7. Therefore, if either party institutes any action or proceeding to specifically enforce the provisions of this paragraph 7 (by injunction or otherwise), the other party hereby waives the claim or defense in such action that it has an adequate remedy at law or in damages, and shall not urge in any such action or proceeding the claim or defense that a remedy at law or in damages exists. The rights and remedies of either party set forth in this paragraph 7 or any other provision of the Agreement are in addition to and not in lieu of any other right or remedy afforded to such party under any other provision of this Agreement, by law or otherwise.
- 7.3 **Design and Inventor Credit** DESIGNER shall be identified as the inventor (as defined by U.S. patent law) of any Product invented by DESIGNER for IC in any application or other document filed by IC to obtain or perfect IC's proprietary rights in said Product.

## **8.0 Release and Indemnity**

- 8.1 **By DESIGNER** DESIGNER releases and shall defend, indemnify and hold harmless IC, its affiliates, successors and assigns, and the respective directors, officers, employees, agents and representatives of IC and its affiliates, successors and assigns (collectively and individually, "IC Indemnitees") from all claims, losses, harm, costs, liabilities, damages and expenses (including, but not limited to, reasonable attorney's fees) arising out of or in connection with the Design Services or any act, omission, fault, negligence, strict liability or breach of contract (including breach of this Agreement) of DESIGNER or anyone

acting on DESIGNER'S behalf; provided that DESIGNER shall not be obligated to indemnify the IC Indemnitees to the extent, and in the percentage, that the cost, liability, damage or expense in question is caused by the act, omission, negligence or strict liability of any of the IC Indemnitees, or by a material design change implemented or directed by IC which is documented as a IC directed change.

8.2 **By IC** IC releases and shall defend, indemnify and hold harmless DESIGNER, it's affiliates, successors and assigns, and the respective directors, officers, employees, agents and representatives of IC and its affiliates, successors and assigns (collectively and individually, "DESIGNER Indemnitees") from all claims, losses, harm, costs, liabilities, damages and expenses (including, but not limited to reasonable attorney's fees) arising out of or in connection with any act, omission, fault, negligence, strict liability or breach of contract (including breach of this Agreement) of IC or anyone acting on IC's behalf; provided that IC shall not be obligated to indemnify the DESIGNER Indemnitees to the extent, and in the percentage, that the cost, liability, damage or expense in question is caused by the act, omission, negligence or strict liability of any of the DESIGNER Indemnitees.

**9.0 Confidentiality** DESIGNER shall not disclose to anyone or use any trade secret or confidential business information of IC (as that term is defined in this paragraph) except as required for performance of the Service. Trade secrets or confidential business information of IC are hereby defined as (a) the nature of these services DESIGNER are providing to IC, and (b) any document, concept idea or other item treated or otherwise identified by IC as a trade secret or confidential business information, including but not limited to (i) any and all unique methods and techniques that have been developed by or on behalf of IC for use in connection with its business, (ii) promotional and advertising manuals and materials that are used or have been developed in connection with IC's business, (iii) customer and supplier price lists, pricing strategies and other pricing information of IC, (iv) financial information of IC, (v) business plans of IC and (vi) any other confidential information or data relating to IC's business. Notwithstanding the foregoing, confidential business information of IC shall not include methods, techniques or programs developed by DESIGNER outside of performance of the Design Services and used in connection with performance of the Design Services.

**10.0 Assignment** DESIGNER shall not (by contact, operation of law or otherwise) assign this Agreement or any right or interest in this Agreement. Any such assignment shall be void. Subject to the foregoing restriction on assignment, this Agreement shall be fully binding upon, inure to the benefit of and be enforceable by the successors, assigns and legal representatives of the respective parties to this Agreement.

**11.0 Entire Agreement** This Agreement sets forth the entire agreement, and supersedes any and all prior agreements, of the parties with regard to the Design Services. No amendment or modification of this Agreement shall be valid unless set forth in a written instrument signed by both parties.

**12.0 Nonwaiver** The failure of any party to insist upon or enforce performance of any of the provisions of this Agreement or to exercise any rights under this Agreement shall not be construed as a waiver or relinquishment to any extent of such party's right to assert or

rely upon any such provision or right in that or any other instance; rather, the same shall be and remain in full force and effect.

**13.0 Unenforceable Provisions** The illegality or unenforceability of any provisions of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision were placed with a valid and enforceable provision as similar as possible to the one replaced.

**14.0 Governing Law; Courts** This Agreement shall be interpreted, construed and enforced in all respects in accordance with the laws of the State of (your state or the companies state). DESIGNER hereby irrevocably consents to the jurisdiction of the courts of the State of Washington, King County, and the United States District Court for the Western District of Washington at Seattle. DESIGNER shall not bring any action to interpret or enforce, or otherwise arising out of or relating to, this Agreement other than in the courts identified in the preceding sentence.

**Roger Brown:**

By: \_\_\_\_\_  
Roger Brown  
P.O. Box 7122  
North Augusta, SC 29860

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

**International Corporation:**

By: \_\_\_\_\_  
Average Joe, President & CEO  
Main Street  
Somewhere, USA 12345

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

**DESIGN SERVICES AGREEMENT**  
Between **International Corporation** and **Roger A. Brown**

**Attachment "A"**

1. Your Invention listed here