

FACT SHEET
NON-EXCLUSIVE LICENSING AGREEMENT
PRAIRIE VIEW A&M UNIVERSITY

GRANT: Subject to the terms and conditions of the non-exclusive licensing agreement, Prairie View A&M University grants the non-exclusive right and license to use the registered service marks on quality products in the designated territories.

TERM/CONTRACT YEAR: Two year period, unless sooner terminated pursuant to other provisions within the agreement. The first “Contract Year” may be less than twelve months, beginning on the effective date and terminating on the next December 31. (See 3:8 and 3:10)

TERMINATION: Prairie View A&M University may terminate upon 30 days notice if licensee fails to adhere to the terms of the agreement.

ROYALTIES: 7.5% of the gross sales price of all sold by licensed products sold by licensee or any of its subsidiaries, divisions, or affiliates; or \$100 minimum royalty during each contract year, which ever would be the largest.

LICENSE ISSUE FEE: A \$100 license issue fee will be collected on or before the effective date of the contract. This fee is not an advance toward royalties that may become due from the sale of licensed products, and is required for each contract renewal.

REPORTING: Licensee must report sales and pay royalties within 30 days of the end of each quarter – March, June, September and December. Reports should be sent to the Department of Auxiliary, P.O. Box 519 MS 1403, Prairie View, TX 77446.

PRODUCT QUALITY: Licensee must provide a sample of the product proposed to be sold.

The above is a summary of the major terms and conditions of the non-exclusive licensing agreement between Prairie View A&M University and licensee using the registered service marks of Prairie View A&M University. Prior to execution, the licensee is encouraged to read the non-exclusive agreement carefully as the above only outlines several major terms under the agreement.

LICENSE AGREEMENT

This License Agreement (“Agreement”) is entered into effective as of the _____ day of _____ 20_____, between the parties hereto, who agree as follows in consideration of the mutual promises contained herein:

1. PARTIES

- 1:1 Prairie View A&M University, a component of the Texas A&M University System, and an agency of the State of Texas, (hereinafter referred to as UNIVERSITY).
- 1:2 _____ (hereinafter referred to as LICENSEE), with a principle place of business at _____, a _____ corporation authorized to do business in the State of Texas.
- 1:3 UNIVERSITY and LICENSEE are the parties to this agreement.

2. BACKGROUND

- 2:1 UNIVERSITY owns rights in certain marks identified in Attachment A hereto, and has acquired public recognition and goodwill through the use of such marks.
- 2:2 LICENSEE recognizes the goodwill appurtenant to use of the marks and desires to obtain a non-exclusive license to utilize such marks. UNIVERSITY is willing to grant such a license under the terms and conditions of this agreement.

3. DEFINITIONS

- 3:1 MARKS include trademarks and service marks.
- 3:2 LICENSED MARKS means those marks listed in attachment A, made a part of this agreement for all purposes and includes the common-law rights to such marks as well as any registrations or applications for registration filed by the UNIVERSITY, whether State or Federal.
- 3:3 LICENSED PRODUCTS or LICENSED SERVICES means those products or services as specified in Attachment A hereto on or in connection with which any of the LICENSED MARKS are used.
- 3:4 TERRITORY means the area specified in Attachment A hereto.
- 3:5 GROSS SALES PRICE means LICENSEE’S aggregate gross billing price to customers or distributors, including the royalty amount charged for the LICENSED PRODUCTS or LICENSED SERVICES, less (1) UNIVERSITY offered and published quantity discounts actually applied, (2) returns actually made and credited, and (3) transportation charges on returns.
- 3:6 EFFECTIVE DATE means the date specified in the first paragraph of this agreement.
- 3:7 SOLD (or SALE) means that a LICENSED PRODUCT is shipped, distributed, paid for, billed or invoiced (whichever occurs first).

- 3:8 TERM means the effective period of this agreement, which shall continue until all LICENSED PRODUCTS referenced in paragraph 2:4 have been sold, but in no event longer than two (2) years, unless the parties agree in writing to an extension.
- 3:9 QUALITY means an acceptable level of quality to UNIVERSITY.
- 3:10 **CONTRACT YEAR** shall mean the consecutive twelve month period commencing each January 1, and terminating the following December 31, **EXCEPT** that the first **CONTRACT YEAR** may be less than twelve months, commencing on the EFFECTIVE DATE and terminating on the next December 31.

4. LICENSE GRANT

Subject to the terms and conditions of this agreement, UNIVERSITY grants to LICENSEE the non-exclusive right and license to utilize the LICENSED MARKS in the TERRITORY solely on and in connection with the LICENSED PRODUCTS quality during the TERM hereof.

5. PAYMENTS TO UNIVERSITY

- 5:1 On or before the EFFECTIVE DATE, LICENSEE shall pay to UNIVERSITY a License Issue fee of \$100.00. Said Issue Fee is NOT an advance toward royalties that may become due during any calendar quarter of the TERM and LICENSEE shall not deduct the amount of the License Issue Fee from any royalties that may become due from the sale of LICENSED PRODUCTS or LICENSED SERVICES.
- 5:2 LICENSEE shall pay to UNIVERSITY, in addition to said License Issue Fee, a continuing royalty of 7.5% of the GROSS SALES PRICE of all LICENSED PRODUCTS or LICENSED SERVICES by LICENSEE or any of its subsidiaries, division, or affiliates. If LICENSEE sells any LICENSED PRODUCTS or LICENSED SERVICES to any party affiliated with LICENSEE, or in anyway directly or indirectly related to or under common control with LICENSEE, at a price less than the regular price charged to other parties. There shall be no deduction from the royalties owed for uncollectible accounts, or for taxes, fees, assessments, advertising or other expenses of any kind, which may be incurred or paid by LICENSEE except those specifically enumerated in paragraph 3:5 above. All checks for royalties due should be mailed to the address designated in paragraph 14 of this agreement, or such other address as the UNIVERSITY designates in writing.
- 5:3 LICENSEE agrees to pay UNIVERSITY a \$100.00 minimum royalty during each CONTRACT YEAR of the TERM as a minimum guarantee against royalties to be paid during each CONTRACT YEAR. The remedy of UNIVERSITY for failure of LICENSEE to make payment of said minimum royalty shall be limited to termination of this agreement pursuant to the termination provisions below.
- 5:4 The continuing royalty maybe reduced by one-half on LICENSED PRODUCTS or LICENSED SERVICES SOLD by LICENSEE when a dual license design is approved by the UNIVERSITY. However, the reduced royalties shall be no less than royalties paid to the other licensor for LICENSED PRODUCTS or LICENSED SERVICES that bear the dual-licensed design.

6. STATEMENTS AND BOOKS OF ACCOUNT

- 6:1 LICENSEE shall submit quarterly statements to UNIVERSITY in the format and containing the information specified in Attachment B hereto. Such statement shall be submitted to UNIVERSITY within thirty (30) days after the end of each calendar quarter, and shall contain payment of

continuing royalties payable pursuant to paragraph 5:2 above for that calendar quarter. If any CONTRACT YEAR then the minimum royalty specified in paragraph 5:3 above has been met by payments of continuing royalty during such CONTRACT YEAR, then the balance due shall be remitted within thirty (30) days after the anniversary CONTRACT YEAR date of the agreement. The License Issue Fee required by paragraph 5:1 may not be used to satisfy the minimum royalty payment.

