

UNIVERSITY OF SOUTHERN INDIANA
Nonexclusive Trademark License

License # _____

WHEREAS, The Trustees of University of Southern Indiana, a corporate body politic of the State of Indiana, having its principal office in Evansville, Indiana 47712-3597 (hereinafter call the University or Licensor), asserts ownership of all rights, title and interest in and to certain designations comprising designs, trade name, trademarks and service marks, including, without limitation, the names, abbreviations, and marks identified in Exhibit A attached hereto, logotypes and seals incorporating one or more of the names, abbreviations and/or marks therein identified and certain logographics and/or symbols which have come to be associated with the University (licensed marks or marks), and;

WHEREAS, _____
(hereinafter called the Licensee) having a business address at: _____
and telephone number: _____

desires to obtain a license to use certain designations described above.

NOW THEREFORE, in consideration of the promises and of the mutual covenants and agreements hereinafter set forth, the parties, hereto hereby agree as follows:

1. TERM OF AGREEMENT

1.1 This agreement shall remain in force and effect from 6/30/08 through 6/30/10

2. DEFINITION OF TERMS

2.1 In addition to those terms defined elsewhere in the Agreement, these terms shall have the following meaning when used in this Agreement.

2.2 Agreement means this agreement, together with any addenda or exhibits hereto.

2.3 Licensed Marks means the designs, trademarks, trade names, service marks, logo, graphics, symbols and any other devices that are associated with the University.

2.4 Licensed Articles means those articles of merchandise or products approved by Licensor in writing which bear one or more licensed marks.

2.5 Retail Sales means the sale of licensed articles directly to the ultimate consumer at retail outlets (including University outlets), through mail order and/or catalogs.

2.6 Wholesale Sales means the sale of licensed articles to any organization other than the ultimate consumer.

2.7 Net Sales means the total gross invoice amounts billed customers less quantity discounts actually allowed and taken as such by the customer, any credits for returns actually made as supported by credit memos issued to customers, transportation charges on returns if paid by Licensee and less taxes and prepaid transportation charges on licensed products if shipped by Licensee. No costs incurred in the manufacturing, selling, licensing, advertising or distributing the goods or any direct expenses shall be deducted, nor shall deduction be made for uncollectible accounts, cash discounts or similar allowances.

2.8 Premium means any article given free or sold at less than the usual selling price for the purpose of increasing the sale of said article or publicizing any other product or service, or for any other giveaway or promotional purposes.

3. GRANT OF LICENSE

3.1 Subject to the terms and conditions of the Agreement, the University hereby grants to the Licensee a nonexclusive license to use the licensed marks on and in conjunction with the marketing, promotion and sale of the licensed articles in the United States.

4. PREMIUMS

4.1 No license is granted under this Agreement for the distribution of licensed articles as premiums, except with the written approval of the University.

5. ROYALTY PAYMENTS AND REPORTS

5.1 In consideration for this license, Licensee agrees to pay the Licensor the following:

5.2 Non-refundable Application/Processing Fee of Seventy-five dollars (\$75.00) to be submitted with signed contract.

5.3 Royalty Fee of eight percent (8%) of net sales of all licensed articles sold.

5.4 Reports and Payments. Licensee shall submit quarterly reports in the format of and containing the information specified in Exhibit B. Licensee may use an alternate form for the quarterly statement provided that it contains all information specified in Exhibit B and has been approved by the Bookstore, University of Southern Indiana. Such a statement shall be submitted to the University within thirty (30) days following each calendar quarter and shall be accompanied by payment of royalties due, made payable and sent to the payee identified. Sales shall be deemed to have been consummated, for purposes of determining the royalty payment due at the time of Licensee's invoicing or billing for said items or at the time of Licensee's delivery thereof, whichever is earlier. Royalties shall be paid by check to: **UNIVERSITY OF SOUTHERN INDIANA, Bookstore, University Center, 8600 University Boulevard, Evansville, Indiana 47712-3597 (812) 465-1649.**

5.5 Records. Licensee agrees to keep full and accurate records to show the basis for calculation of royalties, and such records, including sales invoices and Licensee's general accounting records, shall be open to inspection by a representative of the University's choice at reasonable time, and within normal business hours as more fully described in section 13, ON-SITE COMPLIANCE REVIEWS. Licensee shall maintain complete, readily comprehensible records of its sales covered by this agreement for not less than three (3) years after the accounting pertaining to them is rendered to Licensor.

