

1 **BEFORE THE TRIBUNALS OF**
2 **THE AMERICAN ARBITRATION ASSOCIATION**

3 *In the Matter of the Arbitration between*
4 T3 Enterprises, Inc., an Idaho corporation,
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6 Claimant,
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8 and
9 Safeguard Business Systems, Inc., a
10 Delaware corporation,
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12 Respondent.

AAA No. 01 15 0002 6860

**SUPPLEMENT TO
INTERIM AWARD**

Maureen Beyers, Chair
Hon. Kenneth Kato (Ret.), Arbitrator
Van Elmore, Arbitrator

Lance Tanaka, Case Manager

13 On October 5, 2016, the Panel issued an Interim Award in this matter in favor of
14 Claimant T3 Enterprises, Inc. (“T3”) and against Respondent Safeguard Business Systems, Inc.
15 (“SBS”) in connection with the parties’ July 28, 2006 Distributor Agreement. (Ex. 10.)

16 On October 7, 2016, SBS sought “immediate confirmation on its reading of the decision
17 that upon payment of the interim award that T3’s distributorship is returned to Safeguard,
18 which is what T3 asked that the Panel order in its prehearing brief at p. 24, ‘For T3’s breach of
19 contract claims, T3 is entitled to revoke acceptance of the franchise and return it to Safeguard
20 for its market value.’” T3 took exception to SBS’s characterization and the parties were
21 thereupon directed by the Panel to submit a short and concise written proposal about how to
22 deal with T3’s license agreement given the Interim Award, and if a party believed that one or
23 more of the conclusions of law needed to be revised, such party was directed to provide
24 proposed language.

25 The Panel received competing proposals on October 13, 2016. The Panel treats SBS’s
26 October 7, 2016 request and the parties’ subsequent communications as a motion under Rule 40
27 of the AAA Commercial Rules of Arbitration to reopen the hearing for this limited purpose of
28 and hereby issues the following supplement to its Interim Award.

1 The parties agree that Distributor Agreement is terminated. The parties disagree,
2 however, what T3's obligations are by virtue of the termination.

3 SBS's proposal includes a host of obligations to impose upon T3, most but not all of
4 which appear to derive from paragraph 13 of the Distributor Agreement. T3's proposal argues
5 that because of SBS's material breach of the Distributor Agreement, T3 is excused under Texas
6 law (the law governing the Distributor Agreement) from further performance. The Panel
7 agrees with T3 that it is excused from any further performance under the Distributor Agreement
8 because of SBS's material breach.

9 T3's proposal also includes its agreement to certain undertakings upon the termination
10 of the Distributor Agreement, but clarifies that such undertakings are not required by the terms
11 of the Distributor Agreement or by Texas law. Inasmuch as T3 has stipulated to certain
12 undertakings, the Panel will adopt them.

13 Accordingly, the Panel hereby makes the following additional conclusion of law, and
14 the October 5, 2016 Interim Award is amended as follows:

15 **136. The Distributor Agreement between T3 and SBS (Ex. 10) is hereby**
16 **terminated.**

17 **137. Further performance by T3, its principals or its agents under the**
18 **Distributor Agreement is excused by virtue of SBS's material breach thereof as set forth**
19 **in the Interim Award. This specifically includes, without limitation, excuse of any**
20 **performance by T3 of the post term covenant against competition.**

21 **138. Upon payment by Safeguard to T3 of the Final Award in its entirety, T3**
22 **shall cease using the following intellectual property and other materials of Safeguard: (1)**
23 **the Safeguard name and mark(s), (2) the SafeNet program, (3) Safeguard price lists, (4)**
24 **Safeguard product specs, (5) Safeguard marketing materials, (6) the CMS program, (7)**
25 **Safeguard business cards, (8) Safeguard letterhead, (9) Safeguard sales materials, (10)**
26 **Safeguard job samples, (11) Safeguard product manuals, (12) Safeguard product training**
27 **manuals, (13) Safeguard sales brochures, (14) Safeguard design form trays, (15)**
28 **Safeguard demonstration boards, (16) Safeguard email addresses, (17) Safeguard**

1 **websites and domain names, and (18) and any other products or materials containing the**
2 **Safeguard name or mark(s). The telephone number, facsimile numbers, post office box,**
3 **and customer files, cards, records and other data used in connection with T3's business**
4 **will remain the property of T3.**


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6 DATED: October 17, 2016.

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Chair Signature on behalf of the Panel: 

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