- 6:2 All delinquent amounts not paid when due pursuant to paragraph 6:1 above shall be charged the maximum rate of interest permitted under applicable state law but not to exceed one and one-half percent (1.5%) per month or any portion thereof during which said amounts remain more than thirty (30) days delinquent.
- 6:3 LICENSEE agrees to keep accurate books of account and records covering all transactions relating to the LICENSED PRODUCTS or LICENSED SERVICES. UNIVERSITY and its authorized representative shall have the right AT ALL REASONABLE HOUR or THE DAY AT LICENSEE'S USUAL PLACE OF BUSINESS, upon ten (10) days notice, to examine and copy said books of accounts 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 LICENSED SERVICES in order to determine the accuracy of the statement delivered by LICENSEE to UNIVERSITY. If any such examination shall reveal an error in royalties paid or payable hereunder of more than five percent (5%) or if such examination is made because of the LICENSEE'S willful failure to pay any amounts due hereunder, the LICENSEE shall bear all costs incurred by UNIVERSITY, LICENSEE shall, at its own expense, furnish to UNIVERSITY a detailed statement, signed by LICENSEE (where applicable, LICENSEE'S Chief Financial Officer), showing the number, description, GROSS SALES PRICE and itemized deduction from GROSS SALES PRICE or the LICENSED PRODUCTS or LICENSED SERVICES covered by this agreement SOLD by LICENSEE to the date of UNIVERSITY'S demand. All such books of account and records shall be kept available during the TERM and for at least one year thereafter.

7. DEFAULT, TERMINATION

- 7.1 In the event LICENSEE fails to submit timely statements and payments to UNIVERSITY 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 specifying the nature of the default. If the default is not cured within 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.

If the LICENSEE cures the default following receipt of Notice of Termination, the Licensee may initiate a request for reinstatement. If the UNIVERSITY accepts the request and notifies the LICENSEE of such, the LICENSEE will have ten (10) days to respond by submitting a License Reinstatement Fee of \$100.00. Said License Reinstatement Fee is NOT an advance toward royalties that may become due during any calendar quarter of the TERM and LICENSEE shall not deduct the amount of the License Reinstatement Fee from any royalties that may become due from the sale of LICENSED PRODUCTS or LICENSED SERVICES.

- 7:2 Either party may terminate this agreement at any time without cause after serving two (2) months Notice of Intent to Terminate. In such event, this agreement shall be automatically terminated two (2) months after services of said Notice of Intent to Terminate.

7:3 Unless sooner terminated pursuant to the above provisions, this agreement shall remain in effect throughout the TERM described in paragraph 3:8 above.

8. EFFECT OF TERMINATION

8:1 Upon expiration or termination of this agreement, all rights granted to LICENSEE hereunder shall cease, and LICENSEE will refrain further use of LICENSED MARKS or any other mark or name reasonably deemed by UNIVERSITY to be similar or LICENSE MARKS in connection 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 UNIVERSITY.

8:2 Upon expiration or termination of this agreement, LICENSEE shall not operate its business in any manner which would falsely suggest to the public that this agreement is still in force, or that any relationship exists between LICENSEE and UNIVERSITY.

8:3 Expiration or termination of this agreement shall not relieve LICENSEE from the obligation to pay UNIVERSITY any payments due and owing at the time of termination.

9. PERSONAL LICENSE

9:1 The license granted to LICENSEE is personal, and no rights hereunder may be transferred by LICENSEE without the express written approval of UNIVERSITY. LICENSEE shall immediately notify UNIVERSITY of any change or proposed change in ownership or control of LICENSEE during the TERM hereof.

9:2 LICENSEE shall grant no sublicense under this agreement, but this shall not prevent LICENSEE from having products made for it to its specifications, provided all provisions of this agreement are satisfied, and the UNIVERSITY is notified and provided with copy(s) of manufacturer's agreement.

10. GOODWILL IN LICENSED MARKS

10:1 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 UNIVERSITY in or to the LICENSED MARKS;
- (b) apply to register or maintain any application or registration of the LICENSED MARK or any mark confusingly similar to a LICENSED MARK;
- (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 UNIVERSITY;
- (d) misuse the LICENSED MARKS;
- (e) take any actions that would bring the LICENSED MARKS, into public disrepute;

- (f) use the LICENSED MARKS, or any mark or name confusingly similar to a LICENSED MARK, in its corporate or trade name; or
- (g) take any action that would tend to destroy or diminish the goodwill in the LICENSED MARKS.

