

## **LICENSE AGREEMENT**

This License Agreement ("Agreement") is effective as of the \_\_\_\_\_ day of \_\_\_\_\_ 2019, between the parties hereto, who agree as follows in consideration of the mutual promises contained herein:

### **1. PARTIES**

- 1:1. Southwestern Illinois College, Community College District No. 522, (hereinafter referred to as COLLEGE), with a principal place of business at 2500 Carlyle Avenue, Belleville, Illinois 62221.
- 1:2. \_\_\_\_\_, (hereinafter referred to as LICENSEE), with a principal place of business at \_\_\_\_\_.
- 1:3. COLLEGE and LICENSEE are the parties to this Agreement.

### **2. BACKGROUND**

- 2:1. COLLEGE 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 nonexclusive license to utilize such MARKS. COLLEGE 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 mean those MARKS listed in Attachment A, made as 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 COLLEGE, whether State or Federal.
- 3:3. LICENSED PRODUCTS or LICENSED SERVICES mean those products or services as specified in Attachment A hereto, or in connection with which any of the LICENSED MARKS that are used.
- 3:4. TERRITORY means the area specified in Attachment A hereto.
- 3:5. GROSS SALES PRICE means LICENSEE'S billing price to customers or distributors, less: (1) discounts which are given and which are customary in the trade, (2) returns, 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, or billed or invoiced (whichever occurs first).

- 3:8. TERM means the effective period of this Agreement, which shall continue for one (1) year from the effective date of this Agreement and shall automatically renew for additional periods of one (1) year unless one of the parties hereto shall give notice of termination at least thirty (30) days preceding the end of the license period or unless sooner terminated pursuant to other provisions of this Agreement.
- 3:9. QUALITY means an acceptable level of quality to COLLEGE.
- 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, COLLEGE grants to LICENSEE the nonexclusive rights and license to utilize the LICENSED MARKS in the TERRITORY solely on and in connection with the LICENSED PRODUCTS QUALITY during the TERM thereof.

**5. PAYMENTS TO COLLEGE**

- 5:1. On or before the EFFECTIVE DATE, LICENSEE shall pay to COLLEGE a License Issue Fee of **\$ 50**. Said License 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 COLLEGE, in addition to the said License Issue Fee, a continuing royalty of **10 %** of the GROSS SALES PRICE of all LICENSED PRODUCTS or LICENSED SERVICES sold by LICENSEE or any of its subsidiaries, divisions, or affiliates. If LICENSEE sells any LICENSED PRODUCTS or LICENSED SERVICES to any party affiliated with LICENSEE, or in any way directly or indirectly related to or under common control with LICENSEE, at a price less than the regular price charged to other parties, the royalties payable hereunder shall be computed on the basis of 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:

Southwestern Illinois College  
Director of Purchasing  
2500 Carlyle Avenue  
Belleville, Illinois 62221

- 5:3. LICENSEE agrees to pay to COLLEGE a **\$ 0.00** 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 COLLEGE 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 may be reduced by one-half on LICENSED PRODUCTS or LICENSED SERVICES sold by LICENSEE when a cross-licensed design is approved by the COLLEGE. However, the reduced royalties shall be no less than royalties paid to the other licensor for LICENSED PRODUCTS or LICENSED SERVICES that bear the cross-licensed design.
- 5:5 The only royalty exemption will be for the sale of licensed Goods to any department of Licensor when the goods are for the department's own use or consumption and are not designated for resale. Exemptions must be approved by the Licensor.

