

Edison Nation Innovator Agreement

This Innovator Agreement is entered into by and between the person or persons who electronically sign and submit this Agreement and are identified by name in the Submission Acknowledgement as being the Innovator or, collectively, as Innovators, and Edison Nation, LLC, a limited liability company organized and existing under the laws of the State of North Carolina and having a principal office and place of business at 520 Elliot Street, Charlotte, North Carolina 28202. Innovator and Edison Nation are sometimes referred to as “Parties” and each, individually, as a “Party”.

WHEREAS, Edison Nation, whether directly or through one or more affiliated companies, has or has access to expertise in the review, analysis, evaluation, design, development, improvement, manufacture, commercialization, or distribution of consumer and commercial products and services;

WHEREAS, Edison Nation conducts and manages innovation searches seeking out innovations in products and services for acquisition, which innovation searches may be sponsored from time to time by one or more manufacturers, retailers or other sponsors;

WHEREAS, [Innovator](#) has one or more [Innovations](#) that [Innovator](#) desires to submit to Edison Nation for consideration of possible commercialization of one or more [Innovative Products](#), such commercialization to be performed by Edison Nation, an affiliated entity of Edison Nation, an entity under contract with Edison Nation, and/or a licensee or collaborator of Edison Nation;

WHEREAS, [Innovator](#) purports and warrants to be the sole owner of all rights, title, and interests in and to the [Innovation](#), including all associated Intellectual Property; and

WHEREAS, Edison Nation desires to [Consider](#) the [Innovation](#) for purposes of possible acquisition of the [Intellectual Property](#);

NOW THEREFORE, in consideration of the rights and obligations of the Parties, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties agree as follows:

Definitions

Consider

The review, analysis, and evaluation of an [Innovation](#).

Finalist Phase

The period of time starting on the date on which the [Innovation](#) is deemed to be a [Finalist](#) (Stage 7) and continuing for 6 months.

Finalist

A categorization given to those [Innovations](#) that have been selected for presentation to an internal audience or search sponsor (Stage 7).

Insider

An [exclusive, paid membership](#) to the [Edison Nation Web site](#).

Innovator

The person or persons entering into this Agreement with Edison Nation.

Innovator Assignment and Commercialization Agreement

The agreement to which an [Innovator](#) automatically enters into, without negotiation, after selection. The terms and conditions of the Innovator Assignment and Commercialization Agreement can be found in [Exhibit A](#).

Innovation

An idea from an [Innovator](#).

Innovation Search

A process by which an [Innovator](#) submits an [Innovation](#) to Edison Nation.

Innovative Product

A product based on an [Innovation](#).

Intellectual Property

Any and all inventions; any and all domestic, foreign and international patents and patent applications, including any reissue, reexamination, extension, renewal, substitution, conversion, confirmation, division, continuation, continuation-in-part, provisional, nonprovisional, and the like of any patent or patent application, and any patent or patent application claiming a right of priority to any of the foregoing; all domestic, foreign and international trademarks and trademark applications and registrations, and related domain names and Web sites; all domestic and foreign copyrights; trade secrets; know-how; and designs; and including any refinements, changes, variations, derivatives, and improvements of the foregoing; and any past or present right or cause of action arising under any of the foregoing, including the right to sue for infringement, which are incorporated in, embodied by, or otherwise directly related to an [Innovation](#).

Notice of Selection

A notice given to an [Innovator](#) that an [Innovation](#) has been chosen for commercialization.

Publicize

The display of any details of the [Innovation](#) and the [Innovator's](#) name on the [Edison Nation Web site](#) or the Web site of any of its partners or sublicensees; and inclusion of any details of the [Innovation](#) and the [Innovator's](#) name in articles written by Edison Nation or any of its partners or sublicensees.

Submission Acknowledgment

An email message to the [Innovator](#) that contains a copy of the electronically-signed Edison Nation Innovator Agreement, a copy of the response by the [Innovator](#) to the [Innovation Search](#), and a receipt for the [Submission Fee](#). The Submission Acknowledgment serves as documentation of the [Innovator's](#) submission.

Submission Date

The date that an [Innovator](#) submitted an [Innovation](#) to Edison Nation.

Submission Fee

A non-refundable fee paid to Edison Nation to defray the costs of evaluating an [Innovation](#). The amount of the Submission Fee shall be specified on the [Edison Nation Web site](#).

Term

The Term of this shall begin on the [Submission Date](#) and shall end when this Agreement is terminated.

1. Submission for Consideration by Edison Nation
 - A. [Innovator](#) acknowledges that [Innovator](#) is entering and upon submission entered into this Agreement only after careful consideration of this Agreement and the [Innovator Assignment and Commercialization Agreement](#), and that [Innovator](#) has had full and fair opportunity to seek legal advice concerning the rights and obligations of the Parties to this Agreement.
 - B. The Parties acknowledge that this Agreement is being concurrently submitted with a true, accurate, and complete response to an [Innovation Search](#) on the [Edison Nation Web site](#) located at the Uniform Resource Identifier, <http://www.edisonnation.com/>, and that this Agreement is being electronically signed and submitted through the [Edison Nation Web site](#) together with a [Submission Fee](#). Upon successful receipt by Edison Nation of both the electronic signature to this Agreement and the response by the [Innovator](#) to the [Innovation Search](#), and upon confirmation of payment by the [Innovator](#) of the required [Submission Fee](#), Edison Nation shall send an email message to the [Innovator](#) a copy of the electronically signed Agreement, the response by [Innovator](#) to the [Innovation Search](#), and a receipt for the [Submission Fee](#) payment. Notwithstanding the foregoing, if the [Innovator](#) submitted the [Innovation](#) in response to a previous [Innovation Search](#), and the [Innovator](#) is re-submitting the [Innovation](#) in response to this [Innovation Search](#), and the [Innovator](#) was at the time of such prior submission and has remained and still remains an [Insider](#) of the [Edison Nation Web site](#), and the search requirements set forth on the [Edison Nation Web site](#) for this [Innovation Search](#) don't prohibit "opt-ins", no [Submission Fee](#) is due pursuant to this Agreement.
 - C. The [Submission Date](#) shall be set forth in the [Submission Acknowledgment](#).
 - D. [Innovator](#) does not transfer under this Agreement any rights, interests, or title in or to any tangible items, including any products, prototypes, or proofs-of-concept, and it is the intent of the Parties that this Agreement not be deemed to constitute an "offer of sale" or "sale" under 35 U.S.C. § 102(b).
 - E. Edison Nation does not take responsibility for the return of any of [Innovator's](#) products,

prototypes, or proofs-of-concept. Edison Nation shall make reasonable efforts to return such items upon request, however the Parties understand and acknowledge that in certain cases the return of such items is not possible, and [Innovator](#) shall not expect the return of such.

2. Confidentiality; Consideration by Edison Nation

- A. Edison Nation shall treat the [Innovation](#) as confidential and not disclose the [Innovation](#) to any third party; *provided, however*, that Edison Nation may disclose the [Innovation](#) to a third party that has executed a confidentiality agreement with Edison Nation for the purpose of considering the commercialization of the [Innovation](#). This Agreement imposes no obligation of confidentiality upon Edison Nation with respect to any information (i) that was in Edison Nation's possession before receipt from [Innovator](#); (ii) is or becomes a matter of public knowledge through no fault of Edison Nation; (iii) is rightfully received by Edison Nation from a third party not owing a duty of confidentiality to the [Innovator](#); (iv) is disclosed without a duty of confidentiality to a third party by, or with the authorization of, [Innovator](#); or (v) is independently developed by Edison Nation.
- B. During the [Term](#), Edison Nation shall [Consider](#) the [Innovation](#) with respect to the [Innovation Search](#) to which the [Innovator](#) made the submission as well as for other [Innovation Searches](#) that may be conducted by Edison Nation. Edison Nation may [Consider](#) the [Innovation](#) for additional [Innovation Searches](#) without any resubmission or further payment of any fee so long as this Agreement has not been terminated. Such consideration by Edison Nation shall not be an evaluation of the merits of any prototype or commercial sample for purposes of purchase by Edison Nation, and such consideration may be performed manually, by computer analysis, or both. Edison Nation may also, so long as this Agreement has not been terminated, present the [Innovation](#) to third parties in an effort to commercialize the [Innovation](#) by way of a license or other form of commercialization agreement.
- C. At some point during an [Innovation Search](#), the [Innovation](#) may be declared to be a [Finalist](#). If and when a submission becomes a [Finalist](#), the [Innovation](#) shall be deemed to be in the [Finalist Phase](#). During any [Finalist Phase](#), [Innovator](#) shall not submit the [Innovation](#) for consideration or evaluation by any product submission company or the like, nor entertain or explore other avenues for commercializing the [Innovation](#) or any part of it without the prior written consent of Edison Nation.
- D. As long as the [Innovator](#) remains an [Insider](#) of the [Edison Nation Web site](#), and as long as the [Innovation Search](#) specifications do not state otherwise, the [Innovator](#) may re-submit the [Innovation](#) for future [Innovation Searches](#) on the [Edison Nation Web site](#) without being required to pay another [Submission Fee](#).
- E. During the [Term](#) of this Agreement and in consideration for Edison Nation's promise to [Consider](#) the [Innovation](#), [Innovator](#) agrees to enter into and immediately sign, *without negotiation*, the [Innovator Assignment and Commercialization Agreement](#) attached as [Exhibit A](#), including all of the terms and obligations, upon receipt of a [Notice of Selection](#) for commercialization of the [Innovation](#).
- F. In consideration for Edison Nation's promise to [Consider](#) the [Innovation](#), [Innovator](#) grants Edison Nation all Intellectual Property and publicity rights necessary for Edison Nation, at its option, to [Publicize](#) the Innovation, including, without limitation, the right to use the Innovator's name. Innovator agrees that Edison Nation can sublicense these rights to third parties, solely for the purposes described in this paragraph; *provided, however*, the rights granted in subsection 2.D shall survive the [termination](#) of this Agreement.
- G. Unless and until a [Notice of Selection](#) is received by the [Innovator](#), and except as set forth in section 2.C, Edison Nation shall not receive any rights, title, and interests in, to, and under any of the [Intellectual Property](#).
- H. [Innovator](#) understands that Edison Nation or its sublicensees and partners may be developing products, services, concepts, systems, methods or techniques, or may be receiving information from other parties that may be similar to the [Innovation](#). [Innovator's](#) submission of the [Innovation](#) will not prohibit or in any way limit Edison Nation or its sublicensees or partners from independently developing (or having developed for them) products, services, concepts, systems, methods or techniques that are similar to or compete with the products, concepts, systems, methods or techniques contemplated by or embodied in the [Innovation](#).

