SHIPPENSBURG UNIVERSITY

LICENSING AGREEMENT FOR USE
OF
UNIVERSITY TRADEMARKS AND TRADE NAMES

This Agreement, made by and between Shippensburg University of Pennsylvania, hereafter called "LICENSOR," and _____ , a/an _____, (individual, corporation, sole proprietor, general or limited partnership), hereinafter called "LICENSEE"

W I T N E S S E T H:

THAT WHEREAS LICENSOR owns and is the proprietor of the trademarks and/or trade names set forth in Attachment #1 and hereinafter called "marks" or "names," the marks or names are sometimes hereinafter collectively referred to as the "Licensed Material" and

WHEREAS LICENSEE desires to obtain from LICENSOR, and LICENSOR desires to grant to LICENSEE, a license to use the aforementioned names and marks for the limited uses set forth in this Agreement;

NOW THEREFORE, in consideration of the mutual convenants and conditions herein contained, the parties agree as follows:

1.0 <u>Permission for Use</u>:

LICENSOR hereby grants to LICENSEE a nonexclusive license in and to the names and marks described in Attachment #1 (the "License") upon the terms and conditions hereinafter set forth; and LICENSEE hereby accepts such license subject to such terms and conditions.

2.0 <u>Delivery</u>:

Promptly upon execution of this Agreement, LICENSOR shall deliver to LICENSEE, or enable LICENSEE to reproduce, one (1) copy each of the names and marks for LICENSEE.

3.0 <u>Term</u>:

3.1 The term of this Agreement shall be for five (5) years to commence following approval of the Agreement by the Office of Legal Counsel for State System of Higher Education and by the Office of the Attorney General of Pennsylvania, unless sooner terminated as hereinafter set forth.

3.2 There are no renewals.

4.0 <u>Use</u>:

The LICENSEE shall have the right to distribute and market the names and marks within the continental United States. All profits and proceeds from the marketing and distribution of the marks and names shall be used as provided for in this Agreement.

5.0 Tax Assumption:

The LICENSEE shall assume liability for any taxes which may be assessed against the LICENSOR as a result of this Agreement.

6.0 Trademark Protection:

Copyright and trademark rights to the marks and names, and any associated documentation furnished hereunder, are retained by LICENSOR. LICENSEE shall not reproduce any copies of the marks and names, documentation or improvements nor any portion thereof without including LICENSOR'S notice thereon.

7.0 Use of Funds:

7.1 In consideration for the rights granted above, LICENSEE shall retain 91.5 percent of all gross sales received from its use of the names and marks. LICENSOR shall receive 8.5 percent of gross sales (without any adjustment for volume or other discounts) of all items sold by the LICENSEE using the names and marks. For the purpose of this Agreement, a sale by LICENSEE shall be deemed to have occurred when the item is shipped or the customer is billed for it, whichever occurs first. No deduction shall be allowed for uncollectable accounts.

7.2 Payment of the royalties to the LICENSOR or its designee shall be due quarterly for the three-month period ending on the last day of each December, March, June, and September with any balance due on the date of termination if other than such a quarterly period. Payment shall be made no later than thirty (30) days after the close of each quarterly period covering all sales which occurred during the quarter. Payment shall be accompanied by an accounting form acceptable to the University showing all sales which occurred during the quarter including, but not limited to, the type of item, the wholesale price, the quantity, the name and address of the purchaser, and the computation of royalties due.

8.0 Title:

LICENSEE agrees that the names and marks shall at all times remain the property of LICENSOR. LICENSEE shall have no right, title or interest therein or thereto except as expressly set forth in this Agreement.

9.0 Warranty and Limitation of Liability:

9.1 LICENSOR MAKES NO WARRANTIES, EITHER EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING WITHOUT LIMITATION, THE CONDITION OF THE LICENSED MATERIAL, ITS MERCHANTABILITY OR ITS FITNESS FOR ANY PARTICULAR PURPOSE.

9.2 LICENSOR shall not be liable for, and LICENSEE hereby agrees to indemnify, defend, and hold harmless and will release and forever discharge LICENSOR, its agents, officers, assistants and employees thereof, either in their individual capacities or by reason of their relationship to LICENSOR and its successors, in respect to any expense, claim, liability, loss or damage (including any incidental, special, or consequential damage) either direct or indirect, whether incurred, made or

suffered by LICENSOR, LICENSEE or by third parties, in connection with or in any way arising out of any use of the Licensed Material.

10.0 Inspection:

10.1 LICENSOR shall have the right at all reasonable times to inspect the premises and records of LICENSEE, subject to LICENSEE's reasonable security rules then in effect, in order to determine and verify LICENSEE's compliance with this Agreement.

