

## TRADEMARK LICENSE AGREEMENT

This Trademark License Agreement (**Agreement**) is made by and between the University of Alaska Fairbanks (**UAF**), a corporation created and existing under the Constitution and laws of the State of Alaska, and \_\_\_\_\_, (**LICENSEE**) an Alaskan corporation, effective as of the date of last signature (the **EFFECTIVE DATE**).

**Whereas**, UAF holds exclusive rights in certain trademarks and service marks and LICENSEE desires to use those marks in association products made for UAF departments and approved organizations;

**Therefore**, in consideration of the promises exchanged in this Agreement, the parties agree as follows.

### Section 1. Definitions

- 1.1 The term **LICENSED MARKS**, as used in this Agreement, shall mean those marks identified on the UAF webpage "Using the UAF Logo," <http://www.uaf.edu/univrel/guide/logo/index.html>.
- 1.2 The term **LICENSED PRODUCTS** and **SERVICES**, as used in this Agreement, shall mean those products and services identified in Schedule A to this Agreement.
- 1.3 The term **TERRITORY**, as used in this Agreement, shall refer to the Fairbanks, Alaska.
- 1.4 The term **GROSS SALES** as used in this Agreement, shall mean LICENSEE'S billing price to UAF departments or approved associated organizations.
- 1.5 **SOLD** (or **SALE**) means that a LICENSED PRODUCT is shipped, distributed, paid for, or billed or invoiced (whichever comes first).
- 1.6 **QUALITY** means an acceptable level of quality to UAF.
- 1.7 **CONTRACT YEAR** shall mean the consecutive twelve-month period commencing each July 1, and terminating the following June 30, **EXCEPT** that the first **CONTRACT YEAR** may be less than twelve months, commencing on the **EFFECTIVE DATE** and terminating on the next June 30.
- 1.8 **TERM** means the effective period of this agreement, which shall be for one year after the **EFFECTIVE DATE**. Each year thereafter, this Agreement shall automatically renew for an additional one-year term unless either party gives written notice to the other, at least 60 days prior to the end of such term or renewed term, of an intent to terminate.

### Section 2. License Grant

UAF grants to LICENSEE a nonexclusive license to use the LICENSED MARKS in association with the manufacture and sale of the LICENSED PRODUCTS for internal use by UAF departments and approved associated organizations within the TERRITORY. LICENSEE shall have no right to sublicense any rights to use the LICENSED MARKS. LICENSEE may not transfer the rights under this Agreement to any other party without prior approval from UAF.

### Section 4. Statements and Books of Account

- 4.1 LICENSEE shall submit semi-annual statements to UAF in the format and containing the information specified in Attachment A hereto. Such statements shall be submitted to UAF within thirty (30) days after the end of each six-month period. All such statements should be mailed to:  
Intellectual Property and Licensing Office  
University of Alaska Fairbanks  
P. O. Box 757270  
Fairbanks, Alaska 99775-7270

- 4.3 LICENSEE agrees to keep accurate books of account and records covering all transactions relating to the LICENSED PRODUCTS or SERVICES. UAF or its authorized representative shall have the right during normal business hours of the day at LICENSEE'S usual place of business, upon ten (10) days written notice, to examine and copy said books of account and records and all other documents and material in the possession or under the control of LICENSEE insofar as they relate to the LICENSED PRODUCTS or SERVICES in order to determine the accuracy of the statements delivered by LICENSEE to UAF. All such books of account and records shall be kept available during the TERM and for at least one year thereafter.

**Section 5. Goodwill in LICENSED MARKS**

- 5.1 LICENSEE agrees that the essence of this agreement is founded on the goodwill associated with the LICENSED MARKS and the value of that goodwill in the minds of the consuming public. LICENSEE agrees that it is critical that such goodwill be protected and enhanced and, toward this end, LICENSEE shall not during the TERM or thereafter;
- (a) attach the title or any right of UAF in or to the LICENSED MARKS;
  - (b) apply to register or maintain any application or registration of the LICENSED MARKS or any other mark confusingly similar thereto;
  - (c) use any colorable imitation of any of the LICENSED MARKS, or any variant form (including variant design forms, logos, colors, or type styles) of the LICENSED MARKS not specifically approved by UAF;
  - (d) misuse the LICENSED MARKS;
  - (e) take any action that would bring the LICENSED MARKS into public disrepute;
  - (f) use the LICENSED MARKS, or any mark or name confusingly similar thereto, in its corporate or trade name;
  - (g) take any action that would tend to destroy or diminish the goodwill in the LICENSED MARKS.
- 5.2 All use by LICENSEE of the LICENSED MARKS inures to the benefit of UAF.
- 5.3 LICENSEE agrees to cooperate fully with UAF in securing and maintaining the goodwill of UAF in the LICENSED MARKS.