3. Representations, Warranties and Indemnity

- A. [INNOVATOR](#) REPRESENTS AND WARRANTS TO EDISON NATION AND ANY AFFILIATE THAT:
- i. [INNOVATOR](#) IS THE SOLE OWNER OF ALL RIGHTS, INTERESTS, AND TITLE IN AND TO THE [INTELLECTUAL PROPERTY](#) THAT IS INCORPORATED IN, EMBODIED BY, OR OTHERWISE DIRECTLY RELATED TO THE [INNOVATION](#);
 - ii. [INNOVATOR](#) HAS THE RIGHT AND ABILITY TO ENTER INTO THIS AGREEMENT;
 - iii. [INNOVATOR](#) HAS THE RIGHT AND ABILITY TO ENTER INTO THE INNOVATOR ASSIGNMENT AND COMMERCIALIZATION AGREEMENT ATTACHED AS [EXHIBIT A](#);
 - iv. DURING THE [TERM](#) OF THIS AGREEMENT, [INNOVATOR](#) SHALL NOT SELL, HYPOTHECATE, ASSIGN, PLEDGE, TRANSFER, GRANT, OR OTHERWISE ENCUMBER ANY TYPE OF INTEREST IN THE [INNOVATION](#) OR THE [INTELLECTUAL PROPERTY](#);
 - v. [INNOVATOR](#) HAS NO SPECIFIC KNOWLEDGE OF ANY CLAIMS TO, OR REASONS WHY INNOVATOR DOES NOT HAVE CLEAR TITLE TO, THE [INNOVATION](#) OR ANY OF THE [INTELLECTUAL PROPERTY](#);
 - vi. [INNOVATOR](#) HAS NO SPECIFIC KNOWLEDGE OF ANY [INTELLECTUAL PROPERTY](#), INCLUDING ANY PATENT, THAT WOULD BE INFRINGED BY A PROTOTYPE OR COMMERCIAL SAMPLE OF [INNOVATOR](#) THAT REPRESENTS THE [INNOVATION](#);
 - vii. ALL STATEMENTS, DISCLOSURES, AND REPRESENTATIONS MADE BY [INNOVATOR](#), WHETHER WRITTEN OR ORAL, ARE TRUE, ACCURATE, AND COMPLETE; AND
 - viii. WITHOUT IN ANY WAY LIMITING THE FOREGOING, [INNOVATOR](#) CERTIFIES THAT [INNOVATOR](#) HAS NOT WITHHELD OR MISCHARACTERIZED ANY INFORMATION REGARDING [INNOVATOR](#), [INNOVATOR'S](#) BACKGROUND, THE [INNOVATION](#), THE [INTELLECTUAL PROPERTY](#), OR ANY MATERIAL FACTS PERTAINING TO THERETO.
- B. [INNOVATOR](#) SHALL INDEMNIFY AND HOLD HARMLESS EDISON NATION AND ANY AFFILIATE OR PARTY IN PRIVY WITH EDISON NATION FROM AND AGAINST ALL CLAIMS, DEMANDS, ACTIONS, LAWSUITS, PROCEEDINGS, DAMAGES, INJURIES, EXPENSES, COSTS, AND ATTORNEYS' FEES RESULTING FROM, RELATING TO, CONCERNING OR IN CONNECTION WITH A BREACH OF ANY OF [INNOVATOR'S](#) REPRESENTATIONS AND WARRANTIES.
- C. ANY BREACH BY [INNOVATOR](#) OF ANY REPRESENTATION, WARRANTY, OR OBLIGATION OF THIS SECTION SHALL BE DEEMED HEREIN A MATERIAL BREACH.

4. Resolution of Disputes

- A. If a dispute, controversy, or claim arises out of or relates to this Agreement, the Parties agree to submit their dispute, controversy, or claim to mediation to be administered by the American Arbitration Association in accordance with the local rules of the United States District Court for the Western District of North Carolina applicable to mediation. Mediation will be mandatory prior to resorting to arbitration. The site of mediation shall be Charlotte, North Carolina.
- B. If the dispute, controversy, or claim is not settled or resolved by mediation, then the Parties agree that it shall be settled by arbitration administered by the American Arbitration Association under its Patent Arbitration Rules before a panel of three arbitrators. The site of the arbitration shall be Charlotte, North Carolina, and any award rendered shall be binding and not appealable. The Parties agree that any award rendered by such arbitration may be filed in any court of competent jurisdiction for enforcement, but not for review or any other proceedings beyond enforcement.
- C. The prevailing Party in arbitration shall be entitled to recover its reasonable costs, fees, and expenses that are directly associated with the arbitration and mediation. Such recovery shall be included in the arbitration award for enforcement through the judicial system.
- D. Any award for Edison Nation against [Innovator](#) may include specific performance by [Innovator](#) in accordance with one or more obligations of this Agreement, including execution of the [Innovator Assignment and Commercialization Agreement](#) attached as [Exhibit A](#).

- E. EXCEPT AS PROVIDED IN SECTION 4.C, NO MONETARY DAMAGES SHALL BE AVAILABLE TO [INNOVATOR](#), WHETHER ARISING DIRECTLY OR INDIRECTLY FROM ANY DISPUTE, CONTROVERSY, OR CLAIM, AND IN NO EVENT SHALL AN AWARD TO [INNOVATOR](#) INCLUDE ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, INCLUDING WITHOUT LIMITATION, LOSS OF PROFIT, REVENUE, OPPORTUNITY, DATA, OR USE.

5. Termination

- A. During any [Finalist Phase](#), the Parties jointly may agree to terminate this Agreement; however, neither Party shall have the unilateral right to terminate this Agreement even if a material breach occurs by the other Party.
- B. [Innovator](#) shall have the unilateral right to terminate this Agreement without cause by choosing the "REMOVE" option on the [Edison Nation Web site](#) at any time that is outside of any [Finalist Phase](#).
- C. Edison Nation shall have the unilateral right to terminate this Agreement without cause by written notice to the [Innovator](#) at any time that is outside of any [Finalist Phase](#), or after the end of the period of time in which Edison Nation is [Considering](#) the [Innovation](#).
- D. Any means of specifically indicating termination of this Agreement that is provided for by Edison Nation on the [Edison Nation Web site](#) shall be deemed "written notice" except for those [Innovations](#) declared [Finalists](#), which shall be notified as provided in Section 6 or by email.