10:2 All use by LICENSEE of the LICENSED MARKS inures to the benefit of UNIVERSITY.

10:3 In order to facilitate enhanced protection by registration of the LICENSED MARKS, LICENSEE agrees to provide UNIVERSITY within one (1) month after initial SALE by LICENSEE a sample of each different type of LICENSED PRODUCT or LICENSED SERVICE unless this requirement is specifically waived by UNIVERSITY;

- (a) One (1) original of each label, tag, container and advertising promotional piece bearing a LICENSED MARK (or, if the LICENSED MARK does not appear on a label or tag, one (1) photograph showing use of the LICENSED PRODUCT or LICENSED SERVICE); and
- (b) A copy of the invoice or shipping ticket indicating the first SALE of the LICENSED PRODUCT or LICENSED SERVICE.

Within ten (10) days after the first SALE by LICENSEE of said LICENSED PRODUCT or LICENSED SERVICE in a State other than Texas (or in Texas, if the sale evidenced by item (b) above was the State other than Texas), LICENSEE shall provide to UNIVERSITY a copy of the invoice or shipping ticket indicating the first SALE.

The items required in paragraph 10:3 shall be provided to UNIVERSITY by mailing or shipping them, postage or shipping costs prepaid, to the address designated in paragraph 14 of this Agreement, or such other address as the UNIVERSITY designates in writing.

10:4 LICENSEE agrees to cooperate fully with UNIVERSITY in securing and maintaining the goodwill of UNIVERSITY in the LICENSED MARKS.

10:5 LICENSEE agrees to notify UNIVERSITY promptly of any known used LICENSED MARKS by others not duly authorized by UNIVERSITY. Notification of such infringement shall include all detail known by LICENSEE that would enable or aid UNIVERSITY to investigate such infringement.

11. QUALITY CONTROL: PACKAGING AND ADVERTISING APPROVAL

All LICENSED PRODUCTS shall be QUALITY goods. UNIVERSITY 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.

12. MARKING

12:1 LICENSEE agrees that it will designate the LICENSED PRODUCTS or LICENSED SERVICES in a manner as specified from time to time in writing by UNIVERSITY, to indicate the rights of UNIVERSITY in the LICENSED MARKS, including registration status of the LICENSED MARKS, and that the products or services are manufactured pursuant to license.

- 12:2 LICENSEE agrees to use the LICENSED MARKS only in the form and manner with appropriate legends as prescribed from time to time by UNIVERSITY, and not to use any other trademark in combination with any of the LICENSED MARKS without the prior written approval of UNIVERSITY. LICENSEE agrees it will not alter, modify, dilute, or otherwise misuse the LICENSED MARKS.
- 12:3 LICENSEE agrees that it shall cause to appear on or written on each LICENSED PRODUCTS, by means of a tag, label, imprint, or other appropriate device, such copyright, trademark, or service mark notices as UNIVERSITY may designate. LICENSEE agrees that all LICENSED PRODUCTS will bear a “Collegiate Licensed Product” label or identification on the product or packaging in a form and manner that UNIVERSITY may from time to time, upon reasonable notice, designate.
- 12:4 LICENSEES’ name, as it appears on the LICENSEE AGREEMENT must appear on every item. It may be displayed on the “Collegiate Licensed Product” label, hang tags, permanently sewn or screened onto the products, or other methods approved by the UNIVERSITY.
- 12:5 The LICENSEE agrees to cooperate with the UNIVERSITY in all ways specified by the UNIVERSITY pertaining to MARKING. This cooperation includes immediately, within less than (48) hours of receiving notice from UNIVERSITY, completion and corrections specified by UNIVERSITY.