10.2 The LICENSEE will keep full and true records during this Agreement and for a reasonable time thereafter, of all sales of the names and marks; and for the purpose of inspection and audit, will permit the LICENSOR, or its designee, full access to its books and records concerning sales at all reasonable times hereafter during the life of this Agreement.

10.3 The LICENSEE shall prepare and submit to LICENSOR a report which shall include the acquisition and disposition of all funds accruing to LICENSEE as a result of this Agreement. The report shall be submitted on December 31 of each year that this Agreement is in effect.

11.0 Default:

11.1 If LICENSEE fails to observe, keep or perform any other provisions of the Agreement required to be observed, kept or performed by LICENSEE; or if LICENSEE becomes insolvent or attempts to assign its rights, LICENSOR shall have the right to exercise any one or more of the following remedies:

11.1.1 To terminate the License herein granted;

11.1.2 To recover all funds then accrued or thereafter accruing, with respect to any accounts established under this Agreement;

11.1.3 To take possession of any or all items of Licensed Material without demand or notice, wherever they may be located, without court order or other process of law. LICENSEE hereby waives any and all damages occasioned by such taking of possession. No taking of possession shall constitute a termination of this Agreement as to any item of Licensed Material unless LICENSOR expressly so notifies LICENSEE in writing;

11.1.4 To terminate this Agreement as to any or all items licensed for use;

11.1.5 To pursue any other remedy at law or in equity. Notwithstanding any said repossession or any other action which LICENSOR may take, LICENSEE shall be and remain liable for the full performance of all obligations on his part to be performed under this Agreement. All such remedies are cumulative, and may be exercised concurrently or separately.

12.0 Termination:

12.1 Either party shall have the right to terminate this Agreement upon thirty (30) days notice to the other party.

12.2 Upon termination of the License herein, all marks, names and copies thereof shall be returned to LICENSOR.

12.3 LICENSEE shall promptly, upon request by LICENSOR, certify in writing that all other copies in LICENSEE's possession, whether made in whole or in part, and in any form, have been erased or destroyed.

12.4 Termination or expiration of the license period shall not be construed to release either party from any right or obligation which matured prior to the date of such termination or expiration.

13.0 <u>Status of Licensee</u>:

In rendering performance under this Agreement, LICENSEE will function solely as an independent contractor and not as an agent, partner, employee or joint venturer of LICENSOR.

14.0 <u>Nonuse of Names</u>:

LICENSEE shall not use the name of LICENSOR nor any adaptation thereof in any advertising, promotion or sales literature without the written consent of LICENSOR, the same having been obtained in each case at least ten (10) days prior to such use.

15.0 <u>Notice</u>:

Any notice to either party hereunder must be in writing signed by the party giving it, and shall be served either personally or by registered or certified mail addressed as follows:

TO THE LICENSOR:
Office of Publications and Advertising
Licensing Coordinator
Shippensburg University
1871 Old Main Drive
Shippensburg, PA 17257
Telephone: (717) 477-1201
FAX: (717) 477-1253

TO THE LICENSEE:

_____ PHONE: _____

_____ FAX: _____

_____ EMAIL: _____

_____

or to such other addressee as may be hereafter designated by written notice. All such notices shall be effective only when received by the addressee.

16.0 Modification:

The parties may amend this Agreement in writing at any time upon mutual agreement. All substantive modifications must be approved the Office of Legal Counsel of the State System of Higher Education and the Office of Attorney General.

17.0 Non-Waiver:

The failure of either party to exercise any of its rights under this Agreement for a breach thereof shall not be deemed to be a waiver of such rights, nor shall the same be deemed to be a waiver of any subsequent breach, either of the same provision or otherwise.

18.0 Severability:

If any provision of this Agreement shall be determined to be void, invalid, unenforceable or illegal for any reason, it shall be ineffective only to the extent of such prohibition and the validity and enforceability of all the remaining provisions shall not be affected thereby.

19.0 Compliance with Law:

The Licensee shall comply with all applicable federal and state laws and regulations and local ordinances in the performance of the Contract.

20.0 Hold Harmless Provision:

The Licensee shall hold the Licensor harmless from and indemnify the Licensor against any and all claims, demands and actions based upon or arising out of any activities performed by the Licensee and its employees and agents under this Contract, and shall, at the request of the Licensor, defend any and all actions brought against the Licensor based upon any such claims or demands.

21.0 Contract Controversies:

In the event of a controversy or claim arising from the Contract, the Licensee must, within six months after the cause of action accrues, file a written notice of controversy or claim with the Contracting Officer for a determination. The Contracting Officer shall send his/her written determination to the Licensee. The decision of the Contracting Officer shall be final and conclusive unless, within fifteen (15) days after receipt of such written determination, the Licensee files a claim with the Commonwealth Board of Claims as set forth in Section 12.1 of the Procurement Code, 62 Pa.C.S.A. §1712.1. Pending a final judicial resolution of a controversy or claim, the Licensee shall proceed diligently with the performance of the contract in a manner consistent with the interpretation of the Contracting Officer and the Licensor shall compensate the Licensee pursuant to the terms of the contract.

22.0 Assignability and Subcontracting:

a. Subject to the terms and conditions of this Paragraph 24, this Contract shall be binding upon the parties and their respective successors and assignees.

b. The Licensee shall not subcontract with any person or entity to perform all or any part of the work to be performed under this contract without the prior written consent of the Contracting Officer, which consent may be withheld at the sole and absolute discretion of the Contracting Officer.

c. The Licensee may not assign, in whole or in part, this contract or its rights, duties, obligations, or responsibilities, hereunder without the prior written consent of the Contracting Officer, which consent may be withheld at the sole and absolute discretion of the Contracting Officer.

d. For the purposes of this contract, the term “assign” shall include, but shall not be limited to, the sale, gift, assignment, pledge, or other transfer of any ownership interest in the Licensee provided, however, that the term shall not apply to the sale or other transfer of stock of a publicly traded company.

e. Any assignment consented to by the Contracting Officer shall be evidenced by a written assignment agreement executed by the Licensee and its assignee in which the assignee agrees to be legally bound by all of the terms & conditions of the contract and to assume the duties, obligations, and responsibilities being assigned.

f. A change of name by the Licensee, following which the Licensee’s federal identification number remains unchanged, shall be considered to be an assignment hereunder. The Licensee shall give the Contracting Officer written notice of any such change of name.

23.0 <u>Applicable Law</u>:

This contract shall be governed by and interpreted and enforced in accordance with the laws of the Commonwealth of Pennsylvania (without regard to any conflict of laws provisions) and the decisions of the Pennsylvania courts. The Licensee consents to the jurisdiction of any court of the Commonwealth of Pennsylvania and any federal courts in Pennsylvania, waiving any claim or defense that such forum is not convenient or proper. The Licensee agrees that any such court shall have in personam jurisdiction over it, and consents to service of process in any manner authorized by Pennsylvania law.

24.0 <u>Paragraph Headings</u>:

The paragraph headings herein are inserted for convenience only and shall not be construed to limit or modify the scope of any provision of this Agreement.

25.0 <u>Entire Agreement</u>:

This Agreement and its Attachment #1 (one page) and its Attachment #2 (six pages) constitutes the entire understanding between the parties with respect to the subject matter hereof and supersedes any and all prior understandings and agreements, oral and written, relating hereto. Any amendment hereof must be in accord with the above paragraph on "Modification."

IN WITNESS WHEREOF, the authorized representatives of the parties have executed this Agreement as of the _____ day of _____, 2012.

LICENSOR:

Shippensburg University of Pennsylvania

By: Dr. William N. Ruud
President

_____
Signature

LICENSEE:
Please refer to Instructions (Paragraph 2a) for required signatures

_____

By _____
Name (print)
President **or** Vice President
(Ensure to circle appropriate title)

_____
Signature

By _____
Name (print)
Secretary **or** Treasurer
(Ensure to circle appropriate title)

_____
Signature

_____
Federal Identification Number

APPROVED AS TO FORM AND LEGALITY:

_____
University Legal Counsel

_____
Office of the Attorney General

ATTACHMENT #1

Shippensburg University of Pennsylvania
Marks and Names

1. Official University Seal®
2. University Logo®
3. Shippensburg University of Pennsylvania®
4. Shippensburg University®
5. SHIP™
6. SHIP Happens ™
7. SHIP Is It™
8. Athletic Logos®
9. Raiders™
10. Red Raiders™
11. Lady Raiders™
12. Big Red™
13. Any additional designs, symbols, logos, art, word or words associated with or referring to Shippensburg University of Pennsylvania as approved by the university.

ADDITIONAL TERMS & CONDITIONS
NON-DISCRIMINATION CLAUSE

During the term of this contract, Contractor agrees as follows:

1. Contractor shall not discriminate against any employee, applicant for employment, independent contractor, or any person because of race, color, religious creed, ancestry, national origin, age, or sex. Contractor shall take affirmative action to ensure that applicants are employed, and that employees or agents are treated during employment, without regard to their race, color, religious creed, ancestry, national origin, age, or sex. Such affirmative action shall include, but is not limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training. Contractor shall post in conspicuous places, available to employees, agents, applicants for employment and other persons, a notice to be provided by the contracting agency setting forth the provisions of this non-discrimination clause.

2. Contractor shall in advertisements or requests for employment placed by it or on its behalf state all qualified applicants will receive consideration for employment without regard to race, color, religious creed, national origin, age or sex.

3. Contractor shall send each labor union or worker's representative with which it has a collective bargaining agreement or other contract or understanding, a notice advising said labor union or worker's representative of its commitment to this non-discrimination clause. Similar notice shall be sent to every other source of recruitment regularly utilized by Contractor.

4. It shall be no defense to a finding of noncompliance with Contract Compliance Regulations issued by the Pennsylvania Human Relations Commission or this non-discrimination clause that Contractor had delegated some of its employment practices to any union, training program or other source of recruitment which prevents it from meeting its obligations. However, if the evidence indicates that the Contractor was not on notice of the third-party discrimination or made a good faith effort to correct it, such factor shall be considered in mitigation in determining appropriate sanctions.

5. Where the practices of a union or any training program or other source of recruitment will result in the exclusion of minority group persons, so that Contractor will be unable to meet its obligations under the Contract Compliance Regulations issued by the Pennsylvania Human Relations Commission or this non-discrimination clause, Contractor shall then employ and fill vacancies through other non-discriminatory employment procedures.

6. Contractor shall comply with the Contract Compliance Regulations of the Pennsylvania Human Relations Commission, 16 Pa. Code Chapter 49 and with all laws prohibiting discrimination in hiring or employment opportunities. In the event of Contractor's noncompliance with the non-discrimination clause of this contract or with any such laws, this Contract may, after hearing and adjudication, be terminated or suspended, in whole or in part, and Contractor may be declared temporarily ineligible for further Commonwealth contracts, and such other sanctions may be imposed or remedies invoked as provided by the Contract Compliance Regulations.

7. Contractor shall furnish all necessary employment documents and records to, and permit access to its books, records and accounts by, the contracting agency and the Human Relations Commission, for purposes of investigation to ascertain compliance with the provisions of the Contract Compliance Regulations, pursuant to § 49.35 (relating to information concerning compliance by contractors). If Contractor does not possess documents or records reflecting the necessary information requested, it shall furnish such information on reporting forms supplied by the contracting agency or the Commission.

8. Contractor shall actively recruit minority subcontractors or subcontractors with substantial minority representation among their employees.

9. Contractor shall include the provisions of this non-discrimination clause in every subcontract, so that such provisions will be binding upon each Subcontractor.

10. The terms used in this non-discrimination clause shall have the same meaning as in the Contract Compliance Regulations issued by the Pennsylvania Human Relations Commission, 16 Pa. Code Chapter 49.

11. Contractor obligations under this clause are limited to the Contractor's facilities within Pennsylvania, or where the contract is for purchase of goods manufactured outside of Pennsylvania, the facilities at which such goods are actually produced.

CONTRACTOR RESPONSIBILITY PROVISIONS

Contractor certifies that it is not currently under suspension or debarment by the Commonwealth, any other state, or the federal government, and if the Contractor cannot so certify, then it agrees to submit along with the bid/proposal, a written explanation of why such certification cannot be made.

If Contractor enters into subcontracts or employs under this contract any subcontractors/ individuals who are currently suspended or debarred by the Commonwealth or the federal

government, or who become suspended or debarred by the Commonwealth or federal government during the term of this contract or any extensions and renewals thereof, the Commonwealth shall have the right to require the Contractor to terminate such subcontracts or employment.

The Contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of the Inspector General for investigations of the Contractor's compliance with terms of this or any other agreement between the Contractor and the Commonwealth which result in the suspension or debarment of the Contractor. Such costs include, but not be limited to, salaries of investigators, including overtime; travel and lodging expenses; and expert witnesses and documentary fees. The Contractor shall not be responsible for investigative costs for investigations which do not result in the contractor's suspension or debarment.

The Contractor may obtain the current list of suspended and debarred contractors by contacting the: Department of General Services, Office of Chief Counsel, North Office Building Room 603, Harrisburg, PA 17125. Telephone Number (717) 783-6472 or FAX (717) 787-9138.

CONTRACTOR INTEGRITY PROVISIONS

DEFINITIONS

Confidential information means information that is not public knowledge, or available to the public on request, disclosure of which would give an unfair, unethical, or illegal advantage to another desiring to contract with the University.

