Trademark License Agreement

This Trademark License Agreement ("**License** Agreement"), dated as of [DATE], is by and between The Board Of Regents of The University of Texas System, an agency of the State of Texas (hereinafter referred to as the “**Board**”), for the use and Benefit of The University of Texas \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ , an agency of the State of Texas (“**University**”), and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the "Licensee").

WHEREAS Licensee and University have entered into an agreement for Licensee to [fill in details] dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereafter “**[Main] Agreement**”);

WHEREAS, Board is the owner of and has the right to license the Marks (as defined below); and

WHEREAS, Licensee wishes to use the Marks in the Territory (as defined below) in connection with the Licensed Materials (as defined below) and Board is willing to grant to Licensee a license to use the Marks on the terms and conditions set out in this License Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Definitions. For purposes of this License Agreement, the following terms will have the following meanings:

"Action" has the meaning set forth in **Section 11.1**.

"Affiliate" of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

"Brand Manual" means Board's guidelines prescribing the permitted form and manner in which the Marks may be used, a copy of which is attached to this License Agreement as Exhibit A to Schedule 3, including any amendments or additions notified in writing by Board to Licensee from time to time.

"Board" has the meaning set forth in the preamble.

"Confidential Information" has the meaning set forth in **Section 9.1(a)**.

"Effective Date" means the date of this License Agreement as set forth in the preamble.

"Law"  means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, other requirement or rule of law of any federal, state, local or foreign government or political subdivision thereof, or any arbitrator, court or tribunal of competent jurisdiction.

"Licensed Materials" means anything Licensee makes, uses, sells, offers for sale, commissions, or directs the use of which bears, uses, or otherwise displays any of the Marks. Licensed Materials include

* + - * all advertising and promotional materials,
			* all materials and services listed in Schedule 2,
			* all Licensed Products (as defined below), and
			* any other materials, products or services that may be agreed upon in writing by Board and Licensee from time to time

which bears, uses, or otherwise displays any of the Marks.

"Licensed Products" means

* + - * the specific products listed in Schedule 2,
			* any product to be displayed, sold, or otherwise distributed, and
			* any other products that may be agreed upon in writing by Board and Licensee from time to time

upon which any of the Marks are imprinted, engraved, attached or otherwise affixed.

"Licensee" has the meaning set forth in the preamble.

"Losses" means losses, damages, liabilities, deficiencies, actions, judgments, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys' fees and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers.

"Marks" means the trademarks, service marks and domains name set forth on Schedule 1 whether registered or unregistered, including the listed registrations and applications and any registrations which may be granted pursuant to such applications.

"Person" means an individual, corporation, partnership, joint venture, limited liability company, governmental authority, unincorporated organization, trust, association or other entity.

"Quarterly Period" means each three-month period commencing on the 1st of January, 1st of April, 1st of July and 1st of October.

"Sell-Off Period" has the meaning given to it in **Section 14.2**.

"Term" has the meaning given to it in **Section 13.1**.

1. License.
	1. License Grant. Subject to the terms and conditions of this License Agreement, Board hereby grants to Licensee during the Term a non-exclusive, non-transferable (except as provided in **Section 12**), non-sublicenseable license to use the Marks on or in connection with the promotion, advertising, distribution and sale of Licensed Materials in [the United States of America] ("Territory").
	2. Territorial Restrictions. Licensee will not:
		1. undertake advertising of Licensed Materials in, or specifically aimed at, any country outside the Territory;
		2. actively seek orders for Licensed Materials from outside the Territory; or
		3. establish any branch dealing in Licensed Materials or maintain any distribution center for Licensed Materials outside the Territory.
	3. Business Names and Domain Names. Without Board's prior written consent, Licensee will not use the Marks (or any Marks confusingly similar thereto), individually or in combination, as part of:
		1. its corporate or trade name; or
		2. any domain name other than the domain name(s) listed on Schedule 1 to this License Agreement.
	4. Sublicensing. Licensee will not grant sublicenses under this License Agreement.
2. Use of the Marks.
	1. University-Licensed Products. This License will not entitle Licensee to use a Trademark for any purpose other than performing its obligations under the License Agreement; therefore, if Licensee desires to use one or more of the Marks on any product to be displayed, sold, or otherwise distributed, then such use must be authorized pursuant to a separate agreement to license the Marks issued by Learfield Licensing Partners, LLC or a successor identified by University. When using the Marks under this License, Licensee will comply with all applicable laws and regulations pertaining to trademarks, including without limitation compliance with marking requirements. All Licensed Products made, sold or otherwise distributed by Licensee in the Territory will carry the Marks. Licensee will comply strictly with the directions of Board regarding the form and manner of the application of the Marks, including the directions contained in the Brand Manual and the requirements of **Section 3.2**
	2. Licensee must obtain prior approval from Trademarks Director for the use of any of the Marks (i) on any products, (ii) for any services, (iii) in any form of advertising or other promotion, and (iv) in any advertising or promotional copy or graphics to be used by Licensee in any media, including without limitation, a public address announcement or other audio or video broadcast. Trademarks Director’s approval under this Section 13.4 will not be unreasonably withheld, conditioned or delayed; provided, however, that Trademarks Director will have the right, in his or her sole discretion, to decline to approve any use of Marks on any products, for any service, or in copy or graphics that (i) is in violation of any Applicable Laws, Athletic Organization Rules, or University Rules; or (ii) Trademarks Director or University Representatives considers to be misleading or offensive. Requests for approvals will be submitted to:

