

## AGREEMENT

THIS LICENSE AGREEMENT (“Agreement”) is entered into and is effective as of the date the last signatory signs and is by and between Delta Sigma Theta Sorority, Incorporated (“Delta” or “Licensor”), a not-for-profit corporation organized and existing under the laws of the District of Columbia and having its offices and principal place of business at 1707 New Hampshire Avenue Northwest, Washington, D.C. 20009, and \_\_\_\_\_ (“Licensee”), a corporation organized and existing under the laws of \_\_\_\_\_, having its principal place of business at \_\_\_\_\_.

**WHEREAS**, Delta, a not-for-profit Greek-letter service organization, is the owner of federally-registered trademarks and service marks, as reflected on Schedule A attached hereto (and as reflected on the website for the United States Patent and Trademark Office) and as protected by federal, state, and District of Columbia common law, as reflected on Schedule B attached hereto, both as amended from time to time (“Marks”), and is entitled to the exclusive use of the Marks; and

**WHEREAS**, Licensee desires, and Delta is willing, to grant a license to Licensee to use the Marks on merchandise designed, manufactured and sold by Licensee (“Mark-bearing merchandise”), provided that Licensee shall confine its sales of such Mark-bearing merchandise solely to Delta members or other vendors who have been licensed by Delta to trade in Mark-bearing merchandise; at Delta-approved conventions, pursuant to guidelines governing sales at conventions and conferences, and at other events that appeal to Delta members (including events sponsored by Delta chapters), and shall not offer such merchandise for sale through the internet or other electronic means, unless the National President of Delta has approved such sales in writing; and

**WHEREAS**, Delta is willing to grant Licensee a license to design, manufacture, and/or sell Mark-bearing merchandise pursuant to the terms of this Agreement.

**NOW, THEREFORE**, in consideration of the promises and covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties intending to be bound legally, agree as follows:

**1. Grant of License.** Delta hereby grants Licensee a non-exclusive, non-transferable license (“associated License”) to use in designing, manufacturing, and selling merchandise bearing Delta’s Marks in conformance with this Agreement, which includes Delta Sigma Theta Sorority Inc.’s Operating Guidelines and Code of Conduct (“Delta’s Vendors Code of Conduct” -- attached as Schedule C hereto, and incorporated by reference herein), and in accordance with any requirements, specifications, or standards prescribed by Delta hereunder pertaining to Licensee’s use of Delta’s Marks, it being understood that such specifications or standards are designed only to protect the value of Delta’s Marks.

**2. Ownership of Marks.** Licensee acknowledges the great value of the goodwill associated with Delta’s Marks; that the Marks and all rights and goodwill

pertaining thereto belong exclusively to Delta; that all uses of the Marks by Licensee shall inure to the benefit of and be on behalf of Delta; and that Delta retains the right to license the use of the Marks to other parties. Licensee warrants that it will do nothing inconsistent with Delta's ownership of, or rights or interests in, the Marks, and acknowledges that nothing in this Agreement or the associated License confers on Licensee any right, title or interest in the Marks, other than the right to use them in accordance with the terms and provisions of this Agreement. Licensee further agrees that it will not, during the term of this Agreement or thereafter, attack or contest Delta's title to, or rights or interests in, any Mark; that it will not cause anything to be done (by commission or omission) that would in any way impair or tend to impair Delta's rights to, or title or interest in, any Mark; and that it will not attack or contest the validity or enforceability of this Agreement or the associated License.

**3. Licensee as Vendor: Limitations on Sales.** Licensee is authorized to sell Mark-bearing merchandise as a vendor, subject to the restrictions and conditions imposed by Delta, which Licensee expressly acknowledges and agrees to, including the restrictions stated in the second recital (second WHERAS paragraph) of this Agreement; the restrictions stated in Delta's Vendors Code of Conduct; and the prohibition on making sales to any vendor who fails to verify its status by producing a current executed License Agreement between it and Delta.