5.6 Delinquent Payments. All delinquent amounts not paid may be charged one and one-half percent (1 1/2%) per month or any portion thereof during which said amounts remain delinquent.

5.7 Multiple Royalty Payments. The University recognizes that the Licensee may be subject to other license agreements which together with the agreement would subject certain licensed articles to one or more additional royalty payments. In such cases, the University may agree to a reduced royalty. No agreement shall be valid unless in writing and signed by the University.

6. QUALITY, NOTICES, APPROVALS, ARTWORK AND SAMPLES

6.1 The quality of the licensed product(s) as well as the quality of all promotional advertising and packaging materials which includes the licensed mark(s) shall be at least as high as the best quality of similar products and promotional advertising and packaging material presently distributed or sold by the Licensee, and the same shall be in full conformance with all applicable laws and regulations.

6.2 The Licensee may not manufacture, sell, promote or distribute any licensed products until it has received written approval from the Licensor of same in the manner provided herein. Such approval may be granted or withheld as the Licensor, in its sole discretion, may determine.

6.3 Before commencing or authorizing third parties to commence the marketing and manufacture of licensed products which have not been previously approved in writing by the Licensor, the Licensee shall submit at its own cost to the Licensor, for approval, complete layouts and descriptions of the proposed licensed products showing exactly how and where the licensed marks and all other artwork and wording will be used, and Licensee shall provide production samples of the proposed licensed products. (See Exhibit C.)

6.4 The Licensee agrees that all licensed products shall contain appropriate legends, marking and notices as required from time to time by the Licensor, to give appropriate notice to the consuming public of the Licensor's right, title and interest thereto.

6.5 The licensee shall use no other markings, legends and notices on or in association with the licensed products other than the above specified legend and such other markings, legends and notices as may from time to time be specified by the Licensor, without first obtaining the Licensor's prior express written approval.

6.6 After the required approval of samples has been secured, the Licensee shall not depart therefrom in any respect without first obtaining the express prior written approval of the licensor. The licensee shall make submissions to the Licensor and obtain approvals, in the manner required above, each time new or revised concepts, layouts, descriptions, artwork, models, prototype samples and/or samples are created and adopted by or for the Licensee.

- 6.7 To assure that the provisions of the Agreement are being observed, the Licensee agrees that it will allow the Licensor or its designees to enter the Licensee's premises and the premises where the licensed products are being manufactured during regular business hours and upon 24-hour notice, for the purpose of inspecting the licensed products.
- 6.8 If the quality standards referred to in this Agreement are not met or, if the quality standards are not maintained throughout the period of manufacture, sale, promotion or distribution of any licensed products, then, upon receipt of written notice from the Licensor, the Licensee shall immediately discontinue any and all manufacture, sale, promotion and distribution of the licensed product in connection with which the quality standards have not been met.
- 6.9 The form and content of all artwork as used by the Licensee shall be subject to the prior express written approval of the Licensor prior to its use by the Licensee. If the Licensee desired to use artwork previously approved by the Licensor on a different licensed product, the Licensee shall first submit samples of such proposed use to the Licensor for approval thereof.
- 6.10 All of the Licensor's artwork, designs, trademarks or adaptations or reproductions thereof shall remain the property of the Licensor.

PROMOTIONAL DISPLAY

7.1 Licensee agrees that it will not use the licensed marks or any reproduction thereof in any advertising or in any promotional display material in any manner which may detract from or impair the integrity, character and dignity of the licensed marks or reflect unfavorably upon the University. The Licensee shall not use the licensed marks in connection with sweepstakes, lotteries, games of chance, alcoholic beverages or any type of similar promotion. The University reserves the right to obtain a copy of any material utilizing or referring to any licensed mark and to disapprove thereof if it fails to comply with Licensee's obligation herein.

GOODWILL IN LICENSED MARKS

8.1 Licensee agrees that the essence of this Agreement is founded on the goodwill associated with the licensed marks and the value of that good will in the minds of the consuming public. Licensee recognizes that the licensed marks belong solely to the University. Any changes to the licensed marks which may be created by or for the Licensor will thereafter become the exclusive property of the Licensor. Licensee agrees that nothing herein shall give to Licensee any right, title or interest in any licensed mark (except the University's express authorization and consent for the Licensee to use the licensed marks in accordance with the terms hereof) greater than Licensee has under this agreement, or which are later transferred to Licensee by the University, and that the Licensee shall provide to the University within ten (10) business days after written request by the University, copies of all graphics currently in use and/or those used in the past. Licensee shall not procure any trademark or copyright registration with respect to the licensed marks.

INDEMNIFICATION/HOLD HARMLESS

9.1 The University shall have no liability for any licensed article manufactured or sold by the Licensee, and the Licensee shall indemnify, hold harmless and defend the University and its officers, employees, servants and agents thereof from any and all product liability claims caused by or arising from workmanship, material or design of any licensed article manufactured or sold by Licensee.

PERSONAL LICENSE

- 10.1 This Agreement and any rights herein granted are personal to the Licensee and the University and shall not be assigned, sublicensed or encumbered without the written consent of the Licensor which shall not be unreasonably withheld.
- 10.2 Nothing in this Agreement shall be construed to place the parties in the relationship of partners or joint venturers or agents and neither the Licensee nor the University shall have the power to obligate or bind each other in any manner whatsoever, and the University in no way represents itself as guarantor of the quality of any product produced by the Licensee pursuant to this Agreement. The licensee agrees that it will neither state nor imply, either directly or indirectly, that the Licensee, or its activities, other than pursuant to exercise of the license herein, are supported, endorsed or sponsored by the University and, upon the direction of the University, shall issue express disclaimers to that effect.

ENFORCEMENT

11.1 The University will endeavor to investigate unauthorized use by others of the licensed marks brought to its attention by Licensee. However, nothing in this Agreement shall require the University to bring suit or take action for infringement of any of the licensed marks.

LIABILITY INSURANCE

- 10.3 The Licensee shall throughout the Term of this Agreement obtain and maintain at its own cost and expense from a qualified insurance company standard Product Liability Insurance. The insurance company shall be acceptable to Licensor (see Schedule A).
- 10.4 Such policy shall provide protection against any and all claims, demands and caused of action arising out of any defects or failure to perform, alleged or otherwise of the licensed products or any material used in connection with the licensed marks. The amount of coverage shall be in the amount recited in Schedule A attached hereto. The policy shall provide for thirty (30) days notice to the Licensor from the insurer by Registered or Certified Mail, return receipt requested, in the event of any modification, cancellation or termination. This policy shall be written on an occurrence type form. Policy shall name The Trustees of University of Southern Indiana as an additional insured. The Licensee agrees to furnish the Licensor a certificate of insurance evidencing same within thirty (30) days after execution of this Agreement; and in no event shall the Licensee manufacture, sell, promote or distribute the licensed products prior to receipt by the Licensor of such evidence of insurance.

ON-SITE COMPLIANCE REVIEWS

13.1 The University or representatives designated by it may, upon ten (10) business days' notice, examine and copy the books and records of Licensee relating to this Agreement from time to time during reasonable business hours. Licensee shall promptly provide access to those books and records upon the University's request. All such reviews shall be at the Licensor's expense except that, if such examination shall reveal an error in Licensee's favor in royalties paid or payable hereunder of more than five percent (5%) or if such examination is made because of the Licensee's failure to pay any amounts due hereunder, then the Licensee shall reimburse the Licensor upon demand for the cost of the review up to a maximum of One Thousand Dollars (\$1,000). Licensee shall provide such reasonable additional information as the Licensor may request regarding sales.

TERMINATION OF AGREEMENT

14.1 Without prejudice to any other right, the University shall have the right to terminate this Agreement as to any licensed article upon written notice to Licensee if:

- A. Licensee shall fail to submit timely royalty reports and to make royalty payments due hereunder or to deliver any of the statements herein referred to, and such default shall continue for a period of thirty (30) days after written notice of such default is given to the Licensee.
- B. Licensee shall not have begun the bona fide manufacture, distribution and sale of such licensed article hereunder within twelve (12) months from the date of this Agreement.
- C. Licensee shall fail to manufacture, distribute or sell such licensed article hereunder for a period of twelve (12) consecutive months.
- D. Immediate Right of Termination. The Licensor shall have the right to immediately terminate this Agreement by giving written notice to the Licensee if the Licensee does any of the following:
 1. Manufactures, sells, promotes, distributes and/or uses, in any way, any licensed product without having the prior written approval of the Licensor as provided for by the provisions of this Agreement, or continues to manufacture, sell, promote, distribute and/or use, in any way, any licensed product after receipt of notice from the Licensor disapproving or withdrawing approval of same.
 2. Breaches any of the conditions or provisions of this Agreement and fails to correct such breach within thirty (30) days after Licensor has given Licensee notice thereof.
- E. Immediate Right to Terminate a Portion of this Agreement. The Licensor shall have the right to immediately terminate the portion(s) of this Agreement relating to any licensed product(s) in connection with which the Licensee becomes subject to any

voluntary or involuntary order of any governmental agency involving the recall of any of the licensed products and/or promotional and packaging material because of safety, health or other hazards or risks to the public.

F. Right to Termination on Notice. This Agreement may be terminated by either party without cause upon sixty (60) days written notice to the other party.

14.2 If this Agreement is terminated pursuant to paragraph 14 thereof, the Licensee will furnish to the University a statement showing the number and description of licensed articles on hand or in process within thirty (30) days after notice of termination is given.

AFTER TERMINATION

15.1 After termination of this Agreement, the Licensee shall have no further express authorization or consent from the University to manufacture, advertise, distribute, sell or otherwise deal in any licensed articles. If termination is not based upon conditions outlined in Paragraphs 6 and 7 the Licensee may deal in and dispose of licensed articles which are on hand or under contractual commitment at the time of such termination for a period of one hundred eighty (180) days thereafter, provided all royalty payments then due are first made to the University and statements of payment with respect to that one hundred eighty (180) day period are thereafter made in accordance with the terms of this Agreement.

16. NOTICES

16.1 All notices, consents, requests, waivers and other communications to be given hereunder shall be given in writing by Registered or Certified Mail, postage prepaid, return receipt requested. If to Licensor: **Bookstore, University of Southern Indiana, University Center, 8600 University Boulevard, Evansville, Indiana 47712-3597.**

If to Licensee: at the address indicated on Schedule A.

16.2 Either party may change the address to which its notice shall be sent by giving notice thereof in accordance with this paragraph.

ENTIRE AGREEMENT

17.1 This Agreement constitutes the entire agreement and understanding between the parties hereto and cancels, terminates and supersedes any prior agreement or understanding relating to the subject matter hereof between the Licensee and the University. There are no representations, promises, agreements, warranties, covenants or undertakings other than those contained herein. None of the provisions of this Agreement may be waived. This Agreement may be amended only by a written modification hereto signed by both parties to this Agreement.

LAWS GOVERNING

18.1 This Agreement shall be construed in accordance with and any controversy arising out of or relating to this Agreement, or any alleged breach thereof, shall be governed by the laws of the State of Indiana.

The parties below agree not to discriminate against any individual or company on the basis of race, creed, color, national origin, age or sex. EXECUTED by the parties hereto on the day and year first above written, in duplicate copies, each of which shall be deemed an original.

LICENSEE:

Company Name

Signature of Authorized Company Agent

Title of Agent

Date

LICENSOR:

THE TRUSTEES OF UNIVERSITY OF SOUTHERN INDIANA

BY: _____
Signature

Bookstore Manager

Date