Consent means written permission signed by a duly authorized officer or employee of the University, provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal, or contractual terms, the University shall be deemed to have consented by virtue of execution of this agreement.

Contractor means the individual or entity that has entered into this agreement with the University, including directors, officers, partners, managers, key employees, and owners of more than a 5% interest.

Financial interest means: (1) ownership of more than a 5% interest in any business; or (2) holding a position as an officer, director, trustee, partner, employee, or the like, or holding any position of management.

Gratuity means any payment or more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind.

1. The Contractor shall maintain the highest standards of integrity in the performance of this Agreement and shall take no action in violation of state or federal laws, regulations, or other requirements that govern contracting with the University.

2. The Contractor shall not disclose to others any confidential information gained by virtue of this Agreement.

3. The Contractor shall not, in connection with this or any other agreement with the University, directly or indirectly offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendation, vote., other exercise of discretion, or violation of a known legal duty by any officer or employee of the University.

4. The Contractor shall not, in connection with this or any other agreement with the University, directly or indirectly, offer, give, or agree or promise to give to anyone any gratuity for the benefit of or at the direction or request of any officer or employee of the University.

5. Except with the consent of the University, neither the Contractor not anyone in privity with him shall accept or agree to accept from, or give or agree to give to, any person, any gratuity from any person in connection with the performance of work under this Agreement except as provided therein.

6. Except with the consent of the University, the Contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor or material on this project.

7. The Contractor, upon being informed that any violation of these provisions has occurred or may occur, shall immediately notify the Commonwealth in writing.

8. The Contractor, by execution of this Agreement and by the submission of any bills or invoices for payment pursuant thereto, certifies and represents that he has not violated any of these provisions.

9. The Contractor shall, upon request of the University reasonably and promptly make available for inspection and copying all business and financial records of the Contractor of, concerning, and referring to this Agreement with the University or which are otherwise relevant to the enforcement of these provisions.

For violation of any of the above provisions, the University may terminate this and any other Agreement with the Contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these provisions, claim damages for all expenses incurred in obtaining another Contractor to complete performance hereunder, and debar and suspend the Contractor from doing business with the University. These rights and remedies are cumulative, and the use or nonuse of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the University may have under law, statute, regulation or otherwise.

SET-OFFS OF CONTRACTOR COMPENSATION PROVISION

The Contractor agrees that the Commonwealth may set off against the Contractor's compensation under the terms of this contract the amount of any state tax liability or other debt or the Contractor or its subsidiaries that is owed to the Commonwealth and not being contested on appeal against any payments due the Contractor under this or any other contract with the Commonwealth.

AMERICANS WITH DISABILITIES ACT PROVISIONS

During the term of this contract, the Contractor agrees to the following:

Pursuant to Federal regulations promulgated under authority of the Americans with Disabilities Act, 28 C.F.R. § 35.101 et. seq., the Contractor understands and agrees that no individual with a disability shall on the basis of the disability, be excluded from participation in this contract or from activities provided for under this contract. As a condition of accepting and executing this contract, Contractor agrees to comply with the "General Prohibitions Against Discrimination ," 28 C.F.R. § 35.130, and all other regulations promulgated under Title II of the Americans with Disabilities Act which are applicable to the benefits, services, programs and activities provided by the State System of Higher Education through contracts with outside contractors.

The Contractor shall be responsible for and agrees to indemnify and hold harmless the Commonwealth of Pennsylvania, the State System of Higher Education, the University and their respective officers and employees from all losses, damages, expenses, claims, demands, suits and actions brought by any party against any of the foregoing as a result of Contractor's failure to comply with the paragraph above.

DONATION OF EXCESS PREPARED FOOD PROVISION – Not Applicable

The Contractor agrees to make a good faith effort to donate to a non-profit organization for ultimate free distribution to needy individuals any apparently wholesome food or grocery products apparently fit for human consumption which are not consumed at the Commonwealth function. A good faith effort includes, but is not limited to, contacting one or more of the entities appearing on the referral listing maintained by the Department of Agriculture. Contractor is hereby put on notice that liability will not attach if the Contractor complies with 42 Pa. C.S. § 8338.

RECYCLED CONTENT PRODUCTS PROVISION – Not Applicable

Any products provided to the Commonwealth as part of the contractor's performance of this service contract shall meet the minimum percentage levels for total recycled content and post-consumer recycled content as specified below, if this paragraph is applicable.

The University must detail the minimum percentage levels in accordance with the List of Products and Procurement Guidelines available from the Department of General Services upon request.

PRODUCT	MINIMUM PERCENTAGE LEVEL

9/21/09