## **6. STATEMENTS AND BOOKS OF ACCOUNT**

- 6:1. LICENSEE shall submit quarterly statements to COLLEGE in the format and containing the information specified in Attachment B hereto. Such statement shall be submitted to COLLEGE 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 in any CONTRACT YEAR the Minimum Royalty specified in paragraph 5.3 above has not 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 delinquent.
- 6:3. LICENSEE agrees to keep accurate books of account and records covering all transactions relating to the LICENSED PRODUCTS or LICENSED SERVICES. COLLEGE and its authorized representative shall have the right at all reasonable hours of the day at LICENSEE'S usual place of business, upon ten (10) days notice, to examine and copy said books of account and records and all other documents and material in the possession of 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 statements delivered by LICENSEE to COLLEGE. 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, then LICENSEE shall bear all costs incurred by COLLEGE in connection with the examination. Upon demand by COLLEGE, LICENSEE shall, at its own expense, furnish to COLLEGE a detailed statement, signed by LICENSEE (where applicable, LICENSEE'S Authorized Representative), showing the number, description, GROSS SALES PRICE and itemized deductions from GROSS SALES PRICE of the LICENSED PRODUCTS or LICENSED SERVICES covered by this agreement SOLD BY LICENSEE to the date of COLLEGE'S demand. All such books of account and record 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 COLLEGE 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, COLLEGE, may serve on the defaulting party a notice of default specifying the nature of the default. If the default is not cured within ten (10) 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 COLLEGE 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 . 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. LICENSEE may terminate this Agreement at any time without cause upon sixty (60) days' notice to COLLEGE of Intent to Terminate. In such event, this Agreement shall be automatically terminated sixty (60) days after service by LICENSEE 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 from further use of LICENSED MARKS or any other MARK or name reasonably deemed by COLLEGE to be similar to LICENSED 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 COLLEGE.
- 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 COLLEGE.
- 8:3. Expiration or termination of this Agreement shall not relieve LICENSEE from the obligation to pay COLLEGE 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 COLLEGE. LICENSEE shall immediately notify COLLEGE of any change or proposed change in ownership or control of LICENSEE during the TERM hereof.

9:2. LICENSEE shall grant no sublicenses 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 COLLEGE is notified and provided with copy(s) of the manufacturer's agreement.

**10. GOODWILL IN LICENSED MARKS**

10:1. LICENSEE acknowledges 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 COLLEGE in or to the LICENSED MARKS;
- (b) apply to register or maintain any application or registration of the LICENSED MARKS or any other 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 COLLEGE.
- (d) misuse the LICENSED MARKS;
- (e) take any action 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;
- (g) take any action that would tend to tarnish, dilute, or diminish the goodwill in the LICENSED MARKS;
- (h) alter the MARKS in any way, except by separate agreement in writing executed by COLLEGE. All rights in any alteration of the MARK, including, but not limited to, copyright will be assigned to COLLEGE.

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

10:3. In order to facilitate enhanced protection by registration of the LICENSED MARKS, LICENSEE agrees to provide COLLEGE within one (1) month after initial SALE by LICENSEE an electronic PDF file, which provides a photo of each different type of LICENSED PRODUCT or LICENSED SERVICE. The PDF file should indicate:

- (a) One (1) clear image of each label, tag, container and advertising or 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 Illinois (or in Illinois, if the sale evidenced by item (b) above was to a state other than Illinois), LICENSEE shall provide to COLLEGE a copy of the invoice or shipping ticket indicating the first SALE.

The items required in paragraph 10:3 shall be provided to COLLEGE by U.S. Postal Service or by e-mail to:

Southwestern Illinois College  
Director of Purchasing  
2500 Carlyle Avenue  
Belleville, Illinois 62221  
E-mail Address: michael.thomas@swic.edu

- 10:4. LICENSEE agrees to cooperate fully with COLLEGE in securing and maintaining the goodwill of COLLEGE in the LICENSED MARKS.
- 10:5. LICENSEE agrees to notify COLLEGE, promptly of any known use of LICENSED MARKS by others not duly authorized by COLLEGE. Notification of such infringement shall include all details known by LICENSEE, which will enable or aid COLLEGE to investigate such infringement.

#### **11. QUALITY CONTROL: PACKAGING AND ADVERTISING APPROVAL**

- 11:1. All LICENSED PRODUCTS shall be QUALITY goods. 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 the COLLEGE possessed in MARKS would be impaired.
- 11:2. COLLEGE shall have the right through its employee(s) or designated representatives(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.
- 11:3. All advertising or promotions using the LICENSED MARKS or the name of Southwestern Illinois College shall be submitted to the Director of Purchasing for approval before publication or use.

#### **12. MARKETING**

- 12:1. LICENSEE shall send all design modifications of previously approved designs to the office of the Director of Purchasing.
- 12:2. LICENSEE agrees that it will designate the LICENSED PRODUCTS or LICENSED SERVICES in a manner as specified from time-to-time in writing by COLLEGE, to indicate the rights of

COLLEGE in the LICENSED MARKS, including registration status of the LICENSED MARKS, and that the products or services are manufactured pursuant to license.

- 12:3. LICENSEE agrees to use the LICENSED MARKS only in the form and manner, with appropriate legends, as prescribed from time-to-time by COLLEGE, and not to use any other trademark in combination with any of the LICENSED MARKS without the prior written approval of COLLEGE. LICENSEE agrees it will not alter, modify, dilute, or otherwise misuse the LICENSED MARKS.
- 12:4. LICENSEE agrees that it shall cause to appear on, or written on, each LICENSED PRODUCT, by means of a tag, label, imprint, or other appropriate device, such copyright, trademark, or service mark notices as COLLEGE 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 COLLEGE may from time-to-time, upon reasonable notice, designate.
- 12:5. LICENSEE'S name, as it appears on this LICENSEE AGREEMENT, must appear on every item. It may be displayed on the "Collegiate Licensed Product" label, hangtags, permanently sewn, or screened into the products, or by other methods approved by the COLLEGE.
- 12:6. LICENSEE agrees to cooperate with COLLEGE in all ways specified by the COLLEGE pertaining to marketing. This cooperating includes immediately, within less than forty-eight (48) hours of receiving notice from COLLEGE, completion of corrections specified by COLLEGE.

### **13. IDEMNIFY/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 COLLEGE 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 COLLEGE, ITS OFFICERS, EMPLOYEES, AND AGENTS THEREOF, AGAINST ANY CLAIM, PROCEEDING, DEMAND, LIABILITY OR EXPENSE (INCLUDING ANY LEGAL EXPENSE AND REASONABLE ATTORNEYS' FEES) WHICH RELATES TO INJURY TO PERONS OR TO PROPERTY, ANY ACTION BROUGHT BY A THIRD PARTY ALLEGING INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS, OR AGAINST ANY OTHER CLAIM, PROCEEDING, DEMAND, EXPENSE, AND LIABILITY OF ANY KIND WHATSOEVER RESULTING FROM THE PRODUCTION, MANUFACTURE, SALE, COMMERCIAL USE, LEASE, CONSUMPTION, OR ADVERTISEMENT OF ANY LICENSED MARK, LICENSED PRODUCT, OR LICENSED SERVICE UNDER THIS AGREEMENT.**
- 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 making COLLEGE an additional insured insofar as this Agreement is concerned and

LICENSEE shall provide that notice be given to COLLEGE at least thirty (30) days prior to cancellation or material change in the form of such policy(ies). LICENSEE shall furnish COLLEGE, prior to commencing any performance hereunder, certificates of insurance with the endorsements required herein.

In the event of notice of insurance cancellation, the LICENSEE shall obtain a policy of insurance with the same limitations and coverage from an insurance carrier reasonably acceptable to the COLLEGE prior to the effective date of cancellation. In the event the LICENSEE fails to obtain such an insurance policy the COLLEGE may consider the Agreement breached and may terminate the Agreement with the cancellation of the insurance policy then in force and effect without waiver of any damage claims for LICENSEE'S breach.

**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; express or overnight courier service; or by facsimile (confirmed by telephone) addressed as follows:

COLLEGE	LICENSEE
Southwestern Illinois College Director of Purchasing 2500 Carlyle Avenue Belleville, Illinois 62221 Phone: 618-235-2700, ext. 5384 FAX: 618-222-1788	Company Name Address City, State Phone: Fax:

**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 COLLEGE and LICENSEE, and no representation to the contrary shall be binding upon COLLEGE.

**16. BINDING EFFECT**

This Agreement shall be binding upon and inure to the benefit of COLLEGE and LICENSEE and, subject to paragraph 9:1. above, their respective successors, assigns, executors, heirs and personal representatives.

**17. LAWS GOVERNING**

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

**18. MISCELLANEOUS**

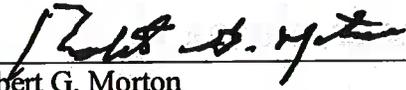
- 18:1. The provisions of this Agreement are severable, and if any provision shall be held illegal, invalid or unenforceable, such holding shall not affect the legality, validity, or enforceability of any other provision.
- 18:2. As used herein, the term LICENSEE shall include the plural as well as the 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 sell the LICENSED PRODUCTS.
- 18:4. This Agreement, which consists of the Agreement and Attachments A, B, and C, contains the entire Agreement between the parties with respect to the subject matter hereof and supersedes any prior Agreement 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 a written Agreement executed by COLLEGE and LICENSEE.

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

SOUTHWESTERN ILLINOIS COLLEGE

LICENSEE

By:

  
Robert G. Morton  
Board of Trustees Chairman

\_\_\_\_\_  
(Name of firm or individual)

\_\_\_\_\_  
(Signature of person authorized to sign)

\_\_\_\_\_  
(Typed or printed name)

Date: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
TYPE OF BUSINESS ENTITY, i.e., Corporation,  
Sole Proprietorship, Partnership

\_\_\_\_\_  
STATE OF INCORPORATION  
(if applicable)

## **ATTACHMENT A**

### **Trademark or Trade Name:**

Southwestern Illinois College  
SWIC  
SWIC logo  
Blue Storm Snow Leopard  
Blue Storm

### **Acceptable Name Abbreviation:**

### **Unacceptable Name Abbreviations**

### **Geographic Area:**

Illinois  
United States

### **Logo Information:**

SWIC utilizes Adobe Illustrator files (unless you specify differently) and logos will be sent upon full execution of the license agreement.

**ATTACHMENT B**

**QUARTERLY ROYALTY REPORT**

**SOUTHWESTERN ILLINOIS COLLEGE**

**RETURN FORM & PAYMENT TO:**

Southwestern Illinois College  
 Director of Purchasing  
 2500 Carlyle Avenue  
 Belleville, Illinois 62221

Telephone:  
 FAX:

\_\_\_\_\_  
 Date Report Prepared

\_\_\_\_\_  
 (For Quarter Ending)

**LICENSEE:**

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**THIS REPORT MUST BE SUBMITTED QUARTERLY EVEN IF NO ROYALTIES ARE DUE**

Invoice Date/ Shipment Date	Invoice Number	Product Description/ Style Number	Sold To	Quantity	Price Per Unit	Gross Sales of Licensed Products

Prepared By \_\_\_\_\_

Title \_\_\_\_\_

Signature \_\_\_\_\_

\* It is acceptable to provide the 7 columns of information as a computer printout and attach it to this form.

TOTAL GROSS SALES OF LICENSED PRODUCTS: \$ \_\_\_\_\_

LESS return and/or transportation charges on returns: \_\_\_\_\_

TOTAL "NET" GROSS SALES OF LICENSED PRODUCTS subject to royalties: \$ \_\_\_\_\_

ROYALTY RATE: X \_\_\_\_\_

ROYALTIES DUE THIS QUARTER & Payment Enclosed with Report: \$ \_\_\_\_\_

## **ATTACHMENT C**

### **QUALITY CRITERIA**

LICENSEE acknowledges that if LICENSED PRODUCTS or SERVICES manufactured and sold by it were of inferior quality in design, material or workmanship, the substantial goodwill, which COLLEGE possesses in MARKS, would be impaired. Accordingly, LICENSEE agrees that all LICENSED PRODUCTS or SERVICES shall be of high quality. To this end, LICENSEE shall, before it sells or distributes any of the LICENSED PRODUCTS or SERVICES, submit electronically by email to COLLEGE, for its approval, artwork of each LICENSED PRODUCT or SERVICE, reflecting any associated carton or container, packing or wrapping material. COLLEGE shall have two (2) weeks from receipt of artwork of LICENSED PRODUCTS or SERVICES in which to reject the proof. In absence of rejection, or upon earlier written acceptance, the proof shall be deemed as accepted for that LICENSED PRODUCT or SERVICE. The LICENSED MARKS may be applied to LICENSEE only to such LICENSED PRODUCTS or SERVICES as are manufactured in accordance with the corresponding examples accepted hereunder and which have been substantially the same relative quality position in the market place as do the examples thereof; provided, however, that LICENSEE may furnish to COLLEGE a further artwork proof of any LICENSED PRODUCT or SERVICE of which it desires to change the quality, style and/or appearance and COLLEGE shall have two (2) weeks from receipt thereof in which to reject in writing said further proof, failure to reject to be deemed as approval thereof as an example of quality for that LICENSED PRODUCT or SERVICE. Artwork proofs are to be submitted to the email address referenced in Section 10.3 of the License Agreement.