6. Miscellaneous Provisions

- A. Notices. Any notices and communications required or permitted under this Agreement shall be deemed made and delivered when actually received in writing by the receiving party, or 3 days after being transmitted by registered or certified mail, return receipt requested, addressed to the receiving party. For purposes of notice, the notice address for Edison Nation shall be the address set forth above, and the notice address for the [Innovator](#) shall be the address set forth below for the [Innovator](#). Any of the Parties may change its address by notice to the other Party in accordance with this paragraph.
- B. Entire Agreement. This Agreement constitutes the entire Agreement between the Parties with respect to the subject matter, and no modifications or revisions shall have any force or effect unless made in writing and executed by all Parties. Any oral representations or agreements made prior to this Agreement are merged and superseded by this Agreement.
- C. Severance. In the event that any provision of this Agreement is declared void or unenforceable, such provision shall be deemed severed from this Agreement, and this Agreement shall otherwise remain in full force and effect unless its purpose cannot be effected absent the severed provision.
- D. Controlling Law. This Agreement has been made and entered into in Mecklenburg County in the State of North Carolina and shall be interpreted and applied in accordance with the laws of the State of North Carolina. The Parties consent to personal jurisdiction in the federal and state courts located in Mecklenburg County.
- E. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties as well as their respective successors, legal representatives, heirs, and assigns.
- F. Relationship of the Parties. Nothing contained in this Agreement shall be deemed or construed as creating an agency, joint venture, partnership, or franchise relationship between the Parties. The [Innovator](#) is not a contestant, and nothing contained in this Agreement shall be deemed or construed as creating a contest. Except as expressly set forth, no Party is, by virtue of this Agreement, authorized as an agent, employee, or legal representative of any other Party.
- G. No Third-Party Beneficiary. The provisions of this Agreement are for the sole benefit of [Innovator](#), Edison Nation, and any affiliate of Edison Nation, and are not intended to convey any rights and benefits to anyone else, nor shall this Agreement be interpreted to convey any rights or benefits to any other persons.
- H. No Implicit Obligations. [Innovator](#) acknowledges that no implicit obligations arise under this Agreement including, but not limited to, any obligations to commercialize, and any obligations of nonuse or restrictions on use.
- I. Assignment. [Innovator](#) may assign its rights and obligations under this Agreement to another person or entity only with the prior written approval of Edison Nation, which approval shall not

be unreasonably withheld. Edison Nation may assign its rights and obligations under this Agreement to another person or entity without the prior written approval of [Innovator](#).

- J. Further Assurances. The Parties agree to execute such other documents and provide such further assurances, if any, as may be reasonably required from time to time, to give effect to the provisions of this Agreement.

Exhibit A

Form of the “Innovator Assignment and Commercialization Agreement”

This Innovator Assignment and Commercialization Agreement (“Assignment”) is entered into by and between the person or persons identified at the end of this Assignment as being the “Assignor” (collectively, “Assignors”) and Edison Nation, LLC, a limited liability company organized and existing under the laws of the State of North Carolina and has a principal office and place of business at 520 Elliot Street, Charlotte, North Carolina 28202 (“Assignee”). Assignor and Assignee are sometimes referred to as “Parties” and each, individually, as a “Party”.

WHEREAS, Assignor and Assignee are Parties to that certain [Edison Nation Innovator Agreement](#), which is incorporated by reference for the sole purpose of defining terms appearing in this Assignment;

WHEREAS, Assignor agreed to the terms and conditions of the [Prior Agreement](#) as part of a submission that Assignor entered on the Edison Nation Web site, the [Submission Acknowledgement](#) for which is included as [Schedule A](#);

WHEREAS, Assignor is obligated under the [Prior Agreement](#) to sign this Assignment for purposes of possible commercialization of one or more products based on the [Innovation](#) submitted by [Innovator](#) to Assignee under the [Prior Agreement](#); and

WHEREAS, Assignee desires to acquire, in accordance with the terms and obligations arising under this Assignment, all rights to the [Intellectual Property](#) now existing or created in the future that are associated with the [Innovation](#);

NOW THEREFORE, in consideration of the promises and obligations of the Parties set forth and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties agree as follows:

Definitions

Adjusted Gross Revenue

[Gross Revenues](#) less the sum of all [Selling and Fulfillment Costs](#), [Fees and Commissions](#), [Patent Fees](#), [Production Costs](#), and [Returns and Bad Debts](#); any and all refunds, credits, credit card processing fees, chargebacks, and other allowances to customers arising from the return or rejection of goods or otherwise granted in the ordinary course of business, and less any attorney fees directly associated with a legal contract under which any [Innovative Products](#) or any of the [Intellectual Property](#) is commercialized.

Annuity Payment

Annual payments made by Assignee to Assignor.

Assignment Channel

A [Commercialization Channel](#) whereby [Assignee](#) assigns all rights, title and interest in, to and under any of the [Intellectual Property](#) for a lump-sum payment.

Assignment Revenue

Any monies received by Assignee that are received solely in connection with assignment of all rights, title, and interest in, to and under any of the [Intellectual Property](#). For purposes of clarification, [Assignment Revenues](#) shall not include any monies received by Assignee in connection with enforcement actions against alleged infringers of the [Intellectual Property](#), and any monies reasonably determined by Assignor to be [Assignment Revenues](#) shall not be considered [Gross Revenues](#), or [Licensing Revenues](#).

ASOTV Channel

A [Commercialization Channel](#) whereby [Assignee](#) creates and tests a direct response television advertisement for the [Innovative Product](#).

Commercialization Channel

A method by which [Assignee](#) attempts to commercialize an [Innovative Product](#).

Development Channel

A [Commercialization Channel](#) whereby [Assignee](#) designs, or engineers, or manufactures and sells the [Innovative Product](#).

Effective Date

The date on which the Parties have executed this Assignment. If the Parties execute this Assignment on different dates, then the Effective Date shall be the latest date of execution.

Fees and Commissions

All fees, commissions, and expenses payable to third parties in connection with Assignee's efforts to commercialize any [Innovative Product](#) and any of the [Intellectual Property](#).

Gross Revenue

All monies actually received by Assignee resulting from efforts by Assignee to commercialize any [Innovative Products](#) and any of the [Intellectual Property](#), including the manufacture and sale of [Innovative Products](#). For purposes of clarification, Gross Revenues shall not include any monies received by Assignee in connection with enforcement actions against alleged infringers of the [Intellectual Property](#); any monies received by Assignee in connection with licensing of, or the grant of rights under, the [Intellectual Property](#), as well as any monies received by Assignee in connection with the explicit grant of any covenant not to sue under the [Intellectual Property](#); or any monies received by Assignee arising solely in connection with assignment of all rights, title, and interest in, to and under any of the [Intellectual Property](#). Furthermore, any monies reasonably determined by Assignor to be Gross Revenues shall not be considered [Licensing Revenues](#), or [Assignment Revenues](#).

Innovation

An idea from an [Innovator](#).

Innovation Search

A process by which an [Innovator](#) submits an [Innovation](#) to Edison Nation.

Innovative Product

A product based on an [Innovation](#).

Intellectual Property

Any and all inventions; any and all domestic, foreign and international patents and patent applications, including any reissue, reexamination, extension, renewal, substitution, conversion, confirmation, division, continuation, continuation-in-part, provisional, nonprovisional, and the like of any patent or patent application, and any patent or patent application claiming a right of priority to any of the foregoing; all domestic, foreign and international trademarks and trademark applications and registrations, and related domain names and Web sites; all domestic and foreign copyrights; trade secrets; know-how; and designs; and including any refinements, changes, variations, derivatives, and improvements of the foregoing; and any past or present right or cause of action arising under any of the foregoing, including the right to sue for infringement, which are incorporated in, embodied by, or otherwise directly related to an [Innovation](#).

Licensing Channel

A [Commercialization Channel](#) whereby [Assignee](#) licenses the [Intellectual Property](#) to one or more third parties to commercialize the [Innovative Products](#).

Licensing Revenue

Any monies received by [Assignee](#) that, in cases where [Assignee](#) has not conducted research, design, engineering, prototyping, market research and/or provided related services, are received in connection with licensing of, or the grant of rights under, the [Intellectual Property](#), as well as any monies received by [Assignee](#) in connection with the explicit grant of any covenant not to sue under the [Intellectual Property](#). For purposes of clarification, [Licensing Revenues](#) shall not include any monies received by [Assignee](#) in connection with enforcement actions against alleged infringers of the [Intellectual Property](#), and any monies reasonably determined by [Assignor](#) to be [Licensing Revenue](#) shall not be considered [Gross Revenues](#), or [Assignment Revenues](#).

Patent Fees

Any fees or costs associated with the assignment, filing, prosecution and maintenance of any domestic or foreign patent applications and patents relating to the [Intellectual Property](#), including but not limited to application costs, filing and examination fees, prosecution costs, assignment and issue fees, maintenance fees, appeal fees, miscellaneous fees and costs for PCT filings and associated foreign fees.

Prior Agreement

The agreement entered into by Assignor and Assignee that is titled "Edison Nation Innovator Agreement", a copy of which Assignor received in the [Submission Acknowledgment](#).

Production Costs

The actual costs of producing and running media for a direct response television advertisement, including telemarketing and web expenses, talent location, props and any other associated costs.

Publicize

The display of any details of the [Innovation](#) and the [Innovator's](#) name on the [Edison Nation Web site](#) or the Web site of any of its partners or sublicensees; and inclusion of any details of the [Innovation](#) and the [Innovator's](#) name in articles written by Edison Nation or any of its partners or sublicensees.

Returns and Bad Debts

All allowances and credits to Assignee's customers on account of rejection or return of units of [Innovative Products](#), losses incurred by Assignee due to returned merchandise which cannot be resold or otherwise becomes obsolete, and losses incurred by Assignee due to credit card chargebacks, bad checks, and other uncollectible debts.

Selling and Fulfillment Costs

The costs incurred by Assignee associated with sales and fulfillment of orders for the [Innovative Products](#), including, without limitation, all actual and reasonable charges for media, inbound telemarketing, order taking and processing, credit card and check processing, warehousing, landed costs, freight in costs, applicable duties, taxes, insurance, packaging, shipping to customers, customer service, markdown money, fees, commissions, and other actual and reasonable amounts payable to brokers, distributors, and other third parties incurred in connection with such sales.

Submission Acknowledgment

An email message to the [Innovator](#) that contains a copy of the electronically-signed [Edison Nation Innovator Agreement](#), a copy of the response by the [Innovator](#) to the [Innovation Search](#), and a receipt for the [Submission Fee](#). The Submission Acknowledgment serves as documentation of the [Innovator's](#) submission.

Term

The Term of this shall begin on the [Effective Date](#) and shall end when this Assignment is terminated.

Termination Date

The 20th anniversary of the [Effective Date](#).

Threshold Date

5 years after the [Effective Date](#).

