



CDP™ LICENSING AGREEMENT

Design Professionals of **Canada**

This **Certification Mark License Agreement** (hereinafter "Agreement") made and effective as of the date executed by selecting "I have read and agree" hereto (the "Elective Date") is made by and between the Design Professionals of Canada, Arts Court, 2 Daly Avenue, Ottawa, Ontario K1N 6E2 ("DesCan®") and

Legal Name (the "Licensee")

Mailing Address

City,

Province

Postal Code

Telephone Email

WHEREAS DesCan® has developed a certification program to certify qualified graphic and communication design professionals with an excellent standard of work and ethical business conduct who meet specific criteria, and

WHEREAS DesCan® is the owner of the the certification marks and trade-marks "CDP™ Certified Design Professional," **Designer Graphique Agréé du Canada** (hereinafter "the Marks"); and

WHEREAS the Licensee desires to participate in the certification program and desires to use the Mark in its marketing, advertising, promotional or other similar materials or communications; and

WHEREAS DesCan® is willing to grant the Licensee permission to so use the Mark pursuant to the terms and conditions hereinafter set forth;

NOW, THEREFORE, in consideration of the foregoing premises and of the mutual agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged.

DesCan® and the Licensee agree as follows:

Certification Program

DesCan® administers the Certification Program (hereinafter "the Program"). The criteria for certification in the Program and the Policies and Procedures governing participation in the Program are contained within the DesCan® Constitution. Licensee agrees to comply with and be subject to all terms, conditions, policies and procedures associated with the Program. Licensee agrees to provide to DesCan® at any time during the term of this Agreement, if requested, reasonable documentation of its continued eligibility for certification in the Program. Licensee agrees that DesCan® shall have the right to revise the Program, the criteria for certification in the Program, and the Policies and Procedures governing participation in the Program from time-to-time, as DesCan® in its sole discretion deems appropriate.



License Grant

1) Subject to the terms of this Agreement, DesCan® hereby grants the Licensee the non-exclusive, non-transferable right to use the Mark in association with the Licensee's name on pre-printed letterhead, business cards, v-cards, quotations for work, advertisements, websites and other marketing, advertising, and promotional materials in association with the Licensee's professional graphic design services in Canada for the term of this Agreement. This license is immediately revoked upon termination or cancellation of this Agreement.

2) The Mark should be placed in close proximity to the Licensee's name. The Mark shall not be confused with a company logo or placed in such close proximity to accompany name or logo so as to give the reader the mistaken impression that the Mark certify the company, or services performed by the company.

3) The Licensee agrees that he or she will ensure that the Mark are only used in a manner that is consistent with and authorized by the Program. Licensee acknowledges that this is an essential term of this Agreement and that any failure to comply with this term shall be a material breach of this Agreement which will cause irreparable harm to DesCan® and which shall entitle the DesCan® to seek immediate injunctive relief and any other remedies available to DesCan®.

4) In order to maintain the right to continue to use the Mark, the Licensee agrees to maintain any and all standards for the character and quality of the services to be provided in association with the Mark. DesCan® shall communicate such standards to the Licensee from time to time. Such standards shall include but not be limited to the DesCan® Code of Ethics.

5) The Licensee agrees that DesCan® may, but is not obligated to, monitor the provision of services provided by the Licensee in association with the Marks and that, in the event DesCan® determines that the quality of those services do not meet the standards set by DesCan®, DesCan® may, in its sole discretion, terminate the license upon 30 calendar days' written notice to the Licensee. Upon termination of this license, licensee shall immediately cease to use or display the Marks for any purpose whatsoever.

6) Licensee agrees that, in all of its visual marketing, advertising, promotional or other similar materials in which the Marks will be displayed, such display of the

Marks shall be in accordance with the written criteria adopted by DesCan® from time to time.

Licensee shall not revise or alter the appearance of the Marks in any manner and shall use the Marks exactly as directed by DesCan®. If appropriate, DesCan® shall supply Licensee with camera-ready art of the Marks to allow Licensee to use the Marks in Licensee's marketing, advertising, promotional or other similar material in accordance with this Agreement.

7) The Licensee shall not use the Marks in any way that implies that DesCan® has approved or endorsed a product created or a service performed by the Licensee;

8) Licensee shall not at any time do or suffer to be done any act or thing which, directly or indirectly, may modify, alter, dilute or misuse the Marks or reduce the value of the Marks or detract from their reputation. The Marks may not be used in any manner that, in the sole discretion of DesCan®: discredits DesCan® or tarnishes its reputation and goodwill; is false or misleading; violates the rights of others; violates any law, regulation, or other public policy; or mischaracterizes the relationship between DesCan® and Licensee.

