

NON-EXCLUSIVE TRADEMARK LICENSE

AGREEMENT dated _____

WHEREAS the **University of Maine System**, acting by and through **the University** _____ (hereinafter called the "University"), having its principle place of operation in _____, Maine asserts ownership of all right, title and interest in and to certain designations comprising designs, trademarks, and service marks, logo types, seals, and certain logo graphics and/or symbols that have come to be associated with the University (the "Licensed Marks"); and

WHEREAS _____ (hereafter called the "Licensee"), having its principle place of business at: _____, wishes to make use of one or more of said Licensed Marks; and

WHEREAS the Licensee recognizes the good will appurtenant to use of the Licensed Marks and desires to obtain a non-exclusive license to utilize the Licensed Marks identified an Exhibit A, which is hereby incorporated by reference;

NOW THEREFORE, in consideration of the mutual promises, covenants and conditions herein contained, it is hereby agreed as follows:

1. **Grant of License:** The University hereby grants to the Licensee a non-exclusive right and license to use the Licensed Marks identified in Exhibit A on the Licensed Goods identified on Exhibit B (the "Licensed Goods"), which is hereby incorporated by reference. The Licensee agrees not to use any Licensed Mark other than those identified in Exhibit A or to use any Licensed Mark on any product except the Licensed Goods, without a written amendment to this Agreement adding the Licensed Mark to Exhibit A and/or the product to Exhibit B.
2. **Term:** This agreement shall be in effect for the period ending one year from the date set forth above, unless sooner terminated pursuant to the provisions hereof.
3. **Renewal:** The terms of this Agreement may be renewed for additional terms of one year each upon the mutual written agreement of the parties.
4. **Territory:** The license hereby granted extends to the territory described in Exhibit C, which is hereby incorporated by reference. The Licensee agrees not to use the Licensed Marks on any goods sold or offered for sale outside of the territory.
5. **Definitions:**
 - a. **Net Sales** - Net Sales shall be the gross sale price less returns actually credited. No deduction shall be made for cash or other discounts, for commissions, for uncollectible accounts, or for taxes, fees, assessments, impositions, payments, or expenses of any kind or costs incurred in manufacturing, selling, advertising or distributing Licensed Goods.

- b. Premium – Where the billed price for any Licensed Good is less than the usual sales price for such Licensed Good sold in the course of the Licensee’s normal sales activity, the Licensed Good is deemed to have been sold at a premium.
- c. Sale – A sale shall be deemed to have been made, for purposes of determining the royalty hereunder, at the time of invoicing or billing for the sale, or at the time of delivery of the merchandise, whichever is earlier.
- d. Retail Sale – The sale of Licensed Goods directly to the ultimate consumer at retail outlets, through mail order and/or catalogs.
- e. Wholesale Sale – The sale of Licensed Goods to any party other than the ultimate consumer.
- f. Royalty and Minimum Payment –
 - i. Royalty Rate – The Licensee agrees to pay the University the royalty set forth in Exhibit C. Any Licensed Good sold at a premium anywhere off campus shall be accounted for and the royalty shall be paid on the regular price of the Licensed Good.
 - ii. Minimum Payment: The Licensee shall pay to the University upon execution of this Agreement the sum set forth in Exhibit C, which shall be a non-refundable guaranteed minimum payment by the Licensee to the University for the initial term. The minimum payment shall be credited against the first royalties earned by the University during the initial term, but no portion of the minimum payment which is unearned during the initial term shall be refundable to the Licensee.

- 6. **Statements and Payments:** The Licensee shall provide the University, within thirty (30) days after the end of each (3) month period of the license, a complete and accurate statement of net sales of Licensed Goods during the period. Such statements shall be in a form which is acceptable to the University and is to include, but is not limited to, information as to the number, description and sales price of the Licensed Goods distributed or sold by the licensee during the preceding quarter and returns actually credited. Such statement shall be furnished to the University whether or not any Licensed Goods have been distributed or sold and whether or any royalties have been earned during the preceding quarter.

The amount shown on the Licensee’s quarterly statements as being due to the University shall be paid simultaneously with the submission of the statement. Interest at the rate of one and one-half percent (1 ½%) per month or the maximum rate of interest permitted by law, whichever is less, shall accrue on any amount due to the University from the date upon which the payment is due until the date of receipt of payment.

7. Procedure for Product Approval:

- a. The Licensee understands and agrees that the goods sold, promoted, or advertised in association with the Licensed Marks must be of high and consistent quality, subject to the approval and continuing supervision and control of the University.
- b. The Licensee understands and agrees that the goods sold, promoted or advertised in association with the Licensed Marks must adhere to practices and terms set forth in the Worker's Right's Consortium (WRC) and the Fair Labor Association (FLA) and require that you disclose detailed information regarding all manufacturing locations used to produce licensed merchandise.
- c. The characteristics, standards, and specifications of each Licensed Good to be sold in connection with each Licensed Mark are set forth in Exhibit D. The Licensee agrees to strictly adhere to the agreed characteristics, standards and specifications, for each Licensed Good sold under each of the Licensed Marks.
- d. Each time before commencing or authorizing third parties to commence the marketing and/or manufacture of Licensed Goods which have not been previously approved in writing by the University, the Licensee shall submit at its own cost to the University, for preliminary approval, complete layouts and descriptions of the proposed Licensed Good showing exactly how and where the Licensed Mark and all other artwork and wording will be used, and production samples of the proposed Licensed Good.
- e. The Licensee agrees that all Licensed Goods shall contain appropriate legends, markings and notices as required from time to time by the University, such as the circled "R" symbol for a mark registered in the United States Patent and Trademark Office, or the "TM" symbol for a mark not so registered to give appropriate notice to the consuming public of the University's right, title, and interest thereto, or an identification that the Licensed Good is a collegiate licensed product in a form and manner that the University shall designate.
- f. Prior to the production for sale of any Licensed Good for which a physical sample has not already been inspected and received final approval by the University, the Licensee shall submit to the University, at the Licensee's expense, a sample of the Licensed Good as it would be produced for sale. If the University approves the product in writing, the product shall be deemed to have received final approval and production quantities may be manufactured by or for the Licensee in strict conformity with the sample that was submitted and the written description of the characteristics, standards and specifications for the Licensed Good. If the University does not approve a product, the Licensee may re-submit a conforming or revised sample for approval or disapproval. If a revised sample is accepted, the written description shall be amended to conform to the revised sample and such revised sample and corresponding written description shall be the standard for the product. If the University requests additional samples of the product, Licensee shall promptly provide the number requested at Licensee's expense.

If a product is not approved for any reason the Licensee is prohibited from producing the goods.

- g. After final approval of sample of a Licensed Good has been secured, the Licensee shall not depart there from in any material respect without first obtaining the express prior written approval of the University. The Licensee shall make submission to the University and obtain approval, in the manner required above, each time a new or revised concept, layout, description, or artwork model is created or adopted by or for the Licensee.
- h. The Licensee agrees to allow the University's designee to enter the Licensee's premises and the premises where the Licensed Goods are being manufactured during regular business hours upon reasonable advance written notice for the purpose of inspecting the Licensed Goods and their conformity to approved Licensed Goods.
- i. All packaging and advertising bearing a Licensed Mark shall be subject to the prior approval of the University in the same manner set forth herein for approval of a Licensed Good.
- j. In the event that the quality standard requirements are not maintained throughout the period of manufacture, sale, promotion, and distribution of any Licensed Good hereunder, then upon receipt of written notice from the University, the Licensee shall immediately discontinue any and all manufacture, sale, promotion and distribution of Licensed Goods in connection with which such quality standard requirements have not been met.

8. Good Will in Licensed Marks: The Licensee recognizes the value of the goodwill associated with the Licensed Marks and acknowledges that the Licensed Marks and all rights therein and the good will pertaining thereto belong exclusively to the University. The Licensee agrees that it is critical that such good will be protected and enhanced. The Licensee agrees that it will not attack the title to or any right of the University in or to any of the Licensed Marks; apply to register or maintain any registration of any of the Licensed Marks or any other mark confusingly similar thereto in any jurisdiction, domestic or foreign; will not misuse any of the Licensed Marks or use any imitation of any of the Licensed Marks or any variant form of any of the Licensed Marks, including variant design forms, logos, colors or type styles; will not use a corporate name, trade name or other designation of its business that is confusingly similar to any of the Licensed Marks or uses any feature of any of the Licensed Marks; or take any action which would bring any of the Licensed Marks into public disrepute.

9. Indemnification: The Licensee agrees to indemnify, hold harmless and defend the University from all costs, expenses, claims or damage arising on account of any injury or damage to any person or property arising out of or in connection with the production, manufacture, sale, use, workmanship, material or design of any Licensed Good. The University shall have the right to approve any counsel chosen to defend the University. Licensee's obligation to indemnify shall not apply to claims alleging copyright or trademark infringement by a Licensed Mark, or unfair competition arising out of Licensee's use of Licensed Marks in accordance with the agreement.

10. **Insurance:** Licensee agrees that prior to the exercise of any right granted hereunder that the Licensee shall procure at its sole expense general and product liability insurance providing coverage of not less than One Million Dollars (\$1,000,000.00) for personal injuries arising out of each occurrence and coverage of not less than one million dollars (\$1,000,000.00) for property damage arising out of each occurrence, which shall name the University, its Trustees, officers, employees, servants and agents as additional insured to the same effect as if separately insured, against any claim, demand, or cause of action or damages, including reasonable attorney's fees, arising out of or in connection with this Agreement. Coverage should include defamation, libel, slander, copyright, patent or trademark infringement, advertising liability and any other coverage needed with respect to this agreement. In addition, Licensee agrees to carry Worker's Compensation insurance in compliance with applicable state law. The Licensee shall provide a Certificate of Insurance to the University and replacement certificates for all renewals not less than fifteen (15) days before the expiration of the then current insurance. Upon request, the Licensee shall promptly deliver to the University complete copies of all insurance policies. Such insurance shall provide that it may not be modified or canceled without at least thirty (30) days prior written notice to the University.

11. **Records and Inspection:** The Licensee agrees to keep accurate and reasonable detailed books of account and records in accordance with good accounting principles at its principal place of business covering all transactions relating to this license. The University or its duly authorized representatives shall have the right, at all reasonable times upon advanced written notice, to audit the Licensee's books of account and records and all other documents and material under the control of the Licensee with respect to this license and to make copies and extracts thereof. In the event that such audit finds an underpayment by the Licensee, the Licensee shall immediately pay the amount of the underpayment plus interest calculated at the rate of one and one-half (1 ½) percent per month or the maximum rate of interest permitted by law, whichever is less from the date each such underpayment was due until the date when the payment is made. In the event the underpayment is as much as five (5) percent of the amount which was payable at the time of the underpayment or three (3) percent of the cumulative amount which was payable under the license during the period covered by the audit, then the Licensee shall pay and/or reimburse the University for all costs in connection with the audit. The Licensee shall retain all books of account and records for transactions under this license for three (3) years after the close of the annual period to which the account and records relate.

12. **Personal License – Non Joint Venture:** This agreement and the rights herein granted are personal to the Licensee and may not be assigned, sublicensed or encumbered, except that Licensee shall have the right to assign the agreement to a subsidiary, successor, or affiliated company by merger, consolidation, acquisition or similar activity with prior written notice to the University.

13. **Independent Status:** Nothing in this agreement shall be construed to place the Licensee and the University into a relationship of partners or joint venturers. Neither is the agent of the other nor does either have the power to obligate or to bind the other. The University's approval of a product is not to be construed as a warranty or other representation of any kind with respect to the quality or fitness of the product for any purpose. The Licensee agrees that it will not directly or indirectly represent that the Licensee or any of its activities or products are supported, endorsed or

sponsored by the University and upon the direction of the University shall issue express disclaimers to that effect.

14. Termination:

- a. The University shall have the right to immediately terminate this Agreement by giving written notice to the Licensee if the Licensee takes any action in connection with the manufacture, offering for sale, sale, advertising, promotion, shipment and/or distribution of the Licensed Goods which, in the sole opinion of the University, damages or reflects adversely upon the University or the Licensed Marks.
- b. If the Licensee fails to make any payment required under this Agreement or fails to perform or observe any of the other obligations of the Licensee hereunder and such default continues for a period of fourteen (14) days after written notice of default from the University to the Licensee, without Licensee taking substantial steps to cure such default if incapable of cure within the fourteen (14) day period, this Agreement shall terminate; provided, however, that if the Licensee shall have been guilty of the same default on two prior occasions during any twelve (12) month period, then this Agreement shall terminate forthwith upon written notice of that default from the University to the Licensee on the third occasion, whenever it may occur.
- c. If the Licensee files a petition in bankruptcy or is adjudicated a bankrupt or if a petition in bankruptcy is filed against the Licensee or if it becomes insolvent, or makes an assignment for the benefit of its creditors or an arrangement pursuant to any bankruptcy law, or if a receiver is appointed for it or its business, this Agreement shall automatically terminate without any notice being necessary. In the event this Agreement is so terminated, the Licensee, its receivers, representatives, trustees, agents, administrators, successors, or assigns shall have no right to sell, exploit or in any way deal with or in any Licensed Goods or any carton, container, packing or wrapping material, advertising, promotional or display material pertaining thereto.
- d. Termination of this Agreement under any of the provisions hereof shall be without prejudice to any rights which the University may otherwise have against the Licensee. Upon termination of this Agreement, all royalties shall become immediately due and payable.

15. Disposition of Licensed Goods After Termination: The Licensee agrees that if this Agreement is terminated for any reason and upon termination of this Agreement at the end of a normal term, unless another disposition is agreed upon by the University in its sole discretion, all unsold or undistributed Licensed Goods or products bearing a Licensed Mark or imitation of a Licensed Mark in the Licensee's possession or control shall be donated to charity provided any defect does not render the goods unsafe in any way.

If the Licensee must discontinue any and all manufacture, sale, promotion or distribution of any Licensed Goods under the provisions of Section 7 (j), such obligation to discontinue shall be deemed to be a termination of this Agreement with respect to such Licensed Goods and for the purpose of the disposition of all

undistributed copies of such Licensed Goods in the possession or control of the Licensee.

16. Licensee Representation and Warranties:

The Licensee warrants and represents that:

- a. All manufacturing and sale of Licensed Goods shall be in conformity with all federal, state and local laws and any applicable laws of a foreign country;
- b. All Licensed Goods will be suitable for the purpose for which they are intended to be used;
- c. Licensee shall at its expense obtain all governmental licenses and permits which may be required and pay all taxes which may become due in the exercise of the Licensee's rights hereunder.

17. Specific Performance: Licensee acknowledges that money damages alone are inadequate to compensate the University for any failure of the Licensee to perform or observe any of the Licensee's obligations hereunder, and agrees that in the event of such a default by the Licensee, the University may, in addition to all other remedies, obtain and enforce injunctive relief prohibiting the continuance of the default.

18. Survival of Rights and Obligations: All rights of the University and obligations of the Licensee hereunder shall survive the termination of this Agreement.

19. Governing Law: The rights of the parties hereunder shall be determined under the laws of the State of Maine, except that its conflicts of law provisions shall not apply.

20. Entire Agreement: The University and the Licensee represent and agree that this Agreement, including Exhibits A, B, C and D which are hereby incorporated by reference, sets forth and constitutes the entire agreement between them and that no representation or agreement not set forth herein is of any force or effect.

21. Waiver: The failure of either party to exercise any of its rights under this agreement for a breach thereof shall not be deemed to be a waiver of such rights by that party, and no waiver by either party, whether oral or written, express or implied, of any rights under or arising from this Agreement shall be binding on any subsequent occasion; and no concession by either party shall be treated as an implied modification of the Agreement unless specifically agreed to in writing by both parties.

22. Severability: In the event that any one or more of the provisions of this Agreement are determined by a court of competent jurisdiction to be invalid, void, unenforceable or illegal, the remaining provisions of this Agreement shall continue to be in full force and effect.

23. Amendment: No changes, amendments or modifications of this Agreement shall be made except by a written amendment to this Agreement executed by both parties.

- 24. **Non-discrimination:** The Licensee shall not discriminate and shall comply with applicable laws prohibiting discrimination on the grounds of race, color, religion, sex, sexual orientation, including transgender status or gender expression, national origin or citizenship status, age, disability or veteran status. The University encourages the Licensee in the employment of individuals with disabilities.
- 25. **Binding Effect:** This Agreement shall both benefit and bind the parties hereto and their respective successors, personal representatives and permitted assigns.
- 26. **Notice:** Any notice or other communication required, or which may be given, pursuant to this Agreement, shall be in writing. Any such notice shall be deemed delivered (i) on the day of delivery in person; (ii) five (5) days after deposit in first class registered mail, with return receipt requested; (iii) on the actual delivery date if deposited with an overnight courier; or (iv) on the date sent by facsimile, if confirmed with a copy sent contemporaneously by first class, certified, registered or express mail; in each case properly posted and fully prepaid to the appropriate address set forth below, or such other address as a party may provide notice of in accordance with this section:

IN WITNESS WHEREOF, the parties have hereunto executed this Agreement by and through their duly authorized representatives as set forth below.

The UNIVERSITY of MAINE SYSTEM

LICENSEE:

By _____

By _____

Title _____

Title _____

EXHIBIT A

LICENSED MARKS COVERED BY THIS LICENSE

Please list all marks you would like to use

EXHIBIT B

LICENSED GOODS COVERED BY THIS LICENSE

Please list goods to be covered by this license

EXHIBIT C

1. Territory: The territory covered by this license is:

2. Royalty Rate: The Licensee agrees to pay the University a Royalty Rate of ___ percent of the net wholesale, sale price of the total Licensed Goods sold.

2. Minimum Payment: The minimum payment payable by the Licensee as of the date hereof is \$ _____ Dollars.

EXHIBIT D

**CHARACTERISTICS, STANDARDS AND SPECIFICATIONS FOR
LICENSED GOODS**

Please refer to the characteristics, standards and specifications for each product you would like to license. Catalog information is usually sufficient.