**Section 6. Quality Control: Packaging and Advertising Approval**

- 6.1 All LICENSED PRODUCTS shall be QUALITY goods. UAF shall have the right through its employee(s) or designated representative(s) during normal business hours to inspect the facilities and product inventory of LICENSEE to assure itself that QUALITY is being maintained at all times and to verify compliance with the criteria specified in this agreement.
- 6.2 LICENSEE acknowledges that if LICENSED PRODUCTS or SERVICES manufactured and sold by it were of inferior quality in design, material, or workmanship, the substantial goodwill that UAF possesses in MARKS would be impaired. Accordingly, LICENSEE agrees that all LICENSED PRODUCTS or SERVICES shall be of high quality. To this end, LICENSEE shall, before it sells or distributes any of the LICENSED PRODUCTS or SERVICES, furnish to UAF, free of cost, for its approval, a sample of each LICENSED PRODUCT or SERVICE, together with any associated carton or container, packing or wrapping material. UAF shall have two (2) weeks from receipt of LICENSED PRODUCTS or SERVICES in which to reject the sample. In absence of rejection, or upon earlier written acceptance, the sample shall be deemed as accepted as an example of the quality for the LICENSED PRODUCT or SERVICE. The LICENSED MARKS may be applied by

LICENSEE only to such LICENSED PRODUCTS or SERVICES as are manufactured in accordance with the corresponding examples accepted hereunder and which have substantially the same relative quality position in the market place as do the examples thereof; provided, however that LICENSEE may furnish to UAF further sample of any LICENSED PRODUCT or SERVICE of which it desires to change the quality, style and/or appearance and UAF shall have two (2) weeks from receipt thereof in which to reject in writing said further sample, failure to so reject to be deemed as approval thereof as an example of quality for that LICENSED PRODUCT or SERVICE.

- 6.3 LICENSEE shall permit UAF and its agents to periodically inspect the facilities and premises of LICENSEE during normal business hours, including any facilities in which the LICENSED PRODUCTS are made, processed, packaged, or stored, to ensure that the LICENSED PRODUCTS are of sufficient quality. If the LICENSED PRODUCTS are produced by a subcontractor, LICENSEE shall obtain agreements with such subcontractors, as necessary, to allow UAF and its agents to inspect the subcontractor's facilities from time to time during normal business hours.

#### **Section 7. Marking**

LICENSEE agrees that it will designate the LICENSED PRODUCTS or SERVICES in a manner as specified in writing by UAF, to indicate the rights to UAF in the LICENSED MARKS, including registration status of the LICENSED MARKS, and that the products or services are manufactured pursuant to license.

#### **Section 8. Default and Termination**

- 8.1 In the event LICENSEE fails to submit timely statements to UAF as provided in this agreement, or in the event LICENSEE becomes insolvent, makes any assignment for the benefits of creditors, or is subject to any bankruptcy or receivership proceedings, or in the event either party fails to comply with any of its obligations under this agreement, the other party may serve on the defaulting party a Notice of Default. If the default is not cured with thirty (30) days from service of the Notice of Default, the other party may then serve its Notice of Termination, and this agreement shall be automatically terminated upon service of said Notice of Termination.
- 8.2 Either Party may terminate this agreement at any time without cause with two (2) months' written Notice of Intent to Terminate. In such event, this agreement shall be automatically terminated two (2) months after service of said Notice of Intent to Terminate.
- 8.3 Unless sooner terminated pursuant to the above provisions, this agreement shall remain in effect through the TERM described in paragraph 1.8 above.

#### **Section 9. Effect of Termination**

- 9.1 Upon expiration or termination of this agreement, all rights granted to LICENSEE hereunder shall cease, and LICENSEE will refrain from further use of LICENSED MARKS or any other mark or name reasonably deemed by UAF to be similar to LICENSED MARKS in condition with manufacture, sale, distribution, or promotion of products or services. LICENSEE acknowledges that failure to comply with this provision will result in immediate and irreparable harm affording injunctive and any and all other appropriate relief to UAF.
- 9.2 Upon expiration or termination of this agreement, LICENSEE shall not operate its business in any manner that would falsely suggest to the public that this agreement is still in force, or that any relationship exists between LICENSEE and UAF.
- 9.3 Upon the earlier of within 30 days of the termination of this Agreement or the completion of the sale of any remaining inventory, LICENSEE shall provide to UAF a final statement of sales in accordance with Section 4 of this Agreement.