1. Assignment of Intellectual Property

- A. [Assignor](#) irrevocably quitclaims, sells, assigns, transfers, and conveys to [Assignee](#) all rights, title, and interests in, to, and under the [Intellectual Property](#). Assignor does not, however, transfer title to, or grant any rights or interests in, any tangible articles of the [Intellectual Property](#). Due to the nature of [Assignee's](#) business, which often includes sending materials and prototypes to one or more potential licensees or partners, [Assignee](#) cannot guarantee the condition in which materials or prototypes will be returned to [Assignor](#), if they are returned at all. Accordingly, [Assignor](#) agrees not to send [Assignee](#) materials or prototypes that [Assignor](#) wants returned.
- B. [Assignor](#) further grants to [Assignee](#) the right to file one or more patent applications covering the Innovation or all or part of the Intellectual Property, and covenants and agrees, and binds any and all heirs, administrators, legal representatives, nominees, and assigns, to assist and cooperate with [Assignee](#) in the preparation and prosecution of any patent, trademark, or copyright application included within the [Intellectual Property](#) and in the prosecution or defense of any interference, opposition, lawsuit, or other proceeding that may arise in connection with the [Intellectual Property](#) and, further, to execute and deliver to [Assignee](#) any and all additional petitions, oaths, assignments, or other papers or instruments that may be reasonably requested by [Assignee](#); provided, however, that the actual, reasonable costs to [Assignor](#) that are incurred in compliance by [Assignor](#) with such assistance and cooperation will be reimbursed by [Assignee](#).
- C. [Assignor](#) further covenants and agrees to authorize and empower [Assignee](#) to invoke and

claim for any patent application, patent, trademark application, and trademark registration included within the [Intellectual Property](#) the benefit of any rights to which [Assignor](#) might be entitled under international law or under the laws of any particular country, and to invoke and claim such rights without further written or oral authorization from [Assignor](#). [Assignor](#) appoints [Assignee](#) as its lawful attorney-in-fact to act on its behalf for the limited purposes of effecting recordation or public notice of the assignment of any of the [Intellectual Property](#), including the execution of assignment instruments for purposes of recordation with, for example, the U.S. Patent & Trademark Office and the U.S. Copyright Office.

- D. [Assignor](#) further covenants and agrees that this Assignment shall inure to the benefit of the successors, assigns, legal representatives, or nominees of [Assignee](#), without further written or oral authorization from Assignor.
- E. [Assignor](#) further covenants and agrees that Assignor shall not take any action that would adversely impact the amounts of [Annuity Payments](#) that may become due to [Assignor](#), such actions including, without limitation, Assignor endorsing, promoting, selling, or otherwise commercializing any product that competes with an [Innovative Product](#). It is the intent of the Parties that this Section benefit [Assignee](#) and its licensees.
- F. The Parties acknowledge and agree that [Assignee](#) is to have, as between the Parties, the exclusive right to commercialize [Innovative Products](#) and the [Intellectual Property](#), and Assignor agrees not to grant any rights to any third party and agrees not to work with, cooperate, or assist any third party with respect to commercialization of either the [Innovative Products](#) or any of the [Intellectual Property](#) without the express written consent of [Assignee](#).
- G. Any breach by [Assignor](#) of any obligation of this Section shall be deemed a material breach of this Assignment.

2. [Commercialization Channels](#); Consideration to [Assignor](#) in Exchange for Assignment

- A. [Assignee](#), in its sole discretion, may attempt to commercialize the [Innovative Product](#) through one or more of the following [Commercialization Channels](#)
- B. [ASTOV Channel](#)
 - i. If [Assignee](#) determines, at its sole discretion, that the [Innovative Product](#) has met or exceeded certain test criteria, then [Assignee](#) shall make annual payments to [Assignor](#), subject to the terms and conditions provided in Section 3 of this Assignment, in an amount equal to:
7.5% of [Adjusted Gross Revenues](#) received by [Assignee](#)
 - ii. If, however, [Assignee](#) determines, at its sole discretion, that the [Innovative Product](#) has not met or exceeded certain test criteria, then [Assignee](#) expressly authorizes [Assignor](#) to pursue commercialization of the [Innovative Product](#) through the [Licensing Channel](#).
- C. [Licensing Channel](#)
 - i. If [Assignee](#) is successful in executing a license agreement for the [Intellectual Property](#) for the [Innovative Product](#), then [Assignee](#) shall make annual payments to [Assignor](#), subject to the terms and conditions provided in Section 3 of this Assignment, in an amount equal to:
50.0% of [Licensing Revenues](#) received by [Assignee](#)
 - ii. If, however, [Assignee](#) is unsuccessful in licensing the [Intellectual Property](#) for the [Innovative Product](#), then [Assignee](#) shall return to [Assignor](#) all [Intellectual Property](#), including any patent applications or issued patents, along with any unused samples or prototypes for the [Innovative Product](#).
- D. [Development Channel](#)
 - i. When [Assignee](#) manufactures and sells the [Innovative Product](#), then [Assignee](#) shall make annual payments to [Assignor](#), subject to the terms and conditions provided in Section 3 of this Assignment, in an amount equal to:
7.5% of [Adjusted Gross Revenues](#) received by [Assignee](#)
 - ii. For the purpose of clarification, the [Development Channel](#) applies to [Innovative Products](#) that are designed, or engineered, or developed, or manufactured and sold by or under the direction of [Assignee](#).

E. [Assignment Channel](#)

- i. When [Assignee](#) assigns all rights, title and interest in, to and under any of the [Intellectual Property](#) to a third party for a lump-sum payment, then [Assignee](#) shall make a single payment to [Assignor](#), subject to the terms and conditions provided in Section 3 of this Assignment, in an amount equal to:
40.0% of [Assignment Revenues](#) received by [Assignee](#)
- ii. For the purpose of clarification, the [Assignment Channel](#) involves a single payment by [Assignee](#) to [Assignor](#) and no future payments of any kind whatsoever.

3. Annuity Payment Schedule

- A. After [Assignee](#) chooses a [Commercialization Channel](#) and the [Innovative Product](#) is commercialized, the [Annuity Payments](#) from [Assignor](#) to [Assignee](#) due shall become payable upon the following schedule:
 - i. The first [Annuity Payment](#) shall become due and payable on the first December 31st following the [Effective Date](#), and shall be paid within 30 days of becoming due.
 - ii. All subsequent [Annuity Payments](#), except the final [Annuity Payment](#), shall become due and payable on each December 31st thereafter, and shall be paid within 30 days of becoming due.
 - iii. The final [Annuity Payment](#) shall become due and payable on the 20th anniversary of the Effective Date and shall be paid within 30 days of becoming due. The final [Annuity Payment](#) shall be the last [Annuity Payment](#) becoming due and payable under this Assignment.
 - iv. Assignee reserves the right to make payments otherwise due under Section 2.A(i)-(iv) more frequently in its sole discretion.
- B. Within 30 days after the end of each calendar quarter, Assignee shall send to Assignor a written report setting forth in reasonable detail the accrued [Adjusted Gross Revenues](#), [Licensing Revenues](#), and [Assignment Revenues](#) for such calendar quarter. The information contained in the written reports shall form the basis for the amount of each [Annuity Payment](#) under Section 2.A(i)-(iv). If there are no accrued [Adjusted Gross Revenues](#), [Licensing Revenues](#), and [Assignment Revenues](#) for such calendar quarter, then no written report shall be sent.
- C. Upon any material breach of this Assignment by Assignor, which is defined to be a breach of Assignor's obligations set forth in Section 1; a breach of Assignor's representations and warranties set forth in Section 6, or any breach of any obligations of Assignor under the [Prior Agreement](#), any and all obligations to make any [Annuity Payment](#) that has not become due and payable as of the date of such breach shall terminate.

4. Grantback Provision

- A. If, on the [Threshold Date](#), cumulative total of Annuities that have become due and payable to Assignor by Assignee amounts to less than \$100,000.00, then Assignor shall have the right, upon written request to Assignee, to cause Assignee to convey to Assignor all rights, title, and interests in and to any then-existing patents, patent applications, trademarks, trademark applications, trademark registrations, copyrights, and copyright applications of the [Intellectual Property](#) that is owned by Assignee. Simultaneously with such conveyance, Assignor shall grant to Assignee a non-exclusive, perpetual license in and to such patents, patent applications, trademarks, trademark applications, trademark registrations, copyrights, and copyright applications of the [Intellectual Property](#) that are conveyed. Such license shall include the right to sublicense, and all of the provisions of this Assignment shall continue in full force and effect to the extent not contradicted by this Section.
- B. If Assignor does not exercise the right to conveyance set forth in Section 4.A within 1 year of the [Threshold Date](#), then Assignor shall be deemed to have waived such right to conveyance.
- C. For the purposes of avoiding the conveyance contemplated by Section 4.A, Assignee shall have the right to make payment to Assignor of any amount required to make up the difference between the cumulative total of Annuities made to Assignor by Assignee and \$100,000.00. If Assignee exercises this right to cover the shortfall, then Assignor shall not have the right to conveyance set forth in Section 4.A.

5. Audit Rights of Assignor

- A. Assignee shall keep true and accurate records as to all [Innovative Products](#) sold by it and all instances of commercialization by it of the [Intellectual Property](#).
- B. Assignor, through an independent, designated representative acceptable to Assignee (such acceptance not to be unreasonably withheld), shall have the right at reasonable times and upon reasonable advance notice, not more often than once per calendar year, to inspect and audit Assignee's records at Assignor's expense for the purpose of verifying the accuracy of any Annuity Payment and written statement furnished to Assignor by Assignee under this Assignment. The independent, designated representative shall report only on the accuracy or any discrepancy in the Annuity Payment and shall not disclose any confidential information of Assignee, including, without limitation, its licensees, its customers, and any individual sales.
- C. Assignee's audit right shall apply only for each Annuity Payment that has become due and payable.

6. Term and Non-Termination

- A. The term of this Assignment shall naturally expire on the [Termination Date](#).
- B. The Parties jointly may agree to terminate this Assignment; however, neither Party shall have the unilateral right to terminate this Assignment even if a material breach occurs by the other Party.
- C. Assignor's sole remedy for any material breach of this Assignment by Assignee shall be limited to monetary damages that directly result from a breach of this Assignment by Assignee.
- D. Assignee's remedy for any material breach of this Assignment by Assignor may include monetary damages as well as specific performance.

7. Representations, Warranties and Indemnity

- A. ASSIGNOR REPRESENTS AND WARRANTS TO ASSIGNEE THAT: (a) ASSIGNOR IS THE SOLE OWNER OF ALL RIGHTS, TITLE AND INTERESTS IN AND TO THE INTELLECTUAL PROPERTY; (b) ASSIGNOR HAS NOT HYPOTHECATED, PLEDGED, TRANSFERRED OR GRANTED ANY TYPE OF ENCUMBRANCE OR SECURITY INTEREST IN THE INTELLECTUAL PROPERTY; (c) ASSIGNOR HAS THE RIGHT AND ABILITY TO ENTER INTO THIS AGREEMENT; (d) ASSIGNOR HAS NO SPECIFIC KNOWLEDGE OF ANY CLAIMS OR REASONS WHY ASSIGNOR DOES NOT HAVE CLEAR TITLE TO ANY OF THE INTELLECTUAL PROPERTY; (e) ASSIGNOR HAS NO SPECIFIC KNOWLEDGE OF ANY RIGHTS OF THIRD PARTIES, INCLUDING ANY PATENT RIGHTS, THAT WOULD BE INFRINGED BY ANY OF THE INTELLECTUAL PROPERTY; (f) ALL STATEMENTS, DISCLOSURES AND REPRESENTATIONS MADE BY ASSIGNOR TO ASSIGNEE, WHETHER WRITTEN OR ORAL, ARE TRUE, ACCURATE AND COMPLETE; AND (g) WITHOUT IN ANY WAY LIMITING THE FOREGOING, ASSIGNOR CERTIFIES THAT ASSIGNOR HAS NOT WITHHELD OR MISCHARACTERIZED TO ASSIGNEE ANY INFORMATION REGARDING ASSIGNOR, ASSIGNOR'S BACKGROUND, THE INTELLECTUAL PROPERTY, OR ANY FACTS OR CIRCUMSTANCES PERTAINING TO THE INTELLECTUAL PROPERTY.
- B. ASSIGNOR SHALL INDEMNIFY AND HOLD HARMLESS ASSIGNEE AND ANY AFFILIATE OF ASSIGNEE FROM AND AGAINST ALL CLAIMS, DEMANDS, ACTIONS, LAWSUITS PROCEEDINGS, DAMAGES, INJURIES, EXPENSES, COSTS, AND ATTORNEYS' FEES RESULTING FROM, RELATING TO, CONCERNING OR IN CONNECTION WITH A BREACH OF ANY OF ASSIGNOR'S REPRESENTATIONS AND WARRANTIES.
- C. ANY BREACH BY ASSIGNOR OF ANY REPRESENTATIONS, WARRANTIES, OR OBLIGATIONS OF THIS SECTION SHALL BE DEEMED HEREIN A MATERIAL BREACH.

8. Resolution of Disputes

- A. If a dispute, controversy, or claim out of or relates to this Assignment, or the breach thereof, the Parties agree to submit the dispute, controversy, or claim to mediation to be administered by the American Arbitration Association in accordance with the local rules of the United States District Court for the Western District of North Carolina applicable to mediation. Mediation will be mandatory prior to resorting to arbitration. The site of mediation shall be Charlotte, North Carolina.
- B. If the dispute, controversy, or claim is not settled or resolved by mediation, then the dispute, controversy, or claim shall be settled by arbitration administered by the American Arbitration

Association under its Patent Arbitration Rules before a panel of three arbitrators. The site of the arbitration shall be Charlotte, North Carolina, and any award rendered shall be binding and not appealable. The Parties agree that any award rendered by such arbitration may be filed in any court of competent jurisdiction for enforcement, but not for review or any other proceedings beyond enforcement.

- C. The prevailing Party in arbitration shall be entitled to recover its reasonable costs, fees, and expenses that are directly associated with the arbitration and mediation. Such recovery shall be included in the arbitration award for enforcement through the judicial system.
- D. Any award for Assignee against Assignor may include, in addition to or in substitution for monetary damages, specific performance by Assignor in accordance with one or more obligations of this Assignment.
- E. ANY AWARD FOR ASSIGNOR AGAINST ASSIGNEE SHALL BE LIMITED TO MONETARY DAMAGES ARISING DIRECTLY FROM THE DISPUTE, CONTROVERSY, OR CLAIM AND IN NO EVENT SHALL AN AWARD TO ASSIGNOR INCLUDE ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING WITHOUT LIMITATION, LOSS OF PROFIT, REVENUE, OPPORTUNITY OR USE.

9. Miscellaneous Provisions

- A. Notices. Any notices and communications required or permitted under this Assignment shall be deemed made and delivered when actually received in writing by the receiving party, or 3 days after being transmitted by registered or certified mail, return receipt requested, addressed to the receiving party. For purposes of notice, the notice address for Assignee shall be the address set forth in the preamble above, and the notice address for Assignor shall be the address first set forth below for Assignor. Any of the Parties may change its address by notice to the other Party in accordance with this paragraph.
- B. Entire Agreement. This Assignment constitutes the entire agreement between the Parties with respect to the subject matter, and no modifications or revisions shall have any force or effect unless made in writing and executed by all Parties. Any oral representations or agreements made prior to this Assignment are merged and superseded by this Assignment.
- C. Severance. In the event that any provision of this Assignment is declared void or unenforceable, such provision shall be deemed severed from this Assignment, and this Assignment shall otherwise remain in full force and effect unless its purpose cannot be effected absent the severed provision.
- D. Controlling Law. This Assignment has been made and entered into in Mecklenburg County in the State of North Carolina and shall be interpreted and applied in accordance with the laws of the State of North Carolina. The Parties consent to personal jurisdiction in the federal and state courts located in Mecklenburg County.
- E. Binding Effect. This Assignment shall be binding upon and inure to the benefit of the Parties as well as their respective successors, legal representatives, heirs, and assigns.
- F. Relationship of the Parties. Nothing contained in this Assignment shall be deemed or construed as creating an agency, joint venture, partnership, or franchise relationship between the Parties. Except as expressly set forth, no Party is, by virtue of this Assignment, authorized as an agent, employee, or legal representative of any other Party.
- G. No Third-Party Beneficiary. Except for the provisions of section 1.F and 1.G, the provisions of this Assignment are for the sole benefit of Assignor and Assignee only and are not intended to convey any rights and benefits to any third party, nor shall this Assignment be interpreted to convey any rights or benefits to any person except the Parties.
- H. No Implicit Obligations. Assignor acknowledges that no implicit obligations arise under this Assignment, including but not limited to any obligations to commercialize, and any obligations of nonuse or restrictions on use.
- I. Assignment. Assignor may assign its rights under this Assignment to another person or entity only with the prior written approval of Assignee, which approval shall not be unreasonably withheld. Assignee may assign its rights under this Assignment to another person or entity without approval by Assignor (any approval otherwise required hereby being waived), and Assignor hereby consents to any future assignment of rights by Assignee and to any novation necessary to effect substitution of Assignee by another person or entity that assumes all of the rights and

obligations of Assignee under this Assignment.

- J. Further Assurances. The Parties agree to execute such other documents and provide such further assurances, if any, as may be reasonably required from time to time to give effect to the provisions of this Assignment.

EXHIBIT A
"The Innovation"