Trademark License Agreement Terms and Conditions

These Trademark License Agreement Terms and Conditions (License Agreement Terms and Conditions) set forth the terms and conditions for trademark licenses from the Board of Regents of The University of Texas System (Board) (on behalf of a University of Texas institution), to Licensee, where Licensee and University have entered into an agreement (License Agreement) which includes the grant of a Trademark License Agreement from the Board to Licensee.

1. Definitions. The terms below have the following meanings:

"Action" has the meaning set forth in Section 9.

"Affiliate" of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, that Person.

"Brand Manual" means University's guidelines (including any amendments or additions) prescribing the permitted form and manner in which the Marks may be used.

"Control" "controlled by" and "under common control with" mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

"Effective Date" means the effective date of the License Agreement.

"Law"  means any constitution, statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, other requirement or rule of law of any federal, state, local or foreign government or political subdivision thereof, or any arbitrator, court or tribunal of competent jurisdiction.

"Licensee" means the Person identified in the License Agreement as this Licensee.

"Marks" means the trademarks, service marks and domain names set forth on the Trademark Schedule, whether registered or unregistered, including listed registrations and applications and any registrations which may be granted pursuant to those applications.

"Person" means an individual, corporation, partnership, joint venture, limited liability company, governmental authority, unincorporated organization, trust, association or other entity.

 “Territory” means the United State of America.

 “Trademark Schedule” means that attachment to the License Agreement listing the Marks covered by this License.

1. License.
	1. Territorial Restrictions. Licensee will not:
		1. undertake advertising using the Marks in, or specifically aimed at, any country outside the Territory;
		2. actively seek orders using the Marks from outside the Territory; or
		3. establish any branch dealing in materials that bear or use the Marks or maintain any distribution center for materials that bear or use the Marks outside the Territory.
	2. Business Names and Domain Names. Without Board's prior written consent, Licensee will not use the Marks (or any confusingly similar Marks), individually or in combination, as part of:
		1. its corporate name or any trade name; or
		2. any domain name other than the domain name(s) listed on the Trademarks Schedule.
	3. Sublicensing. Licensee will not grant sublicenses under this License.
2. Use of the Marks.
	1. University-Licensed Products. The License Agreement will not entitle Licensee to use a Mark for any purpose other than performing its obligations under this License; therefore, if Licensee desires to use one or more of the Marks on any product to be displayed, sold, or otherwise distributed, then that use must be authorized pursuant to a separate agreement to License Agreement the Marks issued by Learfield Licensing Partners, LLC or a successor identified by University. When using the Marks under this License, Licensee will comply with applicable Laws pertaining to trademarks, including without limitation compliance with marking requirements such as 15 USC §1111.
	2. Licensee must obtain prior approval from Trademark Director for the use of Marks (i) on any products, (ii) for any services, (iii) in any form of advertising or other promotion, and (iv) in any advertising or promotional copy or graphics to be used by Licensee in any media, including a public address announcement or other audio or video broadcast. Trademark Director’s approval will not be unreasonably withheld, conditioned or delayed; provided, however, Trademark Director will have the right, in his or her sole discretion, to decline to approve any use of Marks on any products, for any service, or in copy or graphics that (i) violates any applicable Law, any applicable Athletic Organization Rules, or University Rules; or (ii) Trademark Director or other designated University Representative considers to be misleading or offensive. Requests for approval will be submitted to:

Mr. Craig Westemeier

Associate Athletics Director, Trademarks Licensing

 (“Trademark Director”)