**4. Quality Control and Maintenance.**

**a. Standards for Use and Control of Marks.** Licensee agrees to comply with any requirements prescribed by Delta concerning the quality, style, design, and use of each Mark, and to ensure that all merchandise bearing a Mark is designed, manufactured, advertised, marketed, and/or sold in conformance to specifications and standards that Delta may prescribe. Licensee agrees to cooperate with Delta in facilitating the implementation of Delta's requirements, specifications and standards. Licensee agrees that all Marks shall at all times be under the control of Delta. Licensee also agrees not to use any other Greek letters or symbols on merchandise in combination with any Marks without Delta's permission, or to use any other trademarks or service marks in combination with any Mark without the advance written approval both of Delta, on the one hand, and the owner(s) of such other trademark(s) and/or service mark(s), on the other.

**b. Maintenance of Standards.** Delta shall have the right to require Licensee to submit samples of its designs for merchandise bearing a Mark and samples of such merchandise manufactured by Licensee, as well as display and packaging materials, for Delta's inspection as Delta deems necessary, and Licensee shall make its operations reasonably available for Delta's inspection upon Delta's request.

**c. Safeguards against Prohibited Sales.** Licensee represents and warrants that it will put in place and enforce safeguards designed to protect against unauthorized sales of Mark-bearing merchandise. Licensee warrants that it will not allow, participate in, or in any way cause or facilitate (by commission or omission, directly or indirectly) any activity that makes Mark-bearing goods available for purchase by non-

members or the public (including unlicensed vendors), by resale or otherwise. Licensee further warrants that it will notify Delta of any circumventions of Delta's sales restrictions herein that come to Licensee's attention, including -- but not limited -- to any diversion of Mark-bearing goods to unlicensed vendors for unrestricted sale, attempted purchases in quantities indicating an intent to resell (which Licensee agrees to disallow), and any suspected misuse or falsification of Delta membership materials.

**5. Rights Reserved by Delta.** Licensee acknowledges Delta's right to undertake actions it deems appropriate to protect its Marks, including the right:

**a.** To restrict or prohibit any Licensee activity deemed by Delta to be an unauthorized use of a Mark hereunder, which would include failures by Licensee to conform to Delta's requirements, specifications or standards prescribed hereunder in Licensee's design, manufacturing, advertising, packaging, marketing, promotion, display or sale of Mark-bearing merchandise;

**b.** To inspect Licensee's books and records documenting Licensee's business activities and transactions pursuant to this Agreement and associated License, including income and/or sales tax returns filed by Licensee for the period(s) (including any part thereof) during which Licensee has been granted a license to use Delta Marks; and

**c.** To communicate with Delta members without restriction regarding its Marks and any uses thereof, including the circulation of lists of manufacturers and/or vendors authorized by Delta to use its Mark(s).

**6. Additional Representations and Warranties by Licensee.** Licensee further represents and warrants:

**a.** That it will guarantee all Mark-bearing merchandise it distributes and sells, and that it will make an acceptable adjustment to any dissatisfied purchaser within sixty (60) days of the date of purchase;

**b.** That it will generate and keep, for a minimum period of three years following termination of this Agreement, complete and accurate records and books relating in any way to this Agreement or to Licensee's use of any Mark, including all records of sales of merchandise bearing a Mark under this Agreement, and make such records available for inspection upon Delta's request;

**c.** That it will not at any time sell, transfer, assign or otherwise convey (or attempt to convey by any means) the associated License or any rights thereunder to any other individual, partnership, joint venture, corporation, company, organization or entity without the express written authorization of Delta;

**d.** That it will not disclose, share, or provide copies of any Mark to anyone other than Licensee's employees or contractors who have a demonstrable need to

know and who have a binding agreement with Licensee to protect the Marks against unauthorized use;

e. That it will display the associated License at all times when marketing, displaying or selling Mark-bearing merchandise, as a Vendor, at conventions and other events for members of Greek-letter service organizations; and

f. That it will comply with all provisions of Delta's Code of Conduct and Guidelines (incorporated herein), and with all federal, state and local laws applicable to its business.

g. That it will not provide or furnish Mark-bearing merchandise to non-licensed vendors, for any purpose, either through sale, gift, or consignment arrangement.

7. **Infringement.** Licensee agrees to notify Delta promptly of any infringement, imitation of a Mark, or any other unauthorized use of a Mark, by any person or entity of which Licensee becomes aware. In all such instances, Delta shall have the sole right to determine whether any action shall be taken in response thereto, which may include seeking relief through infringement or unfair competition proceedings or otherwise, and Licensee agrees that it will cooperate with Delta in any enforcement action or effort that Delta may undertake to protect its rights.