Craig Westemeier

Associate Athletics Director, Trademarks Licensing (“**Trademarks** **Director**”)

The University of Texas at Austin

P.O. Box 7399

Austin, Texas 78713

512-475-7923

512-232-7080 fax

trademark@athletics.utexas.edu

or

craig.westemeier@athletics.utexas.edu

* 1. No Other Marks. Apart from the Marks, no other trademark or logo may be affixed to, or used in connection with, the Licensed Materials except that, Licensee may use its trade name on packaging, advertising and promotional materials for the Licensed Materials.
	2. Trademarks Notices. Licensee will ensure that all Licensed Materials sold by Licensee and all related quotations, specifications and descriptive literature, and all other materials carrying the Marks, be marked with the appropriate trademark notices in accordance with Board's instructions.
1. Ownership and Registration.
	1. Acknowledgement of Ownership. Licensee acknowledges that Board and its Affiliates are the owners of the Marks throughout the world. Any goodwill derived from the use by Licensee of the Marks will inure to the benefit of Board. If Licensee acquires any rights in any of the Marks, by operation of law, or otherwise, such rights will be deemed and are hereby irrevocably assigned to Board without further action by any of the parties. Licensee agrees not to dispute or challenge or assist any Person in disputing or challenging Board's rights in and to any of the Marks or the validity of any of the Marks.
	2. Licensee Restrictions. Licensee agrees that it will not, during the Term or thereafter, directly or indirectly:
		1. do, omit to do, or permit to be done, any act which will or may dilute the Marks or tarnish or bring into disrepute the reputation of or goodwill associated with the Marks or Board or which will or may invalidate or jeopardize any registration of the Marks; or
		2. apply for, or obtain, or assist any Person in applying for or obtaining any registration of the Marks, or any trademark, service mark, trade name or other indicia confusingly similar to the Marks in any country/in the Territory.
	3. Maintenance of Registrations. Board will at expense take all reasonable steps to maintain the existing registrations of the Marks and prosecute to registration any pending applications . Licensee will provide, at the request of Board and at Licensee's expense, all necessary assistance with such maintenance and prosecution.
	4. No Encumbrances. Licensee will not grant or attempt to grant a security interest in, or otherwise encumber, the Marks or record any such security interest or encumbrance against any application or registration regarding the Marks in the United States Patent and Trademarks Office or elsewhere.
2. Quality Control.
	1. Acknowledgement. Licensee acknowledges and is familiar with the high standards, quality, style and image of Board, and Licensee will, at all times, conduct its business and use the Marks in a manner consistent with these standards, quality, style and image.
	2. Compliance With Board Specifications. Licensee will comply with the specifications, standards and directions relating to the Licensed Materials, including their design, manufacture, promotion, packaging, distribution and sale as notified in writing by Board from time to time.
	3. Compliance With Laws. In exercising its rights under this License Agreement, Licensee will comply with, and will ensure that each Licensed Product sold or otherwise supplied by Licensee complies with, all applicable Laws. Licensee will promptly provide Board with copies of all communications, relating to the Marks or the Licensed Materials, with any governmental, regulatory or industry authority.
	4. Inspection of Facilities. Licensee will permit, and will obtain permission for, Board at all reasonable times to enter any place used for the manufacture, storage or distribution of the Licensed Materials to inspect the methods of manufacture, storage and distribution to ensure compliance with the quality standards or any other specifications or requirements set forth in this License Agreement.
	5. Submission of Materials for Approval. Licensee will, at its own expense, prior to any use of the Marks and thereafter at least once in every six months (and at any time at Board's request) supply a reasonable number of production samples of the Licensed Materials to Board for approval as per the requirements of **Section 3.2**, which may be given or withheld in Board's sole discretion. In the event that Board rejects any sample, it will use reasonable efforts to give written notice of such rejection to Licensee within 30 days of receipt by Board of the sample. Licensee will immediately cease distribution of such Licensed Materials and will not recommence distribution until Board confirms in writing that it may do so. In the absence of a written notice of rejection, within 30 days of receipt of a sample, the sample will be deemed to have been disapproved by Board.
	6. Rejected, Damaged or Defective Products. Licensee will not sell, Market, distribute or use for any purpose, or permit any third party to sell, Market, distribute or use for any purpose, any Licensed Materials which are rejected by Board pursuant to **Section 5.5**, or which are damaged or defective.
	7. Complaints. Licensee will promptly provide Board with details of any complaints it has received relating to the Licensed Materials together with reports on the manner in which such complaints are being, or have been, dealt with and will comply with any reasonable directions given by Board in respect thereof.
	8. Subcontracting. Licensee will not subcontract the manufacture of the Licensed Materials.
	9. Product Recall. Licensee agrees to take all reasonable steps, which may include, without limitation, product recalls, to abate any health or safety risks posed by the Licensed Materials as expeditiously as possible. Upon Board's written request, Licensee will provide to Board for Board's review and approval, a copy of Licensee's recall program for the Licensed Materials. Licensee will have complete responsibility for determining if a product recall is required and Licensee will bear responsibility for all costs and expenses associated with any recall of the Licensed Materials.
3. Marketing, Advertising and Promotion.
	1. Marketing and Advertising Requirements. Licensee will:
		1. use its best efforts to promote and expand the supply of Licensed Materials throughout the Territory;
		2. provide such advertising and publicity as may reasonably be expected to bring the Licensed Materials to the attention of as many purchasers and potential purchasers as possible; and
		3. ensure that its advertising, marketing and promotion of the Licensed Materials in no way reduces or diminishes the reputation, image and prestige of the Marks or of products sold under or by reference to the Marks (including, without limitation, the Licensed Materials).
	2. Approval of Marketing and Advertising Materials. Licensee will send to Board for its prior written approval the text and layout of all proposed advertisements and marketing and promotional material relating to the Licensed Materials as per the requirements of **Section 3.2**, which may be given or withheld in Board's sole discretion. In the event that Board disapproves of such material, it will give written notice of such disapproval to Licensee within 20 days of receipt by Board of the material. In the absence of a written notice of disapproval within 20 days of receipt of such materials, the materials will be deemed to have been disapproved by Board. Licensee will not use any material in the advertising, marketing or promotion of Licensed Products which has not been approved by Board.
	3. Cost of Marketing and Advertising. Licensee will bear the costs of all advertising, marketing and promotion for the Licensed Products in the Territory.
	4. Celebrity Endorsement. Licensee will not use a personality or celebrity to endorse or promote any Licensed Products without the prior written approval of Board.
4. Protection of the Marks.
	1. Notification. Licensee will immediately notify Board in writing giving reasonable detail if any of the following matters come to its attention:
		1. any actual, suspected or threatened infringement of the Marks;
		2. any actual, suspected or threatened claim that the Marks is invalid;
		3. any actual, suspected or threatened opposition to the Marks;
		4. any actual, suspected or threatened claim that use of the Marks infringes the rights of any third party;
		5. any person applies for, or is granted, a registered trademark by reason of which that person may be, or has been, granted rights which conflict with any of the rights granted to Licensee under this License Agreement; or
		6. any other actual, suspected or threatened claim to which the Marks may be subject.
	2. Actions. With respect to any of the matters listed in **Section 7.1**:
		1. Board will decide, in its sole discretion, what action if any to take;
		2. Board will have exclusive control over, and conduct of, all claims and proceedings;
		3. Licensee will provide Board with all assistance that Board may reasonably require in the conduct of any claims or proceedings; and
		4. Board will bear the cost of any proceedings and will be entitled to retain all sums recovered in any action for its own account.
5. Royalties and Payment Terms.
	1. Royalties. [Option 1 – the Licensee agrees to pay the royalties as detailed by the Royalty Provisions of Schedule 4; Option 2 – The Board licenses the Marks to the Licensee royalty free.]
6. Confidentiality.
	1. Licensee Obligations. Licensee agrees:
		1. not to disclose or otherwise make available to any third party any information that is treated as confidential by Board, including, without limitation, trade secrets, technology, information pertaining to business operations and strategies, and information pertaining to customers, pricing, and marketing (collectively, the "Confidential Information") without the prior written consent of Board; *provided, however*, that Licensee may disclose the Confidential Information to its officers, employees, consultants and legal advisors who have a "need to know", who have been apprised of this restriction and who are themselves bound by nondisclosure restrictions at least as restrictive as those set forth in this **Section 9**;
		2. to use the Confidential Information as permitted under this License Agreement; and
		3. to immediately notify Board in the event it becomes aware of any loss or disclosure of any Confidential Information.
	2. Exceptions. Confidential Information will not include information that:
		1. is already known to Licensee without restriction on use or disclosure prior to receipt of such information from Board;
		2. is or becomes generally known by the public other than by breach of this License Agreement by, or other wrongful act of, Board;
		3. is received by Licensee from a third party who is not under any obligation to Board to maintain the confidentiality of such information; or
		4. is required to be disclosed by Law, including without limitation, pursuant to the terms of a court order; *provided, that* Licensee has given Board prior written notice of such disclosure and an opportunity to contest such disclosure.

It will be the obligation of Licensee to prove that such an exception to the definition of Confidential Information exists.

1. Representations and Warranties.
	1. Mutual Representations and Warranties. Each party represents and warrants to the other party that:
		1. it is duly organized, validly existing and in good standing as a corporation or other entity as represented herein under the laws and regulations of its jurisdiction of incorporation, organization or chartering;
		2. (i) it has the full right, power and authority to enter into this License Agreement, to grant the rights and licenses granted hereunder and to perform its obligations hereunder, and (ii) the execution of this License Agreement by its representative whose signature is set forth at the end hereof has been duly authorized by all necessary corporate action of the party; and
		3. when executed and delivered by such party, this License Agreement will constitute the legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms.
	2. Disclaimer of Representations and Warranties. Nothing in this License Agreement will constitute any representation or warranty by Board that:
		1. any of the Marks are valid;
		2. any of the Marks (if an application) will proceed to grant or, if granted, will be valid; or
		3. the exercise by Licensee of rights granted under this License Agreement will not infringe the rights of any person.
	3. Exclusion of Consequential and Other Indirect Damages. To the fullest extent permitted by Law, Board will not be liable to Licensee for any consequential, incidental, indirect, exemplary, special or punitive damages whether arising out of breach of contract, tort (including negligence) or otherwise, regardless of whether such damage was foreseeable and whether or not Licensee has been advised of the possibility of such damages. NOTWITHSTANDING ANY PROVISION IN THIS LICENSE AGREEMENT TO THE CONTRARY, LICENSEE AGREES AND STIPULATES THAT UNIVERSITY WILL NOT BE REQUIRED TO PERFORM ANY ACT OR TO REFRAIN FROM ANY ACT IF THAT PERFORMANCE OR NON-PERFORMANCE WOULD CONSTITUTE A VIOLATION OF THE CONSTITUTION OR LAWS OF THE STATE OF TEXAS. Without limitation of the forgoing, any provision of this License Agreement to the effect that the University (i) waives or releases a right to make a claim against Licensee or exculpates Licensee from liability; or (ii) will pay attorney’s fees incurred by Licensee or any other person are effective only to the extent that the same are authorized by the Constitution and the laws of the State of Texas as of the Effective Date hereof. No provision in this License Agreement will constitute nor is it intended to constitute a waiver of the Board of Regents of The University of Texas, The University of Texas System’s, The University of Texas [at – insert institution], or the State of Texas' sovereign immunity to suit.
2. Indemnity and Insurance.
	1. Indemnity. Licensee will indemnify, defend and hold harmless Board against all Losses arising out of or resulting from any third party claim, suit, action or proceeding (each, an "Action") related to or arising out of: (a) the breach of this License Agreement by Licensee, and (b) Licensee's exercise of its rights granted under this License Agreement, including but not limited to any product liability claim or third party intellectual property rights infringement claim relating to Licensed Materials manufactured, supplied or put into use by Licensee..
	2. Indemnification Procedures. The Licensee will promptly notify the Board in writing of any Action and cooperate with Board at the Licensee’s sole cost and expense. The Licensee will immediately take control of the defense and investigation of such Action and will employ counsel of its choice to handle and defend the same, at the Licensee ‘s sole cost and expense. The Licensee will not settle any Action in a manner affects the rights of the Board without the Board’s prior written consent. The Board’s failure to perform any obligations under this **Section 11.2** will not relieve the Licensee of its obligations under this **Section 11.2** except to the extent that the Licensee can demonstrate that it has been materially prejudiced as a result of such failure. The Board may participate in and observe the proceedings at its own cost and expense.
	3. Insurance.
		1. At all times during the Term of this License Agreement and for a period of three years thereafter, Licensee will procure and maintain, at its sole cost and expense commercial general liability insurance with limits no less than [e.g. $1,000,000 or other appropriate amount] per occurrence and [e.g. $5,000,000 or other appropriate amount] in the aggregate, including bodily injury and property damage and products and completed operations and advertising liability, which policy will include contractual liability coverage insuring the activities of Licensee under this License Agreement.
		2. Licensee will provide Board with copies of the certificates of insurance and policy endorsements required by this **Section 11.3** upon the written request of Board, and will not do anything to invalidate such insurance.
3. Assignment. Licensee will not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under this License Agreement, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without Board's prior written consent. For purposes of the preceding sentence, and without limiting its generality, any merger, consolidation or reorganization involving Licensee (regardless of whether Licensee is a surviving or disappearing entity) will be deemed to be a transfer of rights, obligations or performance under this License Agreement for which Board's prior written consent is required. No delegation or other transfer will relieve Licensee of any of its obligations or performance under this License Agreement. Any purported assignment, delegation or transfer in violation of this **Section 12** is void. Board may freely assign or otherwise transfer all or any of its rights, or delegate or otherwise transfer all or any of its obligations or performance, under this License Agreement without Licensee's consent. This License Agreement is binding upon and inures to the benefit of the parties hereto and their respective permitted successors and assigns.
4. Term and Termination.
	1. Term. This License Agreement will commence as of the Effective Date and, unless terminated earlier in accordance with **Sections 13.2, 13.4** or **13.4**, will remain in force [Option 1 until DATE or Option 2 for a period of NUMBER years] (the "Term").
	2. Termination with Termination of the [Main] Agreement: - this License Agreement will terminate immediately upon termination of the [Main] Agreement dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.
	3. Termination without Cause. Board will have the right to terminate this License Agreement for any reason on giving Licensee not less than 30 days written notice.
	4. Termination for Cause. Board will have the right to terminate this License Agreement immediately by giving written notice to Licensee if:
		1. Licensee fails to pay any amount due under this License Agreement on the due date for payment and remains in default not less than seven days after being notified in writing to make such payment;
		2. Licensee breaches this License Agreement (other than failure to pay any amounts due under this License Agreement) and (if such breach is curable) fails to cure such breach within 14 days of being notified in writing to do so;
		3. (i) becomes insolvent or admits its inability to pay its debts generally as they become due; (ii) becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law, which is not fully stayed within seven business days or is not dismissed or vacated within 45 days after filing; (iii) is dissolved or liquidated or takes any corporate action for such purpose; (iv) makes a general assignment for the benefit of creditors; or (v) has a receiver, trustee, custodian or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business;
		4. Licensee challenges the validity or Board's ownership of the Marks; or
		5. there is a change in control of Licensee.
5. Post-termination Rights and Obligations.
	1. Effect of Termination. On expiration or termination of this License Agreement for any reason and subject to any express provisions set out elsewhere in this License Agreement:
		1. all outstanding amounts payable by Licensee to Board will immediately become due and payable;
		2. all rights and licenses granted pursuant to this License Agreement will cease;
		3. Licensee will cease all use of the Marks except as expressly permitted pursuant to **Section 14.2**;
		4. Licensee will cooperate with Board in the cancellation of any licenses recorded pursuant to this License Agreement and will execute such documents and do all acts and things as may be necessary to effect such cancellation;
		5. Licensee will promptly return to Board, or, at Board's option, destroy, at Licensee's expense, all records and copies of technical and promotional material in its possession relating to the Licensed Materials, and of any Confidential Information of Board and all copies thereof; and
		6. within 30 days after the date of expiration or termination, Licensee will promptly deliver to Board or any other person designated by Board, or at Board's option, destroy, at Licensee’s expense, all Licensed Materials that it has not disposed of within 30 days after the date of expiration or termination in accordance with **Section 14.2**.
	2. Sell-off Period. On expiration or termination of this License Agreement for any reason other than termination by Board pursuant to **Section 13.4**, Licensee will for a period of 30 days after the date of termination have the right to dispose of all stocks of Licensed Materials in its possession and all Licensed Materials in the course of manufacture at the date of termination, in each case, in accordance with the terms and conditions of this License Agreement, and, provided, that any royalty payable under the provisions of **Section 8** (as if such stocks were supplied at the date of termination) is paid to Board within 30 days after termination.
	3. Surviving Rights. Any rights or obligations of the parties in this License Agreement which, by their nature, should survive termination or expiration of this License Agreement will survive any such termination or expiration, including the rights and obligation set forth in this **Section 14.3**, **Section 4.1**, **Section 4.2**, **Section 5.9**, **Section 8**, **Section 9**, **Section 10**, **Section 11**, **Section 12**, **Section 14**, and **Section 15**.
6. Miscellaneous.
	1. Further Assurances. Each party will, upon the reasonable request, and at the sole cost and expense, of the other party, execute such documents and perform such acts as may be necessary to give full effect to the terms of this License Agreement.
	2. Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in this License Agreement will be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party will have authority to contract for or bind the other party in any manner whatsoever.
	3. Public Announcements. Neither party will issue or release any announcement, statement, press release or other publicity or marketing materials relating to this License Agreement, or, unless expressly permitted under this License Agreement, otherwise use the other party's trademark, service mark, trade names, logos, symbols or brand names, in each case, without the prior written consent of the other party.
	4. Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder will be in writing and will be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient; or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the addresses indicated below (or at such other address for a party as will be specified in a notice given in accordance with this **Section 15.4**.

**Notice to Board**

Director, Trademark Licensing

The University of Texas at Austin

P.O.Box 7399

Austin, Texas 78713

512-475-7923

512-232-7080 (fax)

trademarks@athletics.utexas.edu

or

cw@utexas.edu

With a Copy to:

The University of Texas \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Attention: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Fax: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Email: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Notice to Company**:

Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Attention: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Fax: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Email: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notices will be effective on the date received. The person or persons to be notified or the address for notification may be changed by giving notice as provided in this Section.

* 1. Interpretation. For purposes of this License Agreement, (a) the words "include," "includes" and "including" will be deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; and (c) the words "herein," "hereof," "hereby," "hereto" and "hereunder" refer to this License Agreement as a whole. Unless the context otherwise requires, references herein: (i) to Sections, Schedules and Exhibits refer to the Sections of, and Schedules and Exhibits attached to, this License Agreement; (ii) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof; and (iii) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This License Agreement will be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The Schedules and Exhibits referred to herein will be construed with, and as an integral part of, this License Agreement to the same extent as if they were set forth verbatim herein.
	2. Entire Agreement. This License Agreement, together with all Schedules and Exhibits and any other documents incorporated herein by reference, constitutes the sole and entire agreement of the parties to this License Agreement with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter.
	3. No Third-Party Beneficiaries. This License Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or will confer upon any other Person any legal or equitable right, benefit or remedy of any nature whatsoever, under or by reason of this License Agreement.
	4. Headings. The headings in this License Agreement are for reference only and will not affect the interpretation of this License Agreement.
	5. Amendment and Modification; Waiver. This License Agreement may only be amended, modified or supplemented by an agreement in writing signed by each party hereto. No waiver by any party of any of the provisions hereof will be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this License Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this License Agreement will operate or be construed as a waiver thereof; nor will any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.
	6. Severability. If any term or provision of this License Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability will not affect any other term or provision of this License Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto will negotiate in good faith to modify this License Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.
	7. Governing Law; Submission to Jurisdiction. This License Agreement will be governed by and construed in accordance with the internal laws of the State of Texas. Any legal suit, action or proceeding arising out of or related to this License Agreement or the Services provided hereunder will be instituted in the Federal District Court, Western District of Texas, Austin Division located in Austin Texas or the courts of the State of Texas located in the city of Austin and County of Travis, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. Service of process, summons, notice or other document by mail to such party's address set forth herein will be effective service of process for any suit, action or other proceeding brought in any such court.
	8. Equitable Relief. Licensee acknowledges that a breach by Licensee of this License Agreement may cause Board irreparable damages, for which an award of damages would not be adequate compensation and agrees that, in the event of such breach or threatened breach, Board will be entitled to seek equitable relief, including a restraining order, injunctive relief, specific performance and any other relief that may be available from any court, in addition to any other remedy to which Board may be entitled at law or in equity. Such remedies will not be deemed to be exclusive but will be in addition to all other remedies available at law or in equity, subject to any express exclusions or limitations in this License Agreement to the contrary.
	9. Counterparts. This License Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will be deemed to be one and the same agreement. A signed copy of this License Agreement delivered by facsimile, e-mail or other means of electronic transmission will be deemed to have the same legal effect as delivery of an original signed copy of this License Agreement.

SIGNATURE PAGE FOLLOWS

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

**DATE EXECUTED: LICENSEE:**

 , 201\_\_

By:

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

 Title: \_\_\_\_\_\_\_\_\_\_\_

**BOARD/UNIVERSITY:**

 , 201\_\_\_ BOARD OF REGENTS OF THE UNIVERSITY OF TEXAS SYSTEM FOR THE USE AND BENEFIT OF THE UNIVERSITY OF TEXAS [\_\_\_\_\_\_\_\_\_]

 By:

Name: Daniel H. Sharphorn

Title: Vice Chancellor and General Counsel

 The University of Texas System

 **Approved as to content:**

 , 201\_\_\_ THE UNIVERSITY OF TEXAS \_\_\_\_\_\_\_\_\_\_\_

 By:

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

 Title: \_\_\_\_\_\_\_\_\_\_\_

Schedule 1

Marks and domain names

Word MarkS

Graphic marks

**INSTITUTIONAL MARKS**

**DOMAIN NAMES**

schedule 2

Licensed Materials

**University-Licensed Materials**

**University-Licensed Products**

Schedule 3

Specifications

As per the attached Brand Manual attached as Exhibit A.

Exhibit A

**Board's Brand Manual**

Schedule 4

ROYALTY PROVISIONS

1. Definitions.

"Earned Royalties" has the meaning set forth in **Section 2.2** of this Schedule.

"Minimum Royalty" will mean the minimum royalties set forth for each Quarterly Period.

"Net Sales Price" means the gross invoiced price for each sale of a Licensed Product in an arm's length transaction, less, to the extent separately identified on the invoice, any costs of packing, insurance, transport, delivery, customary and usual trade discounts, sales taxes [and Value Added Taxes], freight and duty charges; provided that where the Licensed Materials are: (i) sold or otherwise distributed other than in an arm's length transaction, or (ii) sold or otherwise distributed to any Affiliate of Licensee, the Net Sales Price of each such Licensed Product will be deemed to be the Net Sales Price which would have been applied under this License Agreement, had such Licensed Product been transferred to an independent arm's length customer.

1. Royalties and Payment Terms.
	1. [Up-Front Payment. On the Effective Date, Licensee will pay to Licensor the sum of $[AMOUNT] [and such sum will not be refundable or available for credit against royalties or any other sums payable by Licensee under this License Agreement/as an advance against royalties payable under **Section 2.2**].]
	2. Earned Royalties. Licensee will pay to Licensor a royalty (the "Earned Royalty") of [PERCENTAGE] of the Net Sales Price of each Licensed Product that is:
		1. sold or distributed by Licensee;
		2. supplied by Licensee to any person otherwise than in **Section 2.2(a)**; or
		3. put into use by Licensee;

in each case, in the Territory and provided that with respect to any Licensed Product sold or distributed or otherwise used or supplied only a single royalty will be payable, and the royalty accrues on the date when the Licensed Product is used or supplied, the date it is supplied being the earliest of when it is invoiced, paid for, installed or delivered.

* 1. [Minimum Royalties. If the Earned Royalty for any Quarterly Period is less than the Minimum Royalty due for such Quarterly Period then Licensee will also pay Licensor the difference between the Minimum Royalty and the Earned Royalty.]
	2. Taxes. Royalties and other sums payable under this License Agreement are exclusive of taxes [including Value Added Tax (or similar tax)] and will be paid free and clear of all deductions and withholdings whatsoever, unless the deduction or withholding is required by law. If any deduction or withholding is required by law, Licensee will pay to Licensor such sum as will, after the deduction or withholding has been made, leave Licensor with the same amount as it would have been entitled to receive in the absence of any such requirement to make a deduction or withholding. If Licensee is required by law to make a deduction or withholding, Licensee will, within five business days of making the deduction or withholding, provide a statement in writing showing the gross amount of the payment, the amount of the sum deducted and the actual amount paid.
	3. Manner of Payment. Royalties and any other sums payable under this License Agreement will be paid within 30 days of the end of each successive Quarterly Period in US dollars [by wire transfer] to a bank account to be designated in writing by Licensor. [For the purpose of converting the local currency of Licensee (in which such royalties arise) into US dollars, the rate of exchange to be applied will be the rate of exchange in effect for the date when the relevant payment first becomes due [as reported in the Wall Street Journal/SOURCE FOR EXCHANGE RATE].]
	4. Late Payments. In the event payments due under this License Agreement are not received by Licensor by the due date, Licensee will pay to Licensor interest on the overdue payment from the date such payment was due to the date of actual payment at a rate of [1.5]% per month, or if lower, the maximum amount permitted under Law.
	5. Royalty Statements. At the same time as payment of royalties are submitted, Licensee will submit or cause to be submitted to Licensor a statement in writing, certified to be true and correct by Licensee's [Chief Financial Officer/OTHER OFFICER] that includes all information relevant to the calculation of such royalties, including:
		1. the Quarterly Period for which the royalties were calculated;
		2. the number of Licensed Materials sold or distributed during the Quarterly Period;
		3. the number of Licensed Materials manufactured during the Quarterly Period but not yet sold or distributed;
		4. the Net Sales Price of each Licensed Product sold or distributed during the Quarterly Period;
		5. the amount of royalties due and payable;
		6. the amount of any withholding or other income taxes deductible or due to be deducted from the amount of royalties due and payable; and
		7. any other details Licensor may reasonably require.

Within [30] days of the end of each calendar year, Licensee will submit to Licensor a written statement certified by Licensee's auditors of the aggregate Net Sales Price of Licensed Materials manufactured, sold or distributed by Licensee in that year and the amount due to be paid for that year under this Section 8. In the event that such statement shows that the amount due by Licensee is less than the amount paid, Licensee will pay to Licensor within [seven] days of the submission of the statement an amount equivalent to the difference between the amount paid and the amount due, plus any interest calculated in accordance with **Section 8.6**

* 1. [Effect of Regulatory Prohibitions. If Licensee is prohibited by a governmental authority in any country from making any payment due under this License Agreement then Licensee will, within the prescribed period for making such payment, use its best efforts to secure from such authority permission to make such payment and will make it within [seven] days of receiving such permission. If such permission is not received within [30] days of Licensee making a request for such permission then, at the option of Licensor, Licensee will either deposit the payment in the currency of the relevant country in a bank account designated by Licensor within such country or make the payment to an associated company of Licensor designated by Licensor and having an office in the relevant country or in another country designated by Licensor.]
	2. Audit Right. Licensee will keep complete and accurate books and records showing the description price, quantity and date of manufacture and sale of all Licensed Materials manufactured, sold or distributed. Such books and records will be kept separate from any books and records not relating solely to the Licensed Materials and be available during normal business hours for inspection and audit by Licensor (or its authorized representative), who will be entitled to take copies of or extracts from the same. If such inspection or audit should reveal a discrepancy in the royalties paid from those payable under this License Agreement, Licensee will immediately make up the shortfall, including interest calculated in accordance with **Section 8.6** and reimburse Licensor for any professional charges incurred for such audit or inspection. Such inspection and audit right of Licensor will remain in effect for a period of [one] year after the termination of this License Agreement.
	3. [Purchase of Licensed Materials By Licensor. If Licensor desires to purchase Licensed Materials for its own use, Licensee agrees to sell such Licensed Materials to Licensor at Licensee's cost. Licensee will owe no royalty payment to Licensor on these sales.]