

**ACCESS DESIGNS, INC.**

**INSTALLER LICENSE AGREEMENT**

This License Agreement (the "Agreement") dated as of \_\_\_\_\_, 2007 (the "Effective Date") is entered into by and between Access Designs, Inc., a corporation organized under the laws of Virginia and having its principal place of business at 1304 E. Market Street, Suite P, Charlottesville, VA 22902 ("Access") and \_\_\_\_\_, a \_\_\_\_\_ organized under the laws of \_\_\_\_\_ with its principal place of business at \_\_\_\_\_ (the "Installer").

**RECITALS:**

**WHEREAS**, Access has developed an original, unique and reversible method for improving access to bathtubs by removing and then encasing a portion of the tub sidewall using specified materials and methods (the "Technology");

**WHEREAS**, the Technology incorporates secret and proprietary methods, techniques, use of materials and processes developed by Access;

**WHEREAS**, Access supplies to independent installer dealers worldwide Bathtub Conversion Kits (the "Kits") employing its Technology;

**WHEREAS**, Access is the owner of the trademark **The TubcuT™** (the "Mark") used in connection with the Technology and Kits; and

**WHEREAS**, the parties hereto desire that the Installer have nonexclusive use of the Technology and the Mark on the terms and conditions hereinafter set forth;

**NOW, THEREFORE**, for and in consideration of the premises and covenants contained herein and for other good and valuable consideration, receipt of which is hereby acknowledged, the parties agree as follows:

**ARTICLE 1**

**DEFINITIONS**

1. "Affiliate" means, with respect to any person, entity, or any other person or entity that it directly or indirectly controls, is under common control with, or is controlled by that person or entity. For purposes of this definition, "control" (including with correlative meaning, the terms "controlled by" and under "common control with"), as used with respect to any person or entity, means the possession, directly or indirectly, of

the power to direct or to cause the direction of the management and policies of such person or entity, whether through the ownership of voting securities, by contract, or otherwise.

2. “Bathtub Conversion” means the procedure of providing step-through access through the front or side wall of an existing bathtub by cutting out a section of the existing tub wall and finishing the resulting opening, whether using The TubcuT™ and its Technology or another process.

3. “Confidential Information” means the Technology and any and all proprietary information, technical data, trade secrets or know-how provided by Access to Installer, as well as any information, data, trade secrets or know-how derived from **The TubcuT™** Kits or materials supplied to Installer before or after the Effective Date of this Agreement.

## **ARTICLE 2**

### **EXCLUSIVE USE OF THE KIT**

1. Installer and any Affiliate or agent of the Installer agrees to perform Bathtub Conversions exclusively using Kits sold by Access to Installer. Shipment shall be FOB Access’ plant and shall be paid for in full at the time of ordering by electronic payment or credit card.

2. The Installer and any Affiliate or agent of the Installer shall not perform Bathtub Conversions using any materials or any other technology or know-how or methods other than the materials, Technology, know-how and methods provided by Access pursuant to this Agreement. In no event will Installer or any Affiliate or agent of Installer perform any Bathtub Conversion without using a separate Kit provided by Access for each Bathtub Conversion.

3. The Installer acknowledges that Access would be irreparably harmed by any violation of this Agreement and would suffer injuries for which damages at law would be inadequate, and therefore agrees that Access shall be entitled to equitable relief, including injunction and specific performance, in the event of any breach of the provisions of this Agreement, in addition to all other remedies available to Access at law or in equity, and the Installer shall not assert in any proceeding that damages at law would be adequate.

4. The parties agree that, in addition to the equitable remedies available to Access as a result of a breach by Installer of this Agreement, Installer shall pay liquidated damages to Access in the amount of (a) \$750.00 for each occurrence of a breach by Installer during the Term of this Agreement plus (b) a one time charge of \$75,000.00, plus (c) costs and attorneys fees incurred in enforcing this Agreement. “Each occurrence” shall mean each Bathtub Conversion installation performed by Installer not using a Kit acquired from Access. The amount of liquidated damages shall bear interest at an annual

rate of 21% per annum from the date of the first Bathtub Conversion installation not utilizing a Kit.

5. The books and records of Installer which relate to its Bathtub Conversion installations under this Agreement shall be open for inspection by an independent accounting firm appointed by Access (subject to the consent of Installer, such consent not to be unreasonably withheld or delayed) for the sole purpose of verifying installations, during regular business hours at such place or places where such books and records are customarily kept and upon suitable written notice, but not more frequently than once each calendar quarter. The relevant records shall be maintained by Installer for a period of three (3) years after the expiration or termination of this Agreement. The cost of any such inspection shall be paid by Access. Any books and/or records received from Installer during the course of any such inspection shall be kept confidential.

### **ARTICLE 3**

#### **ACCESS DESIGNS INSTALLER**

1. If requested by Installer and if the web posting fee is paid to Access by Installer, Installer shall be listed on Access Designs' website ([www.tubcut.com/kitcust.html](http://www.tubcut.com/kitcust.html)) as an Authorized Installer under the following conditions: Installer must purchase at least three TubcuT™ Kits each month. In order to assure the highest quality of work, Installer agrees to provide to Access the name and contact information for all of Installer's TubcuT™ customers to survey customer satisfaction. In the event that Installer fails to purchase Kits as provided herein, or if Access reasonably determines that Installer's customers are not fully satisfied with Installer's performance, then Installer shall be removed from the website.

2. The relationship of Access and the Installer established by this Agreement is that of independent contractor, and neither party is an employee, agent, partner, or joint venturer of the other. The Installer shall not be considered an agent or legal representative of Access for any purpose, and neither the Installer nor any director, officer, agent, or employee of the Installer shall be, or be considered, an agent or employee of Access. The Installer is not granted and shall not exercise the right or authority to assume or create any obligation or responsibility on behalf of or in the name of Access. All sales and other agreements between the Installer and its customers are the Installer's sole responsibility and will have no effect on Access's obligations under this Agreement. The Installer is solely responsible for any and all claims and liability arising out of its installations of the Kits and any Bathtub Conversions. Installer indemnifies and holds harmless Access for any and all claims arising from the Installer's installations of the Kits and Bathtub Conversions.

## ARTICLE 4

### TERM AND TERMINATION

1. The initial Term of this Agreement shall begin on the Effective Date, and unless sooner terminated by the parties as herein provided, shall continue in full force and effect for five years from the Effective Date.

2. Termination:

(a) After the initial Term, the Agreement shall be automatically renewed for one additional term of five years, unless either party provides written notice of intent not to renew to the other party at least 60 days prior to the renewal date.

(b) Termination by Mutual Agreement: Access and Installer may terminate this Agreement at any time by mutual written agreement.

(c) For Breach: If either party breaches this Agreement, the non-breaching party, at its option, may terminate this Agreement, provided that the non-breaching party has furnished written notice to the breaching party of the breach and the non-breaching party's intention to terminate this Agreement, and the breaching party has failed to cure its breach within sixty (60) days following the date such notice was received by the breaching party.

**3. THE INSTALLER'S OBLIGATION TO PURCHASE KITS PURSUANT TO ARTICLE 2 ABOVE SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT AND SHALL REMAIN IN FULL FORCE AND EFFECT FOR SO LONG AS INSTALLER PERFORMS BATHTUB CONVERSIONS.**

## ARTICLE 5

### LICENSE

1. Access hereby grants the Installer the nonexclusive right to use the Mark in connection with the above-mentioned goods and services and in all advertising and promotion for these goods and services, provided that the Installer offers the goods and services in accordance with the quality standards and specifications approved by Access.

2. The Installer agrees to comply with any requirements established by Access concerning the style, design, display and use of the Mark; to correctly use the trademark symbol TM or registration symbol ® with every use of the mark, to use the registration symbol ® upon receiving notice of registration of the mark from Access and to submit in advance of its use all advertising copy, labels, stickers or packaging to Access for approval.

3. In no event will either party be liable for the loss of profits or incidental, special, or consequential damages arising out of any breach of obligations under this Agreement.
4. Upon termination of this Agreement for any reason, Installer and each of its Affiliates shall immediately cease use of any Marks, including use of the Marks on Installer's website and other marketing materials, and Installer shall return all materials supplied by Access to Installer or to any Affiliate of Installer.