## 8. **Equitable Relief; Liquidate Damages**

a. **Equitable Relief.** Licensee acknowledges and agrees that any unauthorized use by it of any Delta Mark will cause irreparable harm and significant injury to Delta; that damages from such harm or injury would be difficult to determine on a prompt basis; and that Delta shall be entitled to immediate equitable relief from such unauthorized use, by way of temporary and/or permanent injunction, in addition to other rights and remedies that Delta may have.

b. **Liquidated Damages.** Licensee and Delta agree that should Licensee provide or furnish Mark-bearing merchandise to any non-licensed vendor, Licensee will breach this Agreement and harm Delta, and that no exact measure of damages resulting from such a breach can be determined. In the event of such a breach of this Agreement, Licensee shall pay Delta the sum of \$200,000 as liquidated damages, which sum is fixed as a reasonable estimate of probable loss, and not as a penalty, *unless* Licensee is also a manufacturer, in which case it shall pay, as liquidated damages and not as a penalty, the sum of \$500,000.

**9. Liability; Indemnification**

**a. Liability.** Delta assumes no liability to Licensee or any third party arising from the quality, performance or other characteristics of merchandise designed, manufactured, or sold by Licensee.

**b. Indemnification.** Throughout the period from the inception of this Agreement until three years following its termination, Licensee agrees to indemnify and hold harmless Delta, its officers, Executive Board members, agents and employees from and against any and all losses, demands, claims, damages to persons or property, and liabilities, including reasonable attorneys' fees, arising out of or relating to claims by third parties for defects from, or damages or injuries sustained in connection with, Licensee's design, manufacture, sale or use of Mark-bearing merchandise.

**10. Relationship of the Parties.** This Agreement creates no agency relationship between the parties hereto and nothing herein is intended, nor shall be construed or implied, to place the parties in the relationship of partners, joint venturers, or franchisor/franchisee, and Licensee shall have no power to obligate or bind Delta in any manner whatsoever. However, Licensee shall be considered a "related company" within the meaning of 15 U.S.C. § 1127 solely for purposes of establishing Delta's trademark rights in the Marks in connection with Licensee's use thereof, and Licensee's uses of the Marks shall inure to the benefit of Delta.

**11. Term and Publication of Non-Renewal**

**a. Term of Agreement.** The term of this Agreement and the associated License hereby granted shall be effective from the date of execution of this Agreement and shall continue for two years, unless sooner terminated pursuant to the "Termination" provisions set forth in this Agreement, at which point all rights licensed hereby shall cease immediately. Upon expiration of the initial two-year term, this Agreement and the associated License may be extended for an additional two-year term by mutual agreement of the parties, effective upon Delta's receipt from Licensee of the \$2,000 renewal fee.

**b. Publication of Non-Renewal.** Licensee understands and agrees that Delta has the right to and may, in its sole discretion and without recourse by Licensee, publicize the non-renewal of Licensee's Agreement and associate License in the most convenient medium, including posting the fact of the non-renewal and the reason for the non-renewal on Delta's website.

**12. Fee.** Licensee shall pay Delta on a biennial basis a fee of \$2000.00 for a vendor, and for manufacturers or distributors, a fee of \$2,500.00 - \$5,000.00, as determined by Delta based on several factors.

**13. Termination.**

**a. Right to Terminate.**

i. Delta may terminate this Agreement upon written notice to Licensee, in the event Delta receives notice that Licensee plans to cease operating;

ii. Delta may terminate this Agreement immediately upon Licensee's breach of this Agreement (including the incorporated Guidelines and Code of Conduct) by unauthorized use of any Mark – such as violation of Section 7 of the Code of Conduct with respect to the design, marketing, advertising, promotion, display, or sale of such merchandise – or by otherwise failing to meet its obligations under this Agreement;

iii. Licensee may terminate this Agreement at any time upon written notice to Delta that Licensee has ceased its use of all Marks.

**b. Effect of Termination.**

i. **Cessation of License and Licensee's Rights.** If this Agreement is terminated for any reason, the Licensee's right to use the associated License and all rights granted to Licensee thereunder shall immediately cease to exist; Licensee shall immediately stop manufacturing, making, producing, or selling merchandise using any Mark (including advertising, promoting, and displaying merchandise); and Licensee shall send to Delta all such merchandise and materials, as Delta directs, unless Delta in its sole discretion grants Licensee, in writing, a "continuation period" not to exceed sixty (60) days following termination during which Licensee may sell its remaining inventory of such merchandise in accordance with terms and conditions prescribed by Delta. If termination is pursuant to an order of a court or governmental agency, however, Delta shall not authorize any such post-termination use of any Mark.

ii. **Refund of Fees.** Licensee shall not be entitled to a refund of fees (or any portion thereof) upon termination of this Agreement, irrespective of the timing of termination (*i.e.*, whether termination occurs one month or twenty months after the fee has been paid and the associated License issued).

**14. Notices.** Any Notice hereunder shall be given to the individuals identified below as proper recipients of such Notices, at the respective address set forth for each such individual, unless a change of address (or change of recipient) has been provided to the other party as prescribed herein. To be effective under this Agreement, Notice must be given by certified or registered mail, return receipt requested; or by overnight delivery, with a signature confirming receipt; or by facsimile with transmission verifiable. Notice of a change of address (or authorized recipient) shall be deemed effective upon delivery. Authorized recipients (with addresses) of any Notice given pursuant to this Agreement are:

**For Delta:**

**For Licensee:**

\_\_\_\_\_  
Jeanine H. Arnett  
Executive Director  
Delta Sigma Theta Sorority, Inc.  
1707 New Hampshire Avenue, NW  
Washington D.C. 20009

\_\_\_\_\_  
[Print]: Name and Title  
Name of Company: \_\_\_\_\_  
Address: \_\_\_\_\_

(202) 986-2513 (facsimile)

Facsimile number: \_\_\_\_\_

**15. No Waiver:** No term or provision of this Agreement can be waived or modified except by written agreement executed by both parties. No waiver shall be implied from conduct, whether or not prolonged or repeated; nor shall any waiver of one term or provision of this Agreement be considered a waiver of any other term or provision.

**16. No Transfer or Assignment; Binding Effect.** The associated License is granted solely to Licensee, and no other person, entity or party other than Licensee. Neither this Agreement nor the associated License granted under it is transferable or assignable to any other party without Delta’s prior written consent. Licensee may not sublicense or otherwise convey in any manner any rights granted to Licensee hereunder, without Delta’s written consent. This Agreement is binding on Licensee and any officers, directors, members, or agents of Licensee involved in the management and operation of Licensee’s business, including, but not limited to, the signatory of this Agreement.

**17. Entire Agreement.** This Agreement (including the incorporated Guidelines and Code of Conduct) constitutes the entire agreement between the parties relating to the subject matter hereof, and all prior proposals, promises, discussions, negotiations, agreements or writings are superseded hereby. The terms of this Agreement and the associated License shall be binding upon and shall inure to the benefit of the parties and their successors, heirs and assigns.

**18. Choice of Law; Forum; Jurisdiction.** This Agreement and the parties rights and obligations hereunder shall be construed and interpreted in accordance with the laws of the District of Columbia and applicable federal law. The parties agree to bring any action or proceeding relating to this Agreement, its interpretation, performance or breach, and/or the parties’ respective rights and obligations relating to it in the federal or local courts in the District of Columbia and in no other forum. In any such action or proceeding brought against Licensee in a District of Columbia court, Licensee and any officers, directors, members, or agents of Licensee involved in the management and operation of Licensee’s business expressly submit to and waive any objection to personal jurisdiction and venue.

**19. Modification of Agreement.** This Agreement may not be modified or amended except in a writing executed and dated by Delta and Licensee, and such writing shall expressly state that it modifies this Agreement.

**20. Severability.** The provisions of this Agreement (including incorporated documents) are severable, such that a court's finding that any provision is invalid shall not operate or be construed to invalidate the balance of this Agreement's provisions, which shall continue to remain in full force and effect.

**21. Construction of Agreement.** This Agreement shall be construed according to its plain meaning, in light of the parties' intentions as expressed in this Agreement. This Agreement shall be deemed to have been written by both parties such that the rule of interpreting the Agreement in favor of the non-drafting party shall not apply.

**IN WITNESS WHEREOF,** the parties hereto, by signature of their duly authorized representatives below, execute this Agreement effective as of the date set forth above.

\_\_\_\_\_  
Jeanine H. Arnett  
Executive Director  
Delta Sigma Theta Sorority, Inc.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name of Licensee

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature