DEFINITIONS

1.1 The Terms herein defined and used in this Agreement shall, unless the context clearly indicates to the contrary, have the meaning set forth in this Article.

1.2 The term “Licensed Marks” shall mean Queen’s University trademark(s), service marks, trade names and related designs or symbols.

1.3 "Licensed Products" shall mean any product or part thereof bearing one or more Licensed Marks.

1.4 "Net Sales" shall mean 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 customers.

1.5 "Term of this Agreement" shall mean the term hereinafter provided for and any and all renewals or extensions thereof.

GRANT OF LICENSE

2.1 LICENSEE shall not, except with the prior approval of QUEEN’S, through the VPDSAO

(a) manufacture or sell Licensed Products or otherwise use QUEEN’S Trademarks, 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 Trade Mark, 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.

ROYALTY PAYMENTS

3.1 Within one month following the end of each calendar quarter during the term of this Agreement, whether or not a royalty is payable, LICENSEE shall deliver to QUEEN’S, through the Office of the Vice-Provost and Dean of Student Affairs (VPDSAO) 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.
3.2 A royalty obligation shall accrue upon the sale of the Licensed Products regardless of the time of collection by Licensee. For purposes of this 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 this license and for the accurate determination of royalties to be made under this 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 Trademarks owned by QUEEN’S 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; and

(b) QUEEN’S, through the VPDSAO 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 the VPDSAO 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 change 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 changes for approval to QUEEN’S, through the Office of the VPDSA, before the manufacture of any goods reflecting the changes.

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 the (VPDSAO).
RENEWAL

6. If LICENSEE wishes to renew this 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 this Article.

AMENDMENT

7.1 At any time during the term of this Agreement, either Party shall have the right to enter into negotiations to amend the provisions of this Agreement by giving to the other Party ninety (90) days notice, in writing, of such intention.

7.2 The Licensed Products and QUEEN’S Trademarks may be amended from time to time. The parties may agree to extend the terms of this Agreement to additional wares and/or other marks owned by the Licensor (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 this Agreement within the time specified therefore; 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 this 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 this 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 covenant or condition, then termination shall not become effective if, within such thirty (30) day period of notice, LICENSEE shall correct its default.

8.3 Termination shall be effective thirty (30) days after the giving of notice by QUEEN'S if the default 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 this Agreement. LICENSEE shall be deemed to have discharged its obligations under this Article if the royalties provided for in Article 3 shall have been timely paid to QUEEN’S.

8.5 Termination of this Agreement shall not relieve LICENSEE from the obligation to pay the royalties or any other sum due hereunder to QUEEN’S at the date of termination of this Agreement; LICENSEE shall remit any royalties and interest payments owing hereunder and 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 Termination.
8.6 Upon termination of this Agreement, LICENSEE shall immediately

(a) cease any and all use or advertising of the Licensed Trademarks or any trademarks confusingly similar with the Licensed Trademarks in any manner whatsoever; and

(b) surrender to QUEEN’S or to an authorized representative of QUEEN’S within 30 days of termination, all material bearing the Licensed Trademarks.

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 this Agreement or with any use of QUEEN’S Trademarks.

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 this Agreement.

TRADEMARK PROVISIONS

10.1 LICENSEE acknowledges that any use by it of the Trademarks shall enure to the benefit of QUEEN’S;

10.2 LICENSEE, its successors, assigns and affiliates shall not, during or after the term of this Agreement, use any Trademark, service mark, trade name, or other trade designation that is similar in sound or appearance to the Trademarks licensed herein.

10.3 LICENSEE shall use the Trademarks 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 Trademarks 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 registration of the 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 of the Trademark within thirty (30) days after receiving written notice from QUEEN’S to do so.

INFRINGEMENT

11.1 LICENSEE shall notify QUEEN’S promptly in writing of any suspected infringement of the Trademarks by third parties, including the filing of a Trademark application by a third party and any legal proceedings or controversies which may affect or relate to the Trademarks covered by this Agreement, 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, 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 and LICENSEE shall have the sole right 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

12.1 LICENSEE agrees under this Agreement that it is solely responsible for its agents and employees; it further agrees that it is not an agent or employee of QUEEN'S and, subject to the provisions of this Agreement, cannot bind QUEEN'S in any way. It is understood that LICENSEE shall bear sole responsibility for the proper and safe performance of all work and services carried out by LICENSEE, or carried out under the direct supervision of LICENSEE or its employees.

12.2 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, in connection with the performance of this Agreement or the manufacture, use and sale of goods bearing the Trademarks.

12.3 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.

12.4 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 this Agreement, 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 defence 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 this Agreement, QUEEN'S imposes a requirement that a label or other identifying mark be attached to all Licensed Products, LICENSEE agrees that it shall conform to such requirement at its own expense and such requirement as set out by QUEEN'S shall thereafter become part of this Agreement.

WARRANTIES AND STANDARDS

14. (a) No express warranties and no implied warranties as to the merchantability, fitness for any particular use (including safety), or otherwise of the Licensed Products shall apply.

(b) LICENSEE hereby waives all other warranties, guarantees, conditions or liabilities, expressed or implied, arising by law or otherwise.

(c) LICENSEE shall be totally responsible for compliance with all government standards, regulations or guidelines as they may apply.

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 under this Agreement, for the purpose of ascertaining that the provisions of this Agreement are being complied with.

GOVERNING LAW

16. The English language version of this Agreement shall be the official and governing version. This Agreement shall be interpreted and construed in accordance with laws of the Province of Ontario, and, where applicable, with the laws of Canada.

ASSIGNMENT

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

ENTIRE AGREEMENT

18. (a) This 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 agreement or modification or extension of this 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 this 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, other than royalty provisions, of this Agreement shall be held to be illegal, invalid or unenforceable, such term or provision shall be deemed to be severable and shall be deleted from this Agreement.

BINDING EFFECT

21. This Agreement shall be binding upon and enure to the benefit of the parties, their successors and assigns to the extent that this Agreement is assignable by its terms.

AUTHORITY

22. Each of the parties covenants that this Agreement is executed under authority duly granted by its Board of Trustees or Board of Directors as the case may be. The Agreement has been signed in two (2) counterparts, each of which shall be deemed as original.
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