13. INDEMNITY/HOLD HARMLESS

- 13:1 LICENSEE agrees that it is wholly responsible for all products or services manufactured or SOLD by it, including all LICENSED PRODUCTS or LICENSED SERVICES, and that UNIVERSITY shall have no liability for any items, including any LICENSED PRODUCT or LICENSED SERVICE, manufactured or SOLD by LICENSEE.
- 13:2 LICENSEE agrees to indemnify and hold harmless UNIVERSITY, 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 LICENSED SERVICE, including without limitation claims or actions for product liability and patent or copyright infringement.
- 13:3 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 (U.S. \$1,000,000) for personal injury and not less than One Million U.S. Dollars (U.S. \$1,000,000) for property damage. The policy (ies) shall include an endorsement naming UNIVERSITY as an additional insured insofar as this agreement is concerned and provide that notice shall be given to UNIVERSITY at least thirty (30) days prior to cancellation or material change in the form of such policy (ies). LICENSEE shall furnish UNIVERSITY, prior to commencing any performance hereunder, certificates of insurance with the endorsements required herein. UNIVERSITY shall have the right to inspect the original policies of each insurance.

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, with Return receipt requested, express or overnight courier services; or by facsimile (confirmed by telephone) addressed as follows:

UNIVERSITY

Prairie View A&M University
Office of Auxiliary Support Services
P.O. Box 519 MS 1403
Prairie View, Texas 77446
Phone: (936)261-1700
Fax: (936)261-1714

LICENSEE

Name: _____
Address: _____

Phone: _____
Fax: _____
Email: _____

15. STATUS OF PARTIES

This agreement is not intended to create, and shall not be interpreted or construed as creating a partnership, joint venture, agency, employment, master and servant or similar relationship between UNIVERSITY and LICENSEE, and no representation to the contrary shall be binding upon UNIVERSITY.

16. BINDING EFFECT

This agreement shall be binding upon in insure to the benefit of UNIVERSITY and LICENSEE and, subject to paragraph 9:1 above, their respective successors, assigns, executors, heirs, and personal representatives.

17. LAW GOVERNING

Venue in connection with any issue arising out of the performance or interpretation of this contract shall be in Waller County, Texas. This agreement shall for all purposes be governed by and interpreted in accordance with the laws of the State of Texas.

18. MISCELLANEOUS

- 18:1 The provisions of the agreement are severable, and if any provision shall be held illegal, invalid or unenforceable, such holding shall not affect the legality, validity, or enforceability of any other provision. Any such illegal, invalid or unenforceable provision shall be deemed stricken from this Agreement as if it had never been contained herein, but all other provisions shall continue all full force and effect.
- 18:2 As used herein, the term LICENSEE shall include the plural as well as the singular, the masculine and feminine genders and corporations, partnerships and other business entities as well as individuals.
- 18:3 LICENSEE warrants that it has authority to dispose of the LICENSED PRODUCTS, referenced to in paragraph 2:3.

- 18:4 This agreement contains the entire agreement between the parties with respect to the subject matter hereof and supersedes any prior agreements between the parties, written or oral with respect to such subject matter.
- 18:5 This agreement may not be amended, modified or rescinded except by written agreement executed by UNIVERSITY and LICENSEE.

19. The dispute resolution process provided for in Chapter 2260 of the Government Code shall be used, as further described herein, by UNIVERSITY and LICENSEE to attempt to resolve any claim for breach of contract made by the LICENSEE:

A LICENSEE's claim for breach of this contract that the parties cannot resolve in the ordinary course of business shall be submitted to the negotiation process provided in Chapter 2260, subchapter B, of the Government Code. To initiate the process, LICENSEE shall submit written notice, as required by subchapter B, to Mary Lee Hodge, Vice President for Business Affairs or his/her designee. Said notice shall specifically state that the provisions of Chapter 2260, subchapter B, are being invoked. A copy of the notice shall also be given to all other representatives of UNIVERSITY and LICENSEE otherwise entitled to notice under the parties' contract. Compliance by LICENSEE with subchapter B is a condition precedent to the filing of a contested case proceeding under Chapter 2260, subchapter C, of the Government Code.

The contested case process provided in Chapter 2260, subchapter C, of the Government Code is LICENSEE's sole and exclusive process for seeking a remedy for any and all alleged breaches of contract by UNIVERSITY if the parties are unable to resolve their disputes under subparagraph (A) of this paragraph.

- A. Compliance with the contested case process provided in subchapter C is a condition precedent to seeking consent to sue from the Legislature under Chapter 107 of the Civil Practices and Remedies Code. Neither the execution of this contract by UNIVERSITY nor any other conduct of any representative of UNIVERSITY relating to the contract shall be considered a waiver of sovereign immunity to suit.
- B. The submission, processing and resolution of LICENSEE's claim is governed by the published rules adopted by the Office of the Attorney General of the State of Texas pursuant to Chapter 2260, as currently effective, hereafter enacted or subsequently amended.
- C. Neither the occurrence of an event nor the dependency of a claim constitutes grounds for the suspension of performance by LICENSEE, in whole or in part.
- D. The designated individual responsible on behalf of UNIVERSITY for examining any claim or counterclaim and conducting any negotiations related thereto as required under #2260.052 of H.B. 826 of the 76th Texas Legislature shall be Jim Nelms, Purchasing Agent.

Executed by UNIVERSITY and LICENSEE, in triplicate copies, each of which shall be deemed and original.

PRAIRIE VIEW A&M UNIVERSITY

LICENSEE

Cheryl Moore, Auxiliary Services

Name of Individual

Date

Signature of Person Authorized to Sign

Fred Washington, Vice President for
Administration & Auxiliary Services

Typed or Printed Name

Date

Title

Mary Lee Hodge, Vice President for Business Affairs

Date

Date

TYPE OF BUSINESS ENTITY, i.e.
Corporation, Sole Proprietorship,
Partnership.
STATE OF INCORPORATION,
IF APPLICABLE

ATTACHMENT A

Trademark or Trade Name



PRAIRIE VIEW PANTHERS

UNIVERSITY RING CREST DESIGN (MAY NOT BE USED ON RINGS OF ANY TYPE)

PVAMU AND/OR PRAIRIE VIEW UNIVERSITY

P V A
 M

UNIVERSITY SEAL

BLACK PANTHER SUPERIMPOSED ON THE DESIGN STATE OF TEXAS WITH PVA&M

PANTHERS

COLLEGE OF NURSING

Geographic Area

USA

LICENSED PRODUCT

CATEGORIES:

ATTACHMENT C

LICENSEE acknowledges that if LICENSED PRODUCTS or LICENSED SERVICES manufactured and sold by it were of inferior quality in design, material or workmanship, the substantial goodwill which UNIVERSITY possesses in MARKS would be impaired. According, LICENSEE agrees that all LICENSED PRODUCTS or LICENSED SERVICES shall be of high quality. To this end, LICENSED shall, before it sells or distributes any of the LICENSED PRODUCTS or LICENSED SERVICES, furnish to UNIVERSITY, free of cost, for its approval, a sample of each, LICENSED PRODUCT or LICENSED SERVICE, together with any associated carton or container, packing or wrapping material. UNIVERSITY shall have two (2) weeks from receipt of LICENSED PRODUCTS or LICENSED SERVICES in which to reject the sample. In absence or rejection, or upon earlier written acceptance, the sample shall be deemed as accepted as an example of the quality for that LICENSED PRODUCT or LICENSED 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 UNIVERSITY further sample of any LICENSED PRODUCT or LICENSED SERVICE of which it desires to change the quality, style and/or appearance and UNIVERSITY shall have two (2) weeks from receipt thereof in which to reject in writing said further sample, if there is a failure to reject, said example is to be deemed as an example of quality for that LICENSED PRODUCT or LICENSED SERVICE.