## ARTICLE 6

### CONFIDENTIALITY

1. The Installer agrees that the Confidential Information as herein defined constitutes Trade Secrets within the meaning of the Virginia Uniform Trade Secrets Act and that the Confidential Information is the property of Access. The Installer shall, and shall cause all of its employees, agents, officers, managers, partners and Affiliates, to keep in strict confidence all Confidential Information, and each such person must execute the Confidentiality Agreement set forth on Exhibit A hereto prior to receiving any Confidential Information.
2. Installer expressly agrees that it will not reverse engineer **The TubcuT™** Kits or products during or after the term of this Agreement.
3. The Installer shall not, during or subsequent to the Term of this Agreement, use Confidential Information, or any other trade secrets, technical data, methods, processes or procedures, or any other confidential, financial, or business information or data, provided by Access or learned by the Installer in performance of this Agreement for any purpose whatsoever other than for the installation of **The TubcuT™** Kits supplied by Access. The Installer shall not disclose the Confidential Information to any third party.
4. The Installer shall not resell any Kits to any third party. In the event Installer receives requests from any other installer desiring to install Kits or otherwise use the Technology, Installer shall immediately forward any such inquiry to Access in writing.
5. The Installer shall promptly notify Access of any actual or suspected infringements, imitations, or unauthorized use of the Mark, the Technology, or Confidential Information by third parties of which the Installer becomes aware. Access shall have the sole right to bring any action on account of any such infringements, imitations, or unauthorized use, and the Installer shall cooperate fully in any such actions.
6. The obligations of the Installer under this Article 6 shall continue in full force and effect after the termination of this Agreement, and shall apply to Installer and all of its employees, agents, officers, managers, partners and Affiliates.

## **ARTICLE 7**

### **INDEMNIFICATION; DISCLAIMERS OF LIABILITY; NO WARRANTY**

1. Notwithstanding any other provision of this Agreement, the Installer shall indemnify and hold harmless Access and its affiliated companies, and their respective officers, directors, employees, agents, and sub-distributors (“Indemnitees”), from and against all costs, expenses, claims, demands, causes of action, damages and judgments, including without limitation attorney’s fees whether or not a suit is actually commenced, which might be imposed upon or brought against an Indemnitee as a result of or arising out of the installation of Kits and/or performance of Bathtub Conversions by the Installer or any agent of the Installer, including but not limited to any product liability for personal injuries or death and/or property damage.
2. Access makes no warranties or conditions, express, statutory, implied, or otherwise, and Access specifically disclaims the implied warranties and conditions of merchantability, fitness for a particular purpose, and non-infringement, and all other implied warranties or conditions arising from course of dealing, usage of, trade or custom. Notwithstanding the foregoing, Access does not exclude liability to the extent that such liability may not be excluded or limited by law.
3. The provisions of this Article 7 shall survive any termination or expiration of this Agreement.

## **ARTICLE 8**

### **MISCELLANEOUS**

1. This Agreement may not be assigned by Installer, except with the written permission of Access and provided that such assignee agrees in writing to be bound by the terms and provisions of this Agreement. Any purported assignment in violation of the provisions of this paragraph shall be null and void.
2. Nothing in this Agreement shall be deemed to make the parties partners, joint venturers, or agents of one another. No party to this Agreement shall have the power to bind or obligate the other.
3. This Agreement shall be deemed to have been made in the Commonwealth of Virginia, and shall be governed and construed in accordance with the laws of Virginia without giving effect to its choice of law provisions.
4. Any dispute between the parties arising out of or in connection with this Agreement that cannot be settled amicably between the parties, shall be finally resolved by arbitration according to the rules of the American Arbitration Association in the County of Albemarle, Virginia.

5. If for any reason a court of competent jurisdiction finds any provision of the Agreement, or portion thereof, to be unenforceable, that provision shall be enforced to the maximum extent permissible so as to effect the intent of the Agreement, and the remainder of this Agreement shall continue in full force and effect.

6. Any waiver of any rights of either party must be in writing, signed by the waiving party, and any such waiver shall not operate as a waiver of any future breach of this Agreement. In the event any portion of this Agreement is found to be illegal or unenforceable, such portion shall be severed, and the remaining terms shall be separately enforced. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against either party. Any purported modification or amendment inconsistent with the foregoing shall be void. The failure of one party to this Agreement to require performance by the other of any provision of this Agreement shall not affect the right to require performance at a later time. The waiver by any party to this Agreement of a breach by the other of any provision of this Agreement shall not be a waiver of any later breach of the provision.

7. In the event that Access finds it necessary to bring legal action to enforce any provision of this Agreement, it shall be entitled to recover its reasonable attorney's fees and costs.

8. This Agreement contains the entire agreement between the parties relating to the subject matter hereof, and all prior proposals, discussions or writings are superseded hereby. The terms of this Agreement shall be binding upon and shall enure to the benefit of the parties and their successors, heirs and assigns.

9. This Agreement may not be modified except in writing and mutually agreed to and signed by an officer of both Access and the Installer.

10. The parties to this Agreement hereby irrevocably waive any and all right to a trial by jury in any legal proceeding arising out of or relating to this Agreement and to the fullest extent permitted by law waive any rights that they may have to claim or to receive consequential or special damages in connection with any legal proceeding arising out of or relating to this Agreement.

11. The term "force majeure" as used herein shall mean, without limitation, the following: acts of God; strikes or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States of America or of the State or of any of their departments, agencies or officials, or of any civil or military authority; insurrections; riots; landslides; earthquakes; fires; storms; droughts; floods; explosions; breakage or accident to machinery, transmission pipes or canals; and any other cause or event not reasonably within the control of a party. To the extent a party is in default as a result of force majeure, the period of time in which a party may cure such default shall extend until such time as the event causing such force majeure no longer exists.

12. This Agreement may be executed in two (2) counterparts, whereby each party may execute a duplicate original hereof, and each counterpart shall have the same force and effect as an original and shall constitute an effective, binding agreement on the part of each of the undersigned.

13. Any notice, request, or other document to be given to a party under this Agreement shall be in writing and (1) sent by registered or certified mail, postage prepaid, or (2) hand delivered, or (3) sent by express mail or other overnight delivery service which provides documentation of receipt, or (4) sent by telecopy, email or telegram, addressed as follows:

If to Access:

Access Designs, Inc.  
1304 E. Market St.  
Suite P  
Charlottesville, VA 22902  
Fax:  
Email:

If to the Installer:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Fax:  
Email:

Any party may change its address for receiving notices, requests, or other documents by giving written notice of the change to the other party as outlined above.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

ACCESS DESIGNS INC.

INSTALLER

\_\_\_\_\_  
Print Name:

By: \_\_\_\_\_

By: \_\_\_\_\_

Name:

Name:

Title:

Title:

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

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

**CONFIDENTIALITY AGREEMENT**

**WHEREAS**, Access Designs, Inc., a Virginia corporation, with its principal office at 1304 E. Market Street, Suite P, Charlottesville, VA 22902 (“Access”), has developed an original, unique and reversible method for improving access to bathtubs by removing and then encasing a portion of the tub sidewall using specified materials and methods (the “Technology”);

**WHEREAS**, Access supplies to independent installer dealers worldwide Bathtub Conversion Kits (the “Kits”) employing its Technology;

**WHEREAS**, Access is the owner of the trademark **The TubcuT™** (the “Mark”) used in connection with the Technology and Kits; and

**WHEREAS**, “Confidential Information” means the Technology and any and all proprietary information, technical data, trade secrets or know-how provided by Access to Installer, as well as any information, data, trade secrets or know-how derived from **The TubcuT™** Kits or materials supplied to Installer before or after the Effective Date of this Agreement.

The undersigned, being a recipient of Confidential Information from \_\_\_\_\_, as Installer under an Installer License Agreement with Access, hereby agrees, as a condition of receiving certain Confidential Information belonging to Access, to abide by all of the following obligations:

1. The undersigned agrees that the Confidential Information as herein defined constitutes Trade Secrets within the meaning of the Virginia Uniform Trade Secrets Act and that the Confidential Information is the property of Access. The undersigned shall keep in strict confidence all Confidential Information.
2. The undersigned expressly agrees that he or she will not reverse engineer **The TubcuT™** Kits or products at any time.
3. The undersigned shall not use Confidential Information, or any other trade secrets, technical data, methods, processes or procedures, or any other confidential, financial, or business information or data, provided by Access or learned by the Installer or the undersigned and related to the Technology or Confidential Information, for any purpose whatsoever other than for the installation of **The TubcuT™** Kits supplied by Access. The undersigned shall not disclose the Confidential Information to any third party.

4. The undersigned shall not resell any Kits to any third party. In the event the undersigned receives requests from any other person desiring to install Kits or otherwise use the Technology, the undersigned shall immediately forward any such inquiry to Access in writing.

5. The undersigned shall promptly notify Access of any actual or suspected infringements, imitations, or unauthorized use of the Mark, the Technology, or Confidential Information by third parties of which the undersigned becomes aware. Access shall have the sole right to bring any action on account of any such infringements, imitations, or unauthorized use, and the undersigned shall cooperate fully in any such actions.

In witness whereof, the undersigned has executed this Agreement this \_\_\_\_ day of \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_