#### **Section 10. Enforcement**

LICENSEE shall not institute any proceedings for infringement of the LICENSED MARKS without the prior written approval of UAF. LICENSEE shall cooperate fully and in good faith with UAF in the event

any infringement proceedings arising out of or related to any use of the LICENSED MARKS are brought by or against any third party. LICENSEE shall not challenge, directly or indirectly, UAF's right, title, or interest in the LICENSED MARKS.

**Section 11. Insurance and indemnity**

- 11.1 During the TERM of this agreement, LICENSEE shall maintain in effect insurance for both bodily injury and property damage liability, including product liability, in per occurrence limits of not less than One Million U.S. Dollars (US \$1,000,000) for personal injury and not less than One Million U.S. Dollars (US \$1,000,000) for property damage. The policy(ies) shall include an endorsement naming UAF as an additional insured insofar as this agreement is concerned and provide that written notice shall be given to UAF at least thirty (30) days prior to cancellation or material change in the form of such policy(ies). LICENSEE shall furnish UAF, prior to commencing any performance hereunder, certificates of insurance with the endorsements required herein. UAF shall have the right to inspect the original policies of such insurance.
- 11.2 LICENSEE agrees that it is wholly responsible for all products or services manufactured or SOLD by it, including all LICENSED PRODUCTS or SERVICES, and that UAF shall have no liability for any items, including any LICENSED PRODUCT or SERVICE, manufactured or SOLD by LICENSEE.
- 11.3 LICENSEE agrees to indemnify and hold harmless UAF, its officers, employees, and agents thereof, from any claims, demands, causes of action, and damages, including reasonable attorney's fees, caused by or arising out of use of any LICENSED MARK or workmanship, material or design of any LICENSED PRODUCT or SERVICE, including without limitation claims or actions for product liability, patent, or copyright infringement.

**Section 12. No agency relationship**

The parties intend to establish a licensee-licensor relationship by this Agreement. Nothing in this Agreement shall be construed to establish a joint venture, agency, or partnership relationship.

**Section 13. Authority, compliance**

Each party represents and warrants that its entry into this Agreement has been duly authorized by all necessary action, is lawful, and does not violate any other agreement to which it is a party. Each party further represents and warrants that its business conduct in performing under this Agreement will conform to all applicable and valid laws, rules, and regulations.

**Section 14. Notices**

All notices or demands required to be made or permitted under this agreement shall be deemed served when deposited in the United States mail, first class postage prepaid, certified or registered mail, return receipt requested, addressed as provided in paragraph 4.1 of this agreement, or to such other address as either party may from time to time designate in writing.

**Section 15. Miscellaneous provisions**

- 15.1 This Agreement constitutes the entire agreement between the parties regarding the subject matter of the Agreement and supersedes all proposals, oral or written, and all negotiations, conversations, commitments, and other communications between the parties with respect to the subject matter of this Agreement.
- 15.2 Any provision that may be reasonably interpreted to survive the termination or expiration of this Agreement shall survive to the extent required for the full observation and performance of the terms of this Agreement.
- 15.3 This Agreement shall not be modified except by a written agreement signed by the duly authorized representatives of LICENSEE and UAF.

- 15.4 This Agreement may be executed in counterparts, each of which when executed shall be deemed to be an original and all of which counterparts taken together shall constitute the same instrument.
- 15.5 This Agreement shall be construed in accordance with the laws of the State of Alaska without reference to its choice or conflict of laws provisions. This Agreement shall not be construed for or against either party as the drafter.
- 15.6 Failure by either party to enforce at any time or for any period of time the provisions of this Agreement shall not be construed as a waiver of such provisions, and shall in no way affect such party's rights to enforce such provisions at a later time.
- 15.7 If any part of this Agreement is determined by a court or tribunal of competent jurisdiction to be wholly or partially unenforceable for any reason, such unenforceability shall not affect the balance of this Agreement, which shall remain in full force and effect.

*The parties acknowledge the acceptance of the terms and conditions set forth in this Agreement through the signatures of their duly authorized representatives on the dates appearing under such signatures below.*

**University of Alaska Fairbanks**

**LICENSEE**

By: \_\_\_\_\_  
 Name: K. Diane McLean  
 Title: Director, Intellectual Property & Licensing

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

Date: \_\_\_\_\_  
 Address:  
 P. O. Box 757270  
 University of Alaska Fairbanks  
 Fairbanks, Alaska 99775-7270

Title: \_\_\_\_\_  
 Date: \_\_\_\_\_  
 Address: