



TRADEMARK LICENSE

This License Agreement (“Agreement”), effective as of the date signed by both parties (the “Effective Date”), is between ECTOR COUNTY INDEPENDENT SCHOOL DISTRICT (“ECISD”) and _____ (“LICENSEE”).

WHEREAS, ECISD is the owner of the trademarks listed on the attached Exhibit A (“the Marks”); and

WHEREAS, LICENSEE desires to obtain from ECISD a license to use the Marks in connection with the manufacture, sale, distribution and promotion of the goods/services listed on attached Exhibit A (“Licensed Product(s)”) in the United States; and

NOW, THEREFORE, for good and valuable consideration, the parties, each intending to be legally bound hereby, do promise and agree as follows.

1. Warranties. ECISD represents and warrants to and covenants with LICENSEE that ECISD is the owner of the Marks, and has the right and authority to grant the rights granted to LICENSEE in this Agreement.

2. License Grant. ECISD grants LICENSEE the non-exclusive, non-assignable, non-sublicensable right to manufacture, sell, package, distribute, promote and advertise, in the United States only, the Licensed Product(s) carrying the Marks.

3. Quality and Approval. High product quality and accurate reproduction of the Marks are of uppermost importance. Accordingly, LICENSEE must submit to ECISD for approval sample(s) of all Licensed Product(s), packaging, advertising and other materials bearing the Marks before LICENSEE advertises, publishes, sells or uses them. ECISD will attempt to answer promptly. With respect to such Licensed Product(s), packaging and other materials (except advertising), if ECISD does not reply within sixty (60) days of receipt, then it will be deemed disapproved. With respect to advertising, if ECISD does not reply within thirty (30) days, then it will be deemed approved. LICENSEE will not alter or modify the approved Licensed Product(s), packaging, advertising or other samples without first obtaining written approval from ECISD. LICENSEE will not sell Licensed Product(s) bearing the Marks without ECISD’s written approval. All Licensed Product(s) will be of at least the same quality as the approved sample(s), and LICENSEE will comply with all applicable government regulations. LICENSEE will furnish additional sample(s) on reasonable request. LICENSEE will not subcontract the manufacturer of the Licensed Product(s) without ECISD’s prior written approval. ECISD may inspect the Licensed Product(s) on LICENSEE’s premises during business hours.

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4. Artwork. On request, ECISD will provide to LICENSEE artwork, photographs, drawings, samples, graphic standards or other materials that LICENSEE may reasonably require regarding the Marks. LICENSEE will submit any new designs on artwork prepared by or for it, incorporating the Marks, to ECISD for written approval prior to use. ECISD will be the copyright owner of any material produced or used by LICENSEE that incorporates the Marks. LICENSEE agrees to assist ECISD with taking any efforts to register copyrights with the United States Copyright Office any material produced or used by LICENSEE that incorporates the Marks, with ECISD listed as the Claimant in the copyright application(s).

5. Manner of Use and Legal Notices. ECISD will separately provide in writing to LICENSEE directions concerning permissible use of the Marks and the language to be used for trademark and copyright notices and legend. LICENSEE will print ECISD's trademark and copyright notices, together with a legend stating that the Marks are used under license from ECISD, on the Licensed Product(s) and related materials as directed by ECISD.

6. Best Efforts. LICENSEE will use its best efforts to promote, market, sell and distribute the Licensed Products.

7. Records. LICENSEE will maintain comprehensive and accurate royalty records for three years following the payments covered by the records. ECISD may inspect these records on reasonable notice.

8. License Fee. LICENSEE will pay a one-time, non-refundable license issue fee of \$100 USD upon the Effective Date, which is not to be credited toward royalty payments owed or paid to ECISD.

9. Royalties and Reports. No later than thirty (30) days following both June 30 and December 31 of each year, LICENSEE will pay ECISD 8% of the net sales price of all Licensed Product(s) sold during the preceding six months. Net sales price is the amount charged less quantity discounts, returns and other deductions or discounts. The cost of goods sold, overhead and other direct and indirect expenses will not be deducted from the net sales price. If LICENSEE does not charge a recipient for Licensed Product(s), LICENSEE will pay the royalty it would have paid for a comparable cash or credit sale. LICENSEE will pay an annual minimum royalty of \$50 USD for each one-year period subsequent to the Effective Date. If the annual minimum royalty amount exceeds the royalties otherwise to be paid by LICENSEE to ECISD for the year, then LICENSEE will pay the difference within thirty (30) days after December 31 of each year, subject to prorating for partial years. No later than thirty (30) days following both June 30 and December 31 of each year, LICENSEE will provide ECISD with the total number of Licensed Product(s) sold, the net sales amounts and the royalties due for the preceding six months. This information, or a statement that there were no such sales, must be in writing and certified by LICENSEE.

10. Renewal. Provided that LICENSEE has submitted payment of its minimum royalties to ECISD and has otherwise remained in compliance with the other terms of this Agreement, this Agreement shall automatically renew for subsequent one-year periods.

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11. Payment. Unless otherwise directed by ECISD, all payments by LICENSEE will be made in United States dollars to Ector County Independent School District and submitted to the following address:

Associate Superintendent
Ector County Independent School District
P. O. Box 3912
Odessa, Texas 79760

12. Relationship. LICENSEE is a related company under the Lanham Act, but is an independent contractor, not an agent or employee, of ECISD. ECISD is not liable for LICENSEE's acts or omissions. This is not a franchise agreement and does not create a partnership or joint venture between the parties, nor shall this Agreement give either party the power to obligate or bind the other in any manner whatsoever other than as expressly provided in this Agreement.