The University of Texas at Austin

P.O. Box 7399

Austin, Texas 78713

512-475-7923

512-232-7080 fax

trademark@athletics.utexas.edu

or

craig.westemeier@athletics.utexas.edu

* 1. No Other Marks. Apart from the Marks, no other trademark or logo may be affixed to, or used in connection with, any materials that bear any of the Marks except that, Licensee may use its corporate name or trade name on packaging, promotional materials and advertising for materials that bear any Marks.
	2. Trademarks Notices. Licensee will ensure that all materials sold by Licensee, all related quotations, specifications and descriptive literature, and all other materials bearing Marks, are marked with the appropriate trademark notices in accordance with Board's instructions.
1. Ownership and Registration.
	1. Acknowledgement of Ownership. Licensee acknowledges that Board owns the Marks throughout the world. Any goodwill derived from the use by Licensee of the Marks will inure to the benefit of Board. If Licensee acquires any rights in any of the Marks (by operation of law or otherwise), such rights will be deemed to be and are hereby irrevocably assigned to Board without further action by either Licensee or Board. Licensee agrees not to dispute or challenge or assist any Person in disputing or challenging (i) Board's rights in and to any of the Marks, or (ii) the validity of any of the Marks.
	2. Licensee Restrictions. Licensee agrees that it will not, during the Term or thereafter, directly or indirectly:
		1. do, omit to do, or permit to be done, any act that (i) will or may dilute the Marks or tarnish or bring into disrepute the reputation of or goodwill associated with the Marks or Board, or (ii) will or may invalidate or jeopardize any registration of the Marks; or
		2. apply for or obtain (or assist any Person in applying for or obtaining) any registration of the Marks or any trademark, service mark, trade name or other indicia confusingly similar to the Marks in the Territory.
	3. No Encumbrances. Licensee will not grant or attempt to grant a security interest in, or otherwise encumber, the Marks or record any security interest or encumbrance against any application or registration related to the Marks in the United States Patent and Trademark Office or elsewhere.
2. Quality Control.
	1. Acknowledgement. Licensee acknowledges and is familiar with the Brand Manual. Licensee will, at all times, conduct its business and use the Marks in a manner consistent with the Brand Manual. Board reserves the right to unilaterally terminate the License Agreement in accordance with the termination procedures below if, in Board’s sole judgement, Licensee is not conducting its business and using the Marks in a manner consistent with the Brand Manual.
3. Marketing, Advertising and Promotion.
	1. Marketing and Advertising Requirements. Licensee will ensure that its advertising, marketing and promotion in no way reduces or diminishes the reputation, image or prestige of the Marks or of products sold under or by reference to the Marks.
	2. Approval of Marketing and Advertising Materials. In accordance with Section 3.2, Licensee will send to Board for its prior written approval the text and layout of all proposed advertisements and marketing and promotional material relating to or using the Marks, which approval may be given or withheld in Board's sole discretion. In the event that Board disapproves, Board will give written notice of its disapproval to Licensee within 14 days after receipt by Board of the material. In the absence of a written notice of disapproval within 14 days after receipt of the materials, the materials will be deemed to have been disapproved by Board. Licensee will not use any Mark in any advertising, marketing or promotion if the use has not been approved by Board.
4. Protection of the Marks.
	1. Notification. If any of the following matters come to Licensee’s attention, Licensee will immediately notify Board in writing giving reasonable detail:
		1. any actual, suspected or threatened infringement of the Marks;
		2. any actual, suspected or threatened claim that a Mark is invalid;
		3. any actual, suspected or threatened opposition to the Marks;
		4. any actual, suspected or threatened claim that use of the Marks infringes the rights of any third party;
		5. any person applies for, or is granted, a registered trademark by reason of which that person may be, or has been, granted rights which conflict with any of the rights granted to Licensee under this License; or
		6. any other actual, suspected or threatened claim to which the Marks may be subject.
	2. Actions. With respect to any of the matters listed in Section 7.1:
		1. Board will decide, in its sole discretion, what action if any to take;
		2. Board will have exclusive control over, and conduct of, all claims and proceedings;
		3. Licensee will provide Board with all assistance that Board may reasonably request in the conduct of any claims or proceedings; and
		4. Board will bear the cost of any proceedings and will be entitled to retain all sums recovered in any action.
5. Representations and Warranties.
	1. Disclaimer of Representations and Warranties. Nothing in the License Agreement constitutes any representation or warranty by Board that:
		1. any of the Marks are valid;
		2. any of the Marks (if an application) will proceed to grant or, if granted, will be valid; or
		3. the exercise by Licensee of rights granted under the License Agreement will not infringe the rights of any Person.
	2. Exclusion of Consequential and Other Indirect Damages. To the fullest extent permitted by Law, Board will not be liable to Licensee for any consequential, incidental, indirect, exemplary, special or punitive damages whether arising out of breach of contract, tort (including negligence) or otherwise, regardless of whether such damage was foreseeable and whether or not Licensee has been advised of the possibility of those damages. NOTWITHSTANDING ANY PROVISION IN THIS LICENSE AGREEMENT TO THE CONTRARY, LICENSEE AGREES AND STIPULATES THAT UNIVERSITY WILL NOT BE REQUIRED TO PERFORM ANY ACT OR TO REFRAIN FROM ANY ACT IF THAT PERFORMANCE OR NON-PERFORMANCE WOULD CONSTITUTE A VIOLATION OF LAWS, INCLUDING THE CONSTITUTION OR LAWS OF THE STATE OF TEXAS. Without limitation of the forgoing, any provision of the License Agreement to the effect that University (i) waives or releases a right to make a claim against Licensee or exculpates Licensee from liability; or (ii) will pay attorney’s fees incurred by Licensee or any other person are effective only to the extent that the same are authorized by the Constitution and the laws of the State of Texas. No provision in the License Agreement will constitute nor is it intended to constitute a waiver of the sovereign immunity of the Board, The University of Texas System, University, or the State of Texas.
6. Indemnity and Insurance.
	1. Indemnity. Licensee will indemnify, defend and hold harmless Board against any losses arising out of or resulting from any third party claim, suit, action or proceeding (Action) related to or arising out of: (a) the breach of the License Agreement by Licensee, or (b) Licensee's exercise of its rights granted under this License, including any product liability claim or third party intellectual property rights infringement claim.
	2. Indemnification Procedures. Licensee will promptly notify Board in writing of any Action and cooperate with Board at Licensee’s sole cost and expense. Licensee will immediately take control of the defense and investigation of the Action and will employ counsel of its choice to handle and defend the Action, at Licensee‘s sole cost and expense. Licensee will not settle any Action in a manner that affects the rights of Board without Board’s prior written consent. Board’s failure to perform any obligations under this Section will not relieve Licensee of its obligations under this Section except to the extent that Licensee can demonstrate that it has been materially prejudiced as a result of the failure. Board may participate in and observe the proceedings at its own cost and expense.
7. Assignment. Licensee will not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under this License, in each case whether voluntarily, involuntarily, by operation of Law or otherwise, without Board's prior written consent. For purposes of the preceding sentence, and without limiting its generality, any merger, consolidation or reorganization involving Licensee (regardless of whether Licensee is a surviving or disappearing entity) will be deemed to be a transfer of rights, obligations or performance under the License Agreement for which Board's prior written consent is required. No delegation or other transfer will relieve Licensee of any of its obligations or performance under this License. Any purported assignment, delegation or transfer in violation of this Section is void. Board may freely assign or otherwise transfer all or any of its rights, or delegate or otherwise transfer all or any of its obligations or performance, under this without Licensee's consent. The License Agreement is binding upon and inures to the benefit of the parties and their respective permitted successors and assigns.
8. Term and Termination.
	1. Term. The License Agreement will commence as of the Effective Date and, unless terminated earlier, will remain in force until the License Agreement is terminated.
	2. Termination with Termination of the License Agreement: The License Agreement will terminate immediately upon termination of the License Agreement.
	3. Termination without Cause. Board will have the right to terminate the License Agreement for any reason on giving Licensee not less than 30 days written notice.
	4. Termination for Cause. Board will have the right to terminate the License Agreement immediately by giving written notice to Licensee if:
		1. Licensee breaches the License Agreement (other than failure to pay any amounts due under this License) and (if such breach is curable) fails to cure such breach within 14 days after being notified in writing to do so;
		2. Licensee (i) becomes insolvent or admits its inability to pay its debts generally as they become due; (ii) becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law, which is not fully stayed within 10 days or is not dismissed or vacated within 45 days after filing; (iii) is dissolved or liquidated or takes any corporate action for that purpose; (iv) makes a general assignment for the benefit of creditors; or (v) has a receiver, trustee, custodian or similar agent appointed by order of any court of competent jurisdiction, to take charge of or sell any material portion of Licensee’s property or business;
		3. Licensee challenges the validity of or Board's ownership of the Marks; or
		4. there is a change in control of Licensee.
9. Post-termination Rights and Obligations.
	1. Effect of Termination. On expiration or termination of the License Agreement for any reason and subject to any express provisions set out elsewhere in the License Agreement or these License Agreement Terms and Conditions:
		1. all rights and licenses granted pursuant to the License Agreement will cease; and
		2. Licensee will cease all use of the Marks.
	2. Surviving Rights. Any rights or obligations of the parties in the License Agreement Terms and Conditions which, by their nature, should survive termination or expiration of the License Agreement (including the rights and obligation set forth in Section 4, Section 7, and Section 8)will survive termination or expiration.
10. Governing Law; Submission to Jurisdiction. The License Agreement will be governed by and construed in accordance with the Laws of the State of Texas. Any legal suit, action or proceeding arising out of or related to the License Agreement will be instituted in the Federal District Court, Western District of Texas, Austin Division, located in Austin, Texas or the courts of the State of Texas located in the Austin, Texas. Each party irrevocably submits to the exclusive jurisdiction of those courts in any suit, action or proceeding. Service of process, summons, notice or other document by mail to a party's address set forth in the License Agreement will be effective service of process for any suit, action or other proceeding.
11. Equitable Relief. Licensee (a) acknowledges that a breach by Licensee of the License Agreement may cause Board irreparable harm for which an award of damages would not be adequate compensation and (b) agrees that, in the event of breach or threatened breach, Board will be entitled to seek equitable relief, including a restraining order, injunctive relief, specific performance and any other relief that may be available from any court, in addition to any other remedy to which Board may be entitled at law or in equity. These remedies will not be deemed to be exclusive but will be in addition to all other remedies available at law or in equity, subject to any express exclusions or limitations in the License Agreement to the contrary.