9) Licensee shall cause to appear on all materials on or in connection with which the Marks are used, such legends, markings, and notices as are necessary to give appropriate notice of the ownership and/or registered nature of the Marks as instructed by DesCan®.

10) The Marks can be used to identify a group of individuals; however, each individual listed must be current Licensees in their own right.

11) The Marks must not be used as part of a company name.

12) Upon DesCan®'s request, Licensee agrees to promptly submit to DesCan® a specimen of all materials on or in connection with which the Marks are used to ensure compliance with this Agreement. Should DesCan®, in its sole discretion, determine that the Licensee is using the Marks in any manner that is not authorized by this Agreement, DesCan® shall notify Licensee of such unauthorized use and Licensee shall immediately cease using the Marks in such unauthorized manner. Licensee's failure to comply with this provision shall be sufficient grounds for DesCan® to immediately terminate this Agreement.



Ownership of Mark

The Licensee explicitly acknowledges and agrees that

- a) DesCan® is the sole and absolute owner of the Marks;
- b) the Licensee's right to use the Marks is enjoyed by permission of DesCan® and not as of right;
- c) the Licensee is not entitled, by virtue of having earned this designation, to its use other than under the terms of this license.
- d) all right, title and interest in and to the Marks is and shall remain with DesCan®;
- e) Licensee agrees that it will do nothing inconsistent with such ownership and that all right and title to the Marks shall inure to the benefit of and on behalf of DesCan®;
- f) Licensee's use of the Marks accrues only to the benefit of DesCan®;
- g) DesCan® is the sole and absolute owner of all copyright inherent in any design embodied by the Marks;
- h) Licensee may not claim any title or right to use the Marks except pursuant to the permission of DesCan® and under this Agreement;
- i) nothing in this Agreement gives the Licensee any right, title or interest in the Marks other than the right to use the Marks in accordance with this Agreement
- j) Licensee shall make no claim to or against DesCan®'s right, title or interest in the Marks or challenge the validity of this Agreement;
- k) Licensee shall execute any documents reasonably required by DesCan® to confirm DesCan®'s ownership of all rights in and to the Marks
- l) DesCan® has the right to control the character and quality of all wares and/or services in connection with which the Marks are used; and
- m) Licensee's use of the Marks is deemed to have and to always have had the same effect as DesCan®'s use of the Marks.

The Licensee agrees and warrants that it will not question, raise or attack the validity of the Marks or this Agreement, the registrability of the Marks, or DesCan®'s ownership of and right to license the Marks or any similar trademarks or trade names.

Licensee agrees and warrants that it will not harm, detract from, dilute, damage the distinctiveness of, or abuse the Marks. The Licensee acknowledges that these restrictions apply both during the term of this Agreement, and after the termination of this Agreement.

Term of Agreement/Termination

- 1) This Agreement shall not become effective unless and until it is read and accepted by the Licensee.
- 2) This Agreement shall continue and remain in effect until the first anniversary of the Effective Date. This Agreement shall automatically renew on the first and each subsequent anniversary of the Effective Date, if, on the relevant anniversary of the Effective Date:
 - a) the annual membership fee has been paid in full, and
 - b) the Licensee remains eligible for certification in the Program (based on the eligibility requirements in effect on the relevant anniversary of the Effective Date).
- 3) If the annual membership fee is not paid in full on or before the relevant anniversary of the Effective Date, this Agreement and all of the Licensee's rights under the Agreement will terminate immediately, but may be revived by DesCan®, entirely in its sole discretion, on payment of the annual membership fee.
- 4) If the Licensee is no longer eligible for certification in the Program (based on the eligibility requirements in effect on the relevant anniversary of the Effective Date), DesCan® may, in its sole discretion, terminate this Agreement and all of the Licensee's rights under the Agreement on 30 calendar days' written notice to the Licensee.
- 5) This Agreement shall immediately terminate upon Licensee's withdrawal or removal from the Program for any reason.



6) Should DesCan[®] in its sole discretion, determine to cancel the Program or any portion thereof, DesCan[®] may, but is not required to, terminate this Agreement by giving the Licensee 30 calendar days' written notice of its intention to terminate.

7) This Agreement will immediately terminate if Licensee becomes bankrupt or insolvent, or if its business is placed in the hands of a receiver, trustee or assignee for the benefit of its creditors, whether voluntarily or otherwise; (and any trustee in bankruptcy appointed over the assets of the Licensee, may not sell, assign or otherwise deal with the rights contained within this Agreement);

8) This Agreement may also be terminated by DesCan[®] by written notice to Licensee that there has been a material breach of Licensee's representations, warranties, covenants or agreements, whether such are contained in this Agreement or required for certification in the Program. Licensee shall then be given a period of 30 calendar days within which to cure said breach, at the sole expense of the Licensee. If the Licensee fails to cure said breach to the satisfaction of DesCan[®], this Agreement and all of the Licensee's rights under the Agreement will terminate immediately without further notice to the Licensee.

Obligations on Termination

Upon the termination of this Agreement, all rights granted under this Agreement to the Licensee will automatically revert to DesCan[®]. Licensee must:

- a) immediately cease using the Marks in any manner whatsoever;
- b) not make further use of or distribute any further copies of any materials that bear the Marks in any manner whatsoever;
- c) immediately deliver up or destroy (with proof thereof by affidavit at DesCan[®]'s option) any such materials that the Licensee has in his or her possession or under his or her control, and use his or her best efforts to remove or cause the removal of all existing copies of such materials from public display;
- d) immediately cease manufacturing, selling and distributing the wares and/or services in association with the Marks; and

e) execute any and all further instruments or documents requested by DesCan[®] pursuant to which the Licensee's rights are re-conveyed to DesCan[®].

Upon termination of this Agreement, Licensee will be deemed to have assigned, transferred and re-conveyed to DesCan[®] any and all rights, equities and goodwill it may have acquired in the Marks by virtue of this Agreement.

Infringement

In the event that the Licensee learns of any infringement or imitations of the Marks, or of any use by any person or entity of a mark similar to the Marks, it promptly shall notify DesCan[®] thereof.

DesCan[®] thereupon shall take such action as it deems advisable for the protection of its rights in and to the Marks. If requested to do so by DesCan[®], the Licensee shall cooperate with DesCan[®] in all respects, at DesCan[®]'s sole expense, including without limitation by being a plaintiff or co-plaintiff in any proceeding and by causing its officers to execute pleadings and other necessary documents. In no event, however, shall DesCan[®] be required to take any action if it deems it inadvisable to do so, and the Licensee shall have no right to take any action with respect to the Marks without DesCan[®]'s prior written approval.

Indemnification

1) The Licensee hereby agrees to indemnify and hold harmless and forever discharge DesCan[®] and its officers, directors, agents and employees from and against, and in respect of, any and all suits, claims, demands, damages, costs and expenses, including attorney's fees, that may be claimed or asserted against DesCan[®] or any or all of the above-mentioned persons or their successors, by any person, firm, corporation or government on account of:

- a) any actual or alleged injury, damage, death or other consequence arising or resulting directly or indirectly out of the products or services supplied by Licensee at any time;
- b) any misrepresentation, breach of any provision of this Agreement (including, without limitation, the attachments hereto), its own negligence, or willful misconduct, by the Licensee; or



c) the use and/or misuse by the Licensee of the Marks, including, but not limited to, Licensee's use of the Marks on or in connection with goods or services that do not meet the standards of the Program.

2) It is expressly understood, agreed and intended by the parties hereto that DesCan[®], its officers, directors, agents and employees will not be responsible, in any way, to any party whatsoever with respect to any warranties, negligence, defects or other obligations in respect of the design, labeling, manufacture, packaging, distribution, promotion, exploitation or sale of products or services by Licensee, however the foregoing might arise.

Warranties

1) DesCan[®] considers itself the owner of the Marks and has taken steps deemed reasonable by itself to protect its rights of ownership through registration (where it deems advisable, in its sole discretion) and otherwise. However, DesCan[®] makes no representation or warranty with respect to ownership or freedom to use the Marks in Canada. Without restricting the generality of the foregoing, the Licensee waives any rights against DesCan[®] for liability for any damages incurred by the Licensee arising from third party claims of any kind that may arise out of Licensee's use of the Marks under this Agreement.

2) DesCan[®] makes no other warranties of any kind, either express or implied, with respect to the Marks. In no event shall DesCan[®] be liable for any consequential, incidental, or special damages (including lost profits) arising from or relating to Licensee's use of the Marks, even if DesCan[®] has been advised of the possibility of such damages.

3) The Licensee represents and warrants that it has reviewed the terms and conditions governing certification in the Program and that he or she meets all of the criteria for participation in the Program and that he or she will take all reasonable steps to ensure that it continues to meet the terms and conditions of the Program during the term of this Agreement.

4) Each party hereto represents that it has full power to enter into and complete the transactions required hereunder, and that this Agreement is enforceable against it in accordance with its terms, and that the activities contemplated hereunder do not conflict with or constitute a breach of or default under any contracts or commitments to which it is a party.

Relationship

Licensee acknowledges that neither the Licensee nor any of its employees shall be considered employees of DesCan[®] for any purpose under any statute, rule or regulation. Licensee agrees to indemnify and hold DesCan[®] harmless from and defend DesCan[®] against any claim based upon an assertion that the Licensee is an employee of DesCan[®], including, without limitation, any claim for withholding tax, unemployment tax, social security payments, worker's compensation or other similar taxes or payments.

Irreparable Harm

Licensee agrees that if he or she violates any provision of this Agreement, irreparable harm will be suffered by DesCan[®] and DesCan[®] shall be entitled to injunctive relief, in addition to any other available remedies.

Miscellaneous Provisions

Notices. All notices, consents, approvals, requests and other documentation to be sent or made under this Agreement must be in writing and must be delivered personally or by prepaid registered mail as follows:

(a) To DesCan[®]:
Arts Court, 2 Daly Avenue
Ottawa, Ontario, Canada
K1N 6E2

(b) To Licensee: To the address supplied by the Licensee through DesCan[®]'s online profile at www.descan.ca

Either party may change its address for notices by sending notice to that effect to the other.

All notices and other documentation delivered as described above will be deemed to have been given and received on the date of delivery if personally delivered, and on the third business day after the postmarked date if sent by registered mail. If normal postal services are disrupted, personal delivery is the only means by which notices may be sent.



Governing Law. This Agreement shall be governed by and construed in accordance with the federal laws of Canada.

Severability. Should anyone or more of the provisions of this Agreement or of any agreement entered into pursuant to this Agreement be determined to be illegal or unenforceable, all other provisions of this Agreement and of each such other agreement shall be given effect separately from the provision or provisions determined to be illegal or unenforceable and shall not be affected thereby.

Force Majeure. If either party shall be prevented from performing any portion of this Agreement by causes beyond its control, including labour disputes, civil commotion, war, governmental regulations or controls, casualty, inability to obtain materials or services, or acts of God, such defaulting party shall be excused from performance for the period of the delay and for a reasonable time thereafter.

Binding on Successors/Assignment. The rights and obligations set forth in this Agreement are binding upon and shall inure to the benefit of the successors of the parties, and its permitted assigns. Licensee shall not assign its rights hereunder to any person or entity without first obtaining the written consent of DesCan®. DesCan® may assign its rights hereunder without the consent of the Licensee.

Waiver. Any waiver of a provision of this Agreement must be in writing signed by the party waiving its rights and shall apply only in the specific instance and for the specific purpose given. The giving of a waiver in one instance or for one purpose shall not create any implied obligation to give a waiver in another instance or for another purpose.

Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which taken together shall be considered one and the same instrument.

No Trial by Jury. All parties to this Agreement waive any and all right to a trial by jury in any action or proceeding brought or commenced by either party which is directly or indirectly related to this Agreement.

Construction of Agreement. It is agreed that both parties had an opportunity and understood their right to obtain independent legal advice in respect of this Agreement, and no provision shall be construed for or against either party by reason of ambiguity in language. To the extent that there is a conflict between the terms in this Agreement and an appendix hereto, the language of the Agreement shall control.

Expenses. Except as otherwise set forth in this Agreement, Licensee and DesCan® shall each bear their own expenses in connection with this Agreement and in connection with all things required to be done by and of them hereunder.

Headings. The headings in this Agreement are for convenience of reference only and shall not constitute a part of this Agreement and shall not be construed to alter or vary the text.

Attorney's Fees. In any action between Licensee and DesCan® at law or in equity arising out of or related to this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and court costs, in addition to any other relief to which that party may be entitled.

Entire Agreement. Except as may otherwise be specifically provided herein, this Agreement, including any appendices and exhibits hereto, constitutes the entire agreement of the parties and all prior representations, covenants, proposals and understandings, whether written or oral, are superseded and merged herein. This Agreement may be modified or amended only by an instrument in writing executed by the parties hereto and specifically stating that is intended as a modification or amendment to this Agreement. No oral statements or representations not contained herein shall have any force or effect.

Survival of Terms. Any terms of this Agreement which by their nature extend beyond termination remain in effect until fulfilled and shall bind the parties and their legal representatives, successors, heirs and assigns.

Time. Time is and will remain of the essence of this Agreement.



Binding Agreement. The parties understand and agree that a binding Agreement, with the above terms and conditions, is created at the time that the Licensee selects "I have read and agree" and the Licensee proceeds to obtain or renew membership with DesCan® (including paying his or her annual membership fee in full).

In witness whereof, the Parties have executed this Agreement as of the date written:

The Design Professionals Of Canada:

Per: Name

Title

Date

The "Licensee"

Per: Name

Title

Date