13. Limitations. LICENSEE will not use ECISD's name or Marks in its business except in accordance with this Agreement and will not combine the Marks with any other marks, names or symbols without ECISD's written consent.

14. Trademark Ownership. LICENSEE hereby acknowledges that ECISD is the sole and rightful owner of the Marks and all goodwill associated with the Marks and that ECISD and its permitted successors and assigns shall retain full right to the Marks, and all goodwill and registrations associated therewith. LICENSEE will not alter, modify, dilute or misuse the Marks; bring them into disrepute; or dispute or otherwise challenge the ownership, title, strength or validity of the Marks.

15. Trademark Protection. LICENSEE will not attempt to register the Marks with any state or federal governmental office of the United States or any foreign governmental office. At ECISD's request, LICENSEE shall execute all documents reasonably required by ECISD to confirm ECISD's ownership of all rights in and to the Marks and the respective rights of ECISD and LICENSEE under this Agreement. LICENSEE shall cooperate with ECISD in connection with the filing and prosecution by ECISD of applications in ECISD's name to register the Marks and the maintenance and renewal of such registrations as may issue.

16. Infringements. LICENSEE will immediately advise ECISD of any actual or suspected third party infringements of any of the Marks. ECISD will have the sole right to take legal action. LICENSEE will provide ECISD all reasonable cooperation and assistance in connection with such disputes. LICENSEE also will cooperate with ECISD to otherwise protect, defend and enforce the Marks.

17. Product Liability. ECISD is not responsible for the Licensed Product(s). LICENSEE shall indemnify and hold harmless ECISD and its affiliated entities and members of their governing board and their respective officers, employees and agents, from any and all claims, suits, damages, attorneys' fees, costs and expenses arising from LICENSEE's performance and activities under this Agreement, whenever and however asserted or established, whether or not there is negligence on the part of ECISD.

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18. Termination. This Agreement will terminate one year from the Effective Date, unless:

(a) renewed as provided by this Agreement; or

(b) sooner terminated by:

(1) either party, without cause, upon sixty (60) days written notice; or

(2) ECISD, upon thirty (30) days written notice if LICENSEE breaches this Agreement, unless LICENSEE cures its breach to ECISD during the thirty (30) day period.

Paragraphs 7 and 12 through 28 shall survive expiration or termination of this Agreement.

19. Cessation. On termination, LICENSEE will immediately stop using the Marks. However, LICENSEE may sell Licensed Product(s) in existence at termination within the three (3) months following termination of the Agreement, but only if LICENSEE:

(a) pays ECISD all royalties due at termination within thirty (30) days after termination;

(b) furnishes a royalty report on all sales up to termination; and

(c) furnishes a list of all Licensed Product(s) in existence at termination and allows ECISD to inspect the inventory upon ECISD's request.

LICENSEE will destroy all Licensed Product(s) that do not qualify for post-termination sale or are not sold within the three months after termination, and LICENSEE will promptly furnish a written report on the number and types of items destroyed.

20. Remedies. Upon LICENSEE's default or breach of this Agreement; any infringement by LICENSEE of ECISD's trademark, copyright or other proprietary rights; defamation or other actionable claims, ECISD may recover from LICENSEE all expenses, attorney's fees and costs incurred in any resulting legal action. Any such default or breach will irreparably harm ECISD. For resolution of any dispute under this Agreement that is not submitted to alternative dispute resolution, the parties will submit to the personal jurisdiction of the federal courts of the Western District of Texas-Midland Division and state courts within Ector County, Texas.

21. Waiver. Any waiver of a breach by either party shall not be a waiver of any subsequent or other breach.

22. Entire Agreement. This Agreement contains the entire agreement between ECISD and LICENSEE with respect to the Marks, and supersedes all other negotiations, agreements and representations, whether in writing or oral. This Agreement will be binding upon and shall inure to the benefit of ECISD's successors and assigns and LICENSEE's successors and assigns.

23. Captions. The captions used in connection with the paragraphs of this Agreement are inserted only for the purpose of reference. Such captions shall not be deemed to govern, limit, modify or in any other manner affect the scope, meaning or intent of the provisions of this Agreement or any part thereof; nor shall such captions otherwise be given any legal effect.

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24. Severability. If any part of this Agreement is held invalid or unenforceable, such provision shall be given the maximum effect permitted under applicable law and be replaced with a valid and enforceable provision that most closely reflects the intention of the parties, and the remainder of this Agreement will remain valid and fully enforceable.

25. Modification. This Agreement may be amended or modified only by a written agreement signed by ECISD and LICENSEE.

26. Applicable Law. This Agreement will be governed by the laws of the State of Texas without regard to the State of Texas's conflict of laws provisions.

27. Notices. Notices shall be received when delivered in person, sent by overnight courier or mailed by certified first class mail to:

Licensor:

Associate Superintendent
Ector County Independent School District
P. O. Box 3912
Odessa, Texas 79760

LICENSEE:

28. Authorization. Those signing are authorized to bind ECISD and LICENSEE to the terms of this Agreement:

Licensor: ECTOR COUNTY INDEPENDENT
SCHOOL DISTRICT

Licensee: _____

By: _____

By: _____

Name: Dr. Anthony Sorola

Name: _____

Title: Associate Superintendent

Title: _____

Date: _____

Date: _____

EXHIBIT A

1. **Marks**

The Marks covered by this Agreement are:

2. **Licensed Products**

The Licensed Products covered by this Agreement: