

NON-EXCLUSIVE LICENSING AGREEMENT

This Non-Exclusive Licensing Agreement (“Agreement”) is made by and between WEST ORANGE-COVE CONSOLIDATED INDEPENDENT SCHOOL DISTRICT, with offices located at 902 W. Park, Orange, Texas 77631 (“WOCCISD” or “Licensor”), and _____, with offices located at _____ (“_____” or “Licensee”), (collectively referred to as the “Parties” or individually as the “Party”) acting herein by and through their respectively authorized officers or employees.

PREMISES

WHEREAS, Licensor is the owner, and has right title in interest in, and to, certain intellectual property, including but not limited to certain common law trademark(s) and trade name(s) as hereinafter referenced and defined; and

WHEREAS, Licensor seeks to further its educational mission by non-exclusively licensing said intellectual property to Licensee in order to ensure the beneficial use of Licensee’s intellectual property in conformance with the terms and conditions of this Agreement, and by using licensing revenues to fund Licensor’s educational programs.

WHEREAS, Licensee would like to obtain a non-exclusive license from Licensor, and Licensor is willing to grant such non-exclusive license on such terms as hereinafter set forth.

NOW, THEREFORE, for good and valuable consideration, including the mutual promises and covenants contained herein, the receipt and adequacy of which is hereby acknowledged, Licensor and Licensee hereby agree as follows.

AGREEMENT

1. Definitions.

- (a) The word "Marks" or sometimes “Mark” means certain trademarks, service marks, trade name(s), copyrights, and logo types, whether registered or unregistered, limited to the terms and phrases listed on Exhibit “A” which may be amended from time to time by Licensor at Licensor’s sole discretion.
- (b) The word "Territory" shall mean the fifty United States, the District of Columbia and Puerto Rico.
- (c) “Goods” means the products and services listed on Exhibit “B” hereto which may be amended from time to time by Licensor at Licensor’s sole discretion.

2. Term and Renewal

The term of this Agreement shall be for a period of one (1) year commencing upon the execution of this Agreement by both Parties. Thereafter, this Agreement shall

automatically renew for successive one (1) year terms unless either Party provides written notice prior to the renewal date.

3. Grant of License; Terms of Use; Period of License; Exclusivity; Reservations.

- (a) Licensor hereby grants to Licensee, during the term of this Agreement, a non-exclusive, non-transferable license to use the Marks only within the Territory and solely on and in association with the Goods (the “License”) and only as set forth in this Agreement. Licensee specifically agrees not to use the Marks or consent to their use in any manner or on any product or item, except as set forth in this Agreement.
- (b) Licensor retains the right, at its sole and complete discretion, to use, manufacture, publish, duplicate, license and otherwise disseminate the Marks without limitation and in any manner.
- (c) Licensee may manufacture and sell Goods bearing or associated with the Marks to public and private institutions and the public at retail for ultimate end-use consumption or distribution of Goods at wholesale for other parties to resell at the wholesale or retail level.
- (d) Licensee may further use the Marks in connection with the promotion or advertisement for the Goods in promotional or advertising materials for the Goods, subject to Licensor’s prior written approval.
- (e) Licensee acknowledges the substantial value of the publicity, reputation and goodwill associated with the Marks and that the Marks have acquired a secondary meaning and have an established identity in the mind of the public.
- (f) Licensee may only use the Marks in such form and/or formats as listed on Exhibit “A.”
- (g) Licensor may, at Licensor’s sole discretion, register the Marks with the United States Patent and Trademark Office (“USPTO”) or with the State of Texas or any other state or territory. Any such registration will be registered in the name of Licensor. Unless and until Licensor notifies Licensee that a Mark has been registered with respect to a particular Good, the Parties will use the notation “TM” in association with the Marks and Goods. If and when Licensor registers a Mark with the USPTO with respect to a particular Good, the Parties will use the notation “R” in association with the registered Mark(s). The License granted under this Agreement is strictly conditioned upon Licensee using the notations as set forth in this paragraph for any and all Goods manufactured, promoted, advertised, sold or distributed.
- (h) Licensee acknowledges Licensor’s rights, title and interest in and to the Marks and will not, either directly or indirectly, at any time do anything that discredits or

challenges any part of such right, title or interest, including, without limitation, any right, title and interest in any derivative work of the Marks. Licensee agrees that its use of the Marks and any derivatives of such will inure entirely to the benefit of Licensor.

4. **Licensee's requests for revisions to Marks and Goods.** Licensee may from time to time request that Exhibit "A" and/or Exhibit "B" be amended respectively by Licensor to add new Marks and Goods. All such amendments shall be made at Licensor's sole discretion.

5. **Compliance with Law; Quality Control**

(a) Licensee covenants and warrants that all Goods and the manufacture, production, marketing, promotion, advertising and sale of the Goods will comply with all applicable laws, rules and regulations.

(b) Licensee will maintain high standards of quality with respect to all Goods bearing or associated with the Marks, including, without limitation, the quality of the materials utilized in their manufacture and the quality of the promotions and advertisement for the Goods. Under no circumstances shall Licensee be permitted to sell, distribute or otherwise deal in the Marks or Goods that bear a distortion of the Marks.

(c) Licensee shall consistently distinguish the Marks and Goods from other marks and goods manufactured or sold by Licensee and shall avoid confusing similarity between such other marks and goods and the Marks and Goods set forth in Exhibit "A" and Exhibit "B." Licensee shall take such efforts as are necessary to maintain the Marks and Goods as separate and distinct lines of styling, design and merchandising from any other good manufactured or sold by Licensee.

(d) Upon Licensor's request, Licensee shall provide to Licensor prior to the manufacture, sale or distribution of any Marks or Goods, for review and approval at Licensor's sole discretion a sample of all such Marks and Goods. In such instances, samples shall be provided to Licensor c/o _____ or said individual's designee as indicated in writing by Licensor at the mailing address or email address indicated in Paragraph 14 of this Agreement, or by any other means agreed to in writing by Licensor, and Licensee shall not proceed with the manufacture, sale or distribution until approval is obtained. Licensor shall also be entitled to receive and inspect any such sample after the manufacture, sale or distribution of a Mark or Good has begun, and at Licensor's sole discretion and request, any Mark or Good not meeting Licensor's approval shall be discontinued as soon as commercially reasonable.

(e) The Parties agree, without limitation, that terms and conditions set forth in this Section 4 are material terms of this Agreement.

6. **Royalties and Payment of Royalties.** Licensor shall be paid royalties as set forth herein below.
- (a) Licensee will pay Licensor a royalty of ten percent (10%) of Licensee's Net Sales (as hereinafter defined) from the sale of any Goods bearing or associated with any Mark.
 - (b) A sale of Goods will be deemed made when Licensee accepts the order for those Goods. All royalty payments shall be due to Licensor immediately upon Licensee's receipt of payment in connection with the respective sale. Any royalty payment not received by Licensor within forty-five (45) calendar days of such receipt by Licensee shall be considered late. Any such delinquent amounts shall bear simple interest at the rate of one-half percent (.5%) per month, or, if lower, the highest rate permitted by Texas law, from the due date thereof until paid in full.
 - (c) For purposes of this Agreement, the term "Net Sales" means the total amount invoiced by Licensee less receivables which are at least ninety (90) days in arrears from the date of the invoice and which are actually written off by Licensee as bad debts, less discounts and actual returns, and less, to the extent included as separate charges in the invoice: charges for freight and insurance, sales and use taxes, tariffs, duties and other governmental charges applicable to the sale, and normal and customary handling charges. The amount of the deduction for bad debts for any three-month period may not exceed ten percent (10%) of the Net Sales during that three-month period without regard to bad debts and returns. Licensee will exercise all diligent and reasonable and prudent business practices to minimize the occurrence of bad debts and returns and to execute collection efforts for any bad debts. Any receivables which are deducted from Net Sales pursuant to this Paragraph, but which are later collected in whole or in part by Licensee for any reason, shall be, upon such collection, added back to the Net Sales, and any increased royalty amount resulting from the increased Net Sales amount shall be paid to Licensor in accordance with the terms of Paragraph 6(b).
 - (d) Licensee will maintain accurate records of all elements comprising Net Sales with respect to which royalties are payable under this Section 6. Licensee shall provide a copy of all such records to Licensor at the same time as the issuance of the respective royalty payments.
 - (e) If an audit by Licensor of the records described in Paragraph 6(d) should reveal a shortfall of royalties paid by the Licensee against royalties actually due in accordance with this Agreement, Licensee shall within fifteen (15) days make payment to Licensor in the amount of such shortfall, plus interest in the same manner as if a payment were delinquent under Paragraph 6(b).

(f) Upon termination of this Agreement for any reason, all then outstanding royalty payments shall remain due consistent with the terms of this Section.

7. **Protection of Licensor's Rights.** Licensor may, at its sole discretion, take such action (including, without limitation, commencing and maintaining any action at law or in equity) to protect, defend and enforce its rights to the use of the Marks against unfair competition, infringement and other violations. Licensee shall, at Licensor's request, cooperate with any such action.

8. **Termination.**

(a) Licensor may terminate this Agreement for convenience and without cause at any time upon written notice.

(b) Except as provided in subdivision (c) below, on termination of this Agreement, regardless of the reason or cause of such termination, (i) Licensee will immediately cease using the Marks and cease producing, marketing, selling, promoting and advertising any Goods bearing or associated with any Mark; (ii) Licensee will not use any imitation, likeness or variation of the Marks or any part of the Marks; and (iii) Licensee will deliver and convey to Licensor, without charge and free from any claims, encumbrances or rights in favor of others, all plates, engravings, silk-screens, computer and video tapes, molds, stitching patterns and other items used to make or reproduce any Marks.

(c) Notwithstanding the provisions of subdivision (b), if this Agreement is terminated for any reason other than Licensee's breach of same, Licensee may, for a period of sixty (60) days following termination but subject to the other provisions of the Agreement (i) fill all orders which it accepted prior to termination for Goods bearing or associated with a Mark, (ii) sell all Goods bearing or associated with a Mark which are in its possession at the time of termination, and (iii) take delivery of and sell all Goods bearing or associated with a Mark which are on order by it from manufacturers and suppliers at the time of termination. It is understood that any Net Sales which occur after the termination of this Agreement are subject to the provisions contained in Section 6 regarding the payment of royalties.

9. **Licensee's Indemnity.**

(a) Licensee will indemnify Licensor against any liability and hold Licensor harmless from and pay any loss, damage, cost and expense (including, without limitation, legal fees) which the Licensor incurs (i) arising out of any failure by Licensee to perform any of its obligations under this Agreement, or (ii) arising out of any act, omission or obligation with respect to any Goods bearing or associated with the Marks of either Licensee or anyone acting under authority of Licensee, or (iii) arising out of the manufacture, offer, sale, advertising, promotion, use or condition of any Goods bearing or associated with the Marks.

- (b) Licensee shall, at its expense, defend any claim against Licensor covered by this indemnity under subdivision (a) above.
10. **Liability Insurance.** While the License under this Agreement remains in effect, Licensee will obtain and maintain, at its expense, product liability insurance covering all Goods bearing or associated with any Marks. The insurance will be in an amount not less than \$1,000,000.00 per occurrence and not less than \$1,000,000.00 in the aggregate and will have deductibles not exceeding \$5,000.00 per occurrence. The insurance will be occurrence-based (as opposed to claims made), will include Licensor as a named insured without liability for premiums, and will provide for at least thirty (30) days' prior written notice to Licensor of cancellation or non-renewal and of any material change in the coverage. On execution of this Agreement and on each anniversary of the date of this Agreement, and at any time on request by Licensor, Licensee will furnish Licensor with certificates issued by the insurer or by a licensed insurance broker confirming that insurance coverage required by this Agreement is maintained and in full force and effect.
11. **Nature of Relationship.** This Agreement creates no relationship between Licensor and Licensee other than that of a Licensor to the Licensee.
12. **Ownership and Rights to Intellectual Property.**
- (a) This Agreement shall not be construed to convey any rights of ownership or any other license, right, title or interest in Licensor's Marks or any other trademarks, copyrights, patents or other intellectual property belonging to Licensor, other than the licensing rights specified in this Agreement. To the extent that any derivative works based on Licensor's Marks or other such intellectual property are created by either of the Parties to carry out the terms and conditions of this Agreement, all rights in and to such derivatives shall belong to Licensor, and Licensee agrees to provide Licensor with any assistance reasonably necessary to perfect such rights, should the need arise in the future.
- (b) Any unauthorized use by Licensee of Licensor's Marks or other intellectual property shall constitute a material breach of this Agreement.
- (c) Should Licensee at any point become aware of any third party infringements of rights in or to Licensor's Marks, Licensee shall immediately inform Licensor of the same. Under such circumstances, Licensee shall cooperate fully with Licensor in enforcing its rights in and to the Marks.
13. **Audit.** Licensee will maintain all data, books and other records, including electronically stored data ("Records"), that are related to any design, manufacture, promotion and/or distribution of the Marks or any products containing the Marks and any related accounting activities, as well as any other Records that are generated by Licensee in the performance of this Agreement's terms and conditions, up to a maximum of three (3) years. Upon request by Licensor, Licensee shall make such Records available for inspection and copying at a reasonable time during normal business hours. Licensee shall

keep all such Records available to Licensor for at least three (3) years after the expiration of this agreement.

14. **Notice.** Notices and other communications under this Agreement shall be in writing and sent to each Party at its address by regular and certified mail, return receipt requested one if applicable, by electronic mail at the addresses set forth below or, in the event of a change in any mailing address or electronic mail addresses, then to such other addresses as to which notice of the change is given. Notices to Licensee will be sent to ____ or __@__.com, and to Licensor, West Orange-Cove Consolidated Independent School District at 902 W. Park, Orange, Texas 77631 c/o ____, with a copy to ____ at 902 W. Park, Orange, Texas 77631, [email] c/o ____.

MISCELLANEOUS

15. This Agreement may be amended only by an instrument in writing signed by Licensor and Licensee. No provision of this Agreement and no obligation of either Party under this Agreement may be waived except by an instrument in writing signed by the Party waiving the provision or obligation.
16. Section headings are for convenient reference only and shall not affect the meaning or have any bearing on the interpretation of any provision of this Agreement.
17. The Parties shall execute and deliver any and all further instruments referenced herein and assurances and perform any acts that the other Party may reasonably request for the purpose of giving full force and effect to the provisions of this Agreement.
18. The Agreement shall be binding upon the Parties, their heirs, legal representatives, successors or assigns. The executor, administrator or personal representative of a deceased Party shall execute and deliver any documents or legal instruments necessary or desirable to carry out the provisions of the Agreement.
19. This Agreement constitutes a personal contract and no Party may transfer or assign this Agreement or any part of this Agreement without the other Party(ies) express and written consent.
20. A failure of either Party at any time to require performance by the other Party of any provision of this Agreement shall in no way affect the full right to require such performance at any time thereafter. The waiver of either Party to any provisions for this Agreement shall not be taken or held to be a waiver of any succeeding breach of such provisions or as a waiver of the provision itself.
21. This Agreement shall constitute the entire Agreement between the Parties. Any prior understanding or representation of any kind preceding the date of this Agreement shall not be binding upon either Party, except to the extent incorporated in this Agreement.

22. In the event any one or more of the provisions contained in this Agreement or any exhibit shall, for any reason, be held to be invalid, illegal or unenforceable in any respect that shall not affect any other provision of this Agreement which will be construed as if the invalid, illegal or unenforceable provision had never been contained within the Agreement.
23. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas. Any dispute between the Parties resulting in litigation shall be subject to the jurisdiction of the courts of the State of Texas, whether federal or state, with venue in Orange County, Texas.
24. If any action at law or in equity is necessary for either Party to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to its attorney's fees, costs and necessary disbursements in addition to any other relief that may be proper.
25. The Parties agree that they, and/or their respective attorneys, have reviewed and/or revised this document as necessary for their mutual purposes and they hereby agree that any rule or construction to the effect that any ambiguity or ambiguities is/are to be resolved against the parties who drafted this document shall not apply with respect to interpretation of this document or the agreement(s) of the Parties.
26. Neither Party will be liable to the other for any failure or delay in performance under this Agreement due to circumstances beyond its reasonable control, including Acