

License Agreement, Simple

This License Agreement ("Agreement") is made effective as of _____ (Date), by and between _____ ("Manufacturer") and _____, owner of the license ("Licensor").

Manufacturer wishes to sell and/or Licensor's property as a component or in its entirety and Licensor wants Manufacturer to do so. Both parties are familiar with the business of the other and therefore enter into this Agreement.

Therefore, the parties agree as follows:

1. Grant of License.

Licensor grants Manufacturer a license to use Licensor's product or products subject to the limitations specified as follows with regards to territory and other matters: _____ . The subject of this license is described in Exhibit A and the best likeness or sample available is also attached to that Exhibit.

The manufacturer retains the right, with or without cause, to drop the product or products at any time without having any recourse to recover any monies already paid to Licensor but with no more responsibility to pay the Licensor any more money other than as strictly due under the last quarter sales made of the product or products in question. This inalienable right to give up is an integral part of the Manufacturer's motivation to enter into this Agreement and therefore expects any Court of competent jurisdiction to honor this right as the full and complete intent of the parties.

If the Manufacturer stops selling the product or products as indicated by the Manufacturer in writing to the Licensor, and exerts its rights under this clause in writing to the Licensor, all rights revert to the Licensor as long as the Licensor takes no further legal or collection action against the Manufacturer. This clause is intentionally in favor of the Manufacturer in order to induce them to enter into this Agreement and undertake their responsibilities under this Agreement.

2. Payment of Royalty.

Manufacturer will pay Licensor a royalty, which shall be calculated as follows: _____ .
Payment shall be due 15 Days after the end of each quarter. A written royalty report shall accompany each payment.

3. Defaults.

If Manufacturer fails to abide by the obligations of this Agreement, including the obligation to make a royalty payment when due, Licensor shall have the option to cancel this Agreement by providing 30 days written notice to Manufacturer and permitting them another 30 Days to cure. Manufacturer shall have the option of preventing the termination of this Agreement by taking corrective action that cures the default, if such corrective action is taken prior to the end of the time period stated in the previous sentence, and if there are no other defaults during such time

period.

4. Assignment of Rights.

Either party may assign their rights to this Agreement to any other party. This assignment will not relieve the assigning party of their responsibilities under this Agreement. The assigning party should, as a courtesy, notify the other party of the assignment. This responsibility remains a “courtesy only” because the assignor remains fully and completely responsible for all their duties prior to assignment.

5. Notices.

Any notice required by this Agreement or given in connection with it, shall be in writing and shall be given to the appropriate party by personal delivery or a recognized over night delivery service such as FedEx.

If to the Manufacturer: _____.

If to the Licensor: _____.

6. No Waiver.

The waiver or failure of either party to exercise in any respect any right provided in this agreement shall not be deemed a waiver of any other right or remedy to which the party may be entitled.

7. Entirety of Agreement.

The terms and conditions set forth herein constitute the entire agreement between the parties and supersede any communications or previous agreements with respect to the subject matter of this Agreement. There are no written or oral understandings directly or indirectly related to this Agreement that are not set forth herein. No change can be made to this Agreement other than in writing and signed by both parties.

8. Governing Law.

This Agreement shall be construed and enforced according to the laws of the State of _____ and any dispute under this Agreement must be brought in this venue and no other.

9. Headings in this Agreement

The headings in this Agreement are for convenience only, confirm no rights or obligations in either party, and do not alter any terms of this Agreement.

10. Severability.

If any term of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then this Agreement, including all of the remaining terms, will remain in full force and effect as if such invalid or unenforceable term had never been included.

In Witness whereof, the parties have executed this Agreement as of the date first written above.

First Party

Second Party

Date

Exhibit A: Material or Materials to Be Licensed; Best Rendition Available also attached.

License Agreement, Simple Review List

This review list is provided to help you complete this License Agreement. License agreements imply ongoing payments. We have found that outright purchases, paid in cash, if they can be agreed upon, lead to more satisfactory results for both parties. The reasons are numerous: (1) there will never be a contention, as so often happens between Licensors and Manufacturers or Publishers, that the Manufacturer or Publisher did not do enough, report sales properly, and so on and so on; (2) the manufacturer pays considerably more up front but has no affirmative duty to market the product immediately, deal with the licensor and his or her representatives, and be subject to inquisition by the Licensor; (3) the Licensor gets all the money up front and can sleep at night not worrying about if he or she will get what they believe they deserve.

Obviously the Licensor has to take far less money than the full potential of royalty payments. However, since most license deals fail, the reduced payment approach is a more conservative one for the recipient (i.e., Licensor). This option is well worth thinking about from a business point of view by both parties. We walk this talk by doing it ourselves at Simply Media and have much happier Licensors than we ever had when we licensed products on a royalty basis. Our costs are considerably reduced because we have no on going royalty responsibilities in terms of money or contact, and no affirmative duty to market products immediately.

With this warning in mind, in this simple License Agreement we have included an inalienable right to give up clause, or backdoor, so that if for any reason the Manufacturer wants to give up, they can do so without further recourse by the Licensor. Napoleon once said, "A great general is known by how he retreats to fight another day." Indeed, the same is true for license rights; some work; some don't. The key to success is to have a back door escape clause.

If the product or products are so good, the Licensor should not be unduly concerned about the product or products reverting to him or her if things should not work out. It is on the margins that a licensor becomes concerned. A shrewd Manufacturer looks for those signs by the actions of the licensor, if unwilling to accept this benign walk away clause. Roger Fisher in Getting to Yes frequently discusses the importance of walk away positions in negotiations. In essence he says, "There is always another deal. Be prepared to walk away if the price is too high." We concur with his emphasis.

In addition, both parties retain the right to assign their rights without prior notification to the other party, to prevent disputes on that subject, but then must continue on the agreement as fully responsible if another party takes on the assignment. This clause is intended to protect the financial interests of both parties without punishing them.

Exclusive versus nonexclusive. Manufacturers usually want exclusive rights worldwide. But, that is much more expensive than taking just the rights you need. At Simply Media, for example, we just take the rights to the CD ROM market. We let artists and authors retain the rights to sell the same work into the book or other markets, as a rule. In this way we pay less and they get extra income elsewhere. A true win/win. There are arguments for both points of view. List your mutual decision in Section 1.

This is the simplest license agreement that makes sense. More complicated ones are generally in use but have more perils for all of the parties associated with them, not the least of

which is the opportunity for lawyers to get hold of them and make a meal out of it. Simpler licenses are coming to the foreground, however. When we had a Computer Associates (CA-NYSE) agreement assigned to us at Simply Media we were stunned by its clarity, simplicity, and shortness. Further conversations with CA led us to conclude that simpler, even if it favored the other party, led to more amicable relations, better financial results, and far less litigation. It is for you to decide. We provide the best tool we know how to; it is up to you and your attorney to decide what works best for you.

1. Make at least two copies of the Agreement, with an original retained by both parties. You should keep a copy in a separate license folder, where you have all copies of licenses available, as well as in your file on the product or products themselves.
2. Remember that it is far easier to get into one of these Agreements than out of them. If you are the Manufacturer you may well be dealing with their hopes and dreams, as well as their dreams of sugarplums and big money, so watch out. If you are the Licensor remember this is only business to them. Be guided accordingly. Things that start easy end easy. The opposite is also true: those things that start hard usually end hard. This Agreement starts easy so it can end easy. However, if you wish to “nab” or “hook” the other party, this is the wrong agreement for you.
3. Be warned: whenever the comments in the review list are as long or almost as long as the agreement itself, you are in some peril. Therefore, you are well advised to consult your attorney. Remember that the above is business advice. If your attorney pushes for harder terms, be sure you understand the legal reasons versus the business ones. More than a few attorneys bust deals in the hopes a better one comes along for their client. If the opportunity is great, that may be great business advice. If not, you better think twice about taking the business advice from a lawyer. Always take their legal advice, but that is a different matter entirely.