

QUEEN'S UNIVERSITY TRADEMARK LICENSING AGREEMENT

SCHEDULE A
STANDARD TERMS AND CONDITIONS

DEFINITIONS

- 1.1 The terms herein defined and used in the Trademark License Agreement between the Parties (the Agreement), which includes Schedule A) shall, unless the context clearly indicates to the contrary, have the meaning set forth in this Article.
- 1.2 "Licensed Marks" means those Queen's University trademark(s), service marks, trade names and related designs or symbols licensed to the Licensee under the Agreement as listed in Schedule B.
- 1.3 "Licensed Products" means any product or part thereof listed in Schedule D bearing one or more Licensed Marks.
- 1.4 "Net Sales" means the gross invoice prices at which the "Licensed Products" are sold, less actually allowed cash and trade allowances, sales commissions, discounts and returns allowances or adjustments actually granted to customers.
- 1.5 "Term" means the term provided for in Section 5 of the Agreement and any and all renewals or extensions thereof.
- 1.6 "QUEEN'S Trademarks" means all Queen's University trademark(s), service marks, trade names and related designs or symbols

GRANT OF LICENSE

- 2.1 LICENSEE shall not, except with the prior approval of QUEEN'S, through University Relations.
- (a) manufacture or sell Licensed Products or otherwise use QUEEN'S Trademarks or use QUEEN'S Trademarks in conjunction with any other goods or products or otherwise use QUEEN'S trademarks;
 - (b) manufacture or sell Licensed Products or otherwise use QUEEN'S Trademarks in conjunction with any other marks or designs, whether Trademarks or otherwise; or
 - (c) apply by any method any other mark or design of any nature on any product marked with a QUEEN'S Trademark, whether or not the QUEEN'S Trademark was applied on the said product by LICENSEE.
- 2.2 No products which have been marked with QUEEN'S Trademarks in any fashion by a third party other than a holder of a QUEEN'S University Trademark License in good standing shall be sold or distributed by LICENSEE unless LICENSEE has obtained permission in advance from QUEEN'S for such sale or distribution; LICENSEE shall enter into an exclusive written agreement with the said third party for the purpose, a copy of which shall be delivered to QUEEN'S; LICENSEE shall be responsible for the payment of royalties for such Licensed Products.

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ROYALTY PAYMENTS

- 3.1.1 Within one month following the end of each calendar quarter during the Term of the Agreement, whether or not a royalty is payable, LICENSEE shall deliver to QUEEN'S, through University Relations., quarterly reports showing for the three preceding calendar months the amount of Net Sales in respect of which a royalty is payable, including to whom product is sold and which Queen's University trademark has been used on each product. Each such report shall be accompanied by payment to QUEEN'S of the full amount in Canadian dollars shown by the report to be payable to QUEEN'S.
- 3.1.2 A royalty obligation shall accrue upon the sale of the Licensed Products regardless of the time of collection by Licensee. For purposes of the Agreement, a Licensed Product shall be considered "sold" upon the date such Licensed Product is billed, invoiced, shipped, or paid for, whichever event occurs first.
- 3.3 LICENSEE agrees to keep full, accurate and complete records and books of account relating to its operation under the license and for the accurate determination of royalties to be made under the Agreement and shall make the same available for inspection by an auditor of QUEEN'S choosing at the request of QUEEN'S on reasonable notice and during normal business hours.
- 3.4 No royalties shall be payable for any sale of the Licensed Products where full royalties in respect of the use of the QUEEN'S trademarks have already been paid to QUEEN'S by a third party; provided that the onus of proving that such royalties have been paid shall be the responsibility of the LICENSEE.
- 3.5 LICENSEE may sell products for which royalties have already been paid.

LATE PAYMENT CHARGE

4. A charge of 2% per month shall be payable by LICENSEE to QUEEN'S on any royalty due after the one month period allowed for payment in any quarter.

TRADEMARK USE

- 5.1 The subject products which are manufactured, processed or otherwise prepared by LICENSEE must meet the following requirements:
- (a) They shall meet qualitative standards acceptable to QUEEN'S, which standards shall be in the sole discretion of QUEEN'S;
 - (b) QUEEN'S, through University Relations, reserves the right, in its sole discretion, to grant or deny permission for the use of the License. Samples of the trademarked goods may be required by QUEEN'S for examination and approval;
 - (c) LICENSEE will contact QUEEN'S, through University Relations to review and approve designs and graphics showing the proposed use of any LICENSED MARKS on LICENSED PRODUCT, prior to any production of such LICENSED PRODUCT. If LICENSEE wishes to make any change(s) to the nature or use of the LICENSED MARKS on any goods and/or to alter the product structure or design of the goods, it understands and agrees that it shall submit the change(s) for approval to QUEEN'S, through University Relations., before the manufacture of any goods reflecting the change(s).
- 5.2 Notwithstanding subparagraphs 2.1 (a) and 2.1 (b), the LICENSEE may use QUEEN'S Trademarks in conjunction with another mark or design consisting of words or otherwise, as long as prior approval has been received in writing from QUEEN'S, through University Relations.

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RENEWAL

6. If LICENSEE wishes to renew the License Agreement, LICENSEE shall, in writing not less than thirty (30) days prior to the expiration date of the term, request of QUEEN'S a renewal of this License Agreement under the same terms and conditions save for the Article. Renewal shall be at the sole discretion of QUEEN'S. Absent QUEEN'S written consent to a renewal, this Agreement shall expire at the end of business on the last stated date of its Term.

AMENDMENT

- 7.1 If a Party to the Agreement wishes, at any time during the Term of this Agreement, to amend any term or provision or part thereof of the Agreement, it shall provide the other Party with ninety (90) days written notice of its desire to do so.
- 7.2 The list of Licensed Products set forth in Schedule D and the QUEEN'S Trademarks may be amended from time to time. The Parties may agree in writing to extend the terms of the Agreement to additional wares and/or other QUEEN'S Trademarks (Expanded Use). The terms and conditions of this Expanded Use shall be deemed to apply to any such Expanded Use.

TERMINATION

- 8.1 If LICENSEE shall
- (a) fail to make any payment provided for by the Agreement within the time specified thereof; or
 - (b) fail to perform promptly and comply fully with each and every other of its covenants and the terms and conditions set forth in the Agreement; or
 - (c) become insolvent or bankrupt
- QUEEN'S may then, or at any time thereafter while such default or condition continues, at its option, terminate the Agreement by giving LICENSEE at least thirty (30) days prior written notice of such termination.
- 8.2 If notice of termination is given because of the failure of LICENSEE to perform or comply fully with any of its covenants or with any term or condition of the Agreement, then termination shall not become effective if, within such thirty (30) day period of notice, LICENSEE shall correct such failure.
- 8.3 Termination shall be effective thirty (30) days after the giving of notice by QUEEN'S if the failure is not corrected within such thirty (30) day period.
- 8.4 Failure by LICENSEE to exploit the Trademarks in a commercially acceptable fashion shall entitle QUEEN'S, in its sole discretion, to refuse to renew the Agreement. LICENSEE shall be deemed to have discharged its obligations under this Article if the royalties provided for in Article 3 have been timely paid to QUEEN'S.
- 8.5 Termination, including by expiry, of the Agreement shall not relieve LICENSEE from the obligation to pay the royalties or any other sum due to QUEEN'S under the Agreement on the effective date of termination; LICENSEE shall remit any royalties and interest payments owing to QUEEN'S pursuant to the Agreement and shall provide QUEEN'S with a final written report setting forth the amount of Net Sales of the products sold in the period or quarter, or any portion thereof, preceding the effective date of termination.

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- 8.6 Upon termination of the Agreement, including by expiry, LICENSEE shall:
- (a) immediately cease all manufacture, sale, and distribution by other means, of all Licensed Products;
 - (b) immediately cease all use or advertising of the Licensed Marks and shall not use any marks confusingly similar with the Licensed Marks in any manner whatsoever; and
 - (b) surrender to QUEEN'S or to an authorized representative of QUEEN'S, all material and Licensed Products bearing the Licensed Trademarks, within 30 days of the effective date of termination.
- 8.7 LICENSEE further agrees that on the termination of the Agreement, no monetary amount shall be assigned as attributable to any goodwill associated with any of LICENSEE'S activities pursuant to the Agreement or with any use of any Licensed Mark.

COPYRIGHT

9. LICENSEE or any person or entity with whom LICENSEE is associated shall not, by reason only of the incorporation of QUEEN'S Trademarks into any design in which copyright subsists or may subsist, thereby acquire any rights in the QUEEN'S Trademarks, whether under the Copyright Act or under any other law, other than those rights specified in the Agreement.

TRADEMARK PROVISIONS

- 10.1 LICENSEE acknowledges that any use by it of the Licensed Marks shall enure to the benefit of QUEEN'S;
- 10.2 LICENSEE, its successors, assigns, agents and affiliates shall not, during or after the term of the Agreement, use any Trademark, service mark, trade name, or other trade designation that is similar in sound or appearance to the Licensed Marks or to any QUEEN'S trademark.
- 10.3 LICENSEE shall use Licensed Marks only in a manner approved and directed by QUEEN'S. In connection with such use, LICENSEE shall comply with all Trademark notices, registered user and other usage requirements to maintain the validity of the Licensed Marks and Trademark registrations owned by QUEEN'S
- 10.4 LICENSEE shall not make any use of the Queen's Trademarks that would misrepresent to the public that LICENSEE rather than QUEEN'S is the owner of such mark or the registration thereof.
- 10.5 LICENSEE shall not at any time do or cause to be done any act or thing contesting in any way or impairing or tending to impair all or any part of QUEEN'S right, title or interest in the Trademarks or the registration of them or obtain or attempt to obtain registration of any QUEEN'S Trademark or any Trademark similar thereto in any country.
- 10.6 QUEEN'S may terminate the Trademark License hereunder upon the failure of LICENSEE to remedy any misuse by it or any of its assigns, agents or affiliates or by another entity associated with the LICENSEE of any Licensed Mark or of any QUEEN'S Trademark within thirty (30) days after receiving written notice from QUEEN'S to do so.

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INFRINGEMENT

- 11.1 LICENSEE shall notify QUEEN'S promptly in writing of any suspected infringement of the QUEEN'S Trademarks, including any Licensed Mark by a third party, including the filing of a Trademark application by a third party and any legal proceedings or controversies which may affect or relate to the QUEEN'S Trademarks including any Licensed Mark which may come to the attention of the LICENSEE.
- 11.2 QUEEN'S shall have no obligation to sue infringers, but shall have the right to do so, at its own expense, with the right to join LICENSEE if necessary, at no expense to LICENSEE. If QUEEN'S brings suit against an infringer, QUEEN'S shall have the sole right to control such lawsuit and to settle the same on terms and conditions approved solely by QUEEN'S. All monetary recoveries resulting from a lawsuit brought by QUEEN'S shall belong solely to QUEEN'S.
- 11.3 If, upon the request of LICENSEE, QUEEN'S declines to institute a lawsuit for infringement and if QUEEN'S declines to take any other action to stop an alleged infringement of a Licensed Mark, LICENSEE may take any action it deems necessary to stop the infringement, including the institution of suit, joining QUEEN'S if necessary, at no expense to QUEEN'S. Any such lawsuit for infringement brought by LICENSEE or other action taken by LICENSEE shall be at the expense of LICENSEE. Any lawsuit brought by LICENSEE shall be controlled by LICENSEE except that LICENSEE shall obtain QUEEN'S consent to determine any terms of settlement of such suit. All monetary recoveries from a lawsuit brought by LICENSEE or settlement by LICENSEE belong solely to LICENSEE.
- 11.4 In the event that QUEEN'S in its absolute discretion undertakes a suit, LICENSEE shall cooperate fully with QUEEN'S in relation to such action with regard to the provision of relevant records and the testimony of its employees when requested by QUEEN'S.

INDEMNITY AND INSURANCE

- 12.1 LICENSEE must maintain, throughout the term of the Licensing Agreement, with Queen's added as **additional** insured, and for a period of no less than two (2) years following the termination of the Agreement, comprehensive general liability insurance, including blanket contractual liability and personal injury liability insurance against claims based upon product liability in respect of the licensed products in an amount of not less than two million dollars (\$2,000,000.00) combined single limit. **Within thirty days of signing the Licensing Agreement, the Licensee must provide Queen's with a certificate of insurance naming Queen's University at Kingston an additional insured on their policy.**
- 12.2 LICENSEE agrees that it is solely responsible for the conduct of its agents, affiliates, permitted assigns and employees; it further agrees that neither it nor any of them are agents or employees of QUEEN'S and subject to the provisions of the Agreement, cannot bind QUEEN'S in any way. It is understood that the LICENSEE shall bear sole responsibility for the proper and safe performance of all work and services carried out by the LICENSEE or carried out under the supervision of the LICENSEE or its employees.
- 12.3 LICENSEE shall defend, indemnify and hold QUEEN'S harmless from and against any action, claim or liability based on loss or damage to persons or property resulting from any acts or omissions of LICENSEE or its employees or agents and permitted assigns, in connection with the performance of the Agreement or with the manufacture, use and sales of goods bearing the Licensed Marks.

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- 12.4 QUEEN'S shall not be liable for any consequential or special damages of any kind, including, but not by way of limitation, damages for any loss of use or of profit by LICENSEE or others, or for any other similar or dissimilar collateral or consequential damages which may result from or in connection with the manufacture, use or sale of the Licensed Products.
- 12.5 In the event that any suit, action, or other proceeding shall be brought against LICENSEE involving any claim of Trademark infringement based upon LICENSEE's use of QUEEN'S Trademarks, under the Agreement or otherwise, and as often as the same shall occur, LICENSEE shall promptly send to QUEEN'S copies of all papers which shall have been served in such a suit, action or other proceeding. In the defense of such a claim, QUEEN'S will cooperate fully with LICENSEE, with regard to the provision of relevant records and the testimony of its employees when requested by LICENSEE.

LABELS

13. In the event that, during the Term of the Agreement, QUEEN'S imposes a requirement that a label or other identifying mark be attached to any Licensed Products, LICENSEE agrees that it shall conform to such requirement at its own expense that and such requirement as set out by QUEEN'S shall thereafter become part of the Agreement.

WARRANTIES AND STANDARDS

14. (a) LICENSEE acknowledges that in providing the License herein, QUEEN'S makes no express warranties and no implied warranties of any kind as to the merchantability, fitness for any particular use (including safety) or otherwise in relation to Licensed Products and that no such warranties shall apply to QUEEN'S in respect thereof.
- (b) LICENSEE hereby waives all other warranties, guarantees, conditions or liabilities, expressed or implied, arising by law or otherwise.
- (c) LICENSEE shall be exclusively responsible for compliance with all government standards, regulations or guidelines as they may apply in connection with the manufacture, use and sale of all goods bearing the Licensed Marks.

INSPECTION OF PREMISES

15. LICENSEE shall permit a duly authorized representative of QUEEN'S, upon reasonable notice and during normal business hours, to enter any premises of LICENSEE where LICENSEE shall be conducting operations related to the Agreement, for the purpose of ascertaining that the provisions of the Agreement are being complied with.

GOVERNING LAW

16. The English language version of the Agreement shall be the official and governing version. The Agreement shall be interpreted and construed in accordance with laws of the Province of Ontario, and, where applicable, with the laws of Canada and the LICENSEE hereby attorns to the exclusive jurisdiction of the courts of Ontario and Canada as applicable.

ASSIGNMENT

17. The Agreement may not be assigned or transferred by LICENSEE without the prior written consent of QUEEN'S.

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ENTIRE AGREEMENT

18. (a) The Agreement cancels and supersedes all prior oral or written representations, agreements and understandings between the Parties and embodies all of the understandings and obligations between the Parties with respect to the subject matter hereof.
- (b) No amendment or modification or extension or renewal of the Agreement shall be binding upon any of the Parties hereto unless made in writing and executed by both Parties.

NON-WAIVER

19. Failure of either Party to require strict performance of any term of the Agreement shall not affect that Party's right to enforce the same nor shall any waiver of default be construed to be a waiver of any succeeding default or a waiver of this paragraph.

LEGALITY

20. If any term or provision, or part thereof, other than royalty provisions, of the Agreement shall be held to be illegal, invalid or unenforceable, such term or provision or part thereof shall be deemed to be severable and shall be deleted from the Agreement.

BINDING EFFECT

21. The Agreement shall be binding upon and enure to the benefit of the Parties, their successors and assigns.

AUTHORITY

22. Each of the Parties covenants that the individual executing the Agreement on its behalf is duly authorized to bind that Party to the Agreement. The Agreement shall be signed in two (2) counterparts, each of which shall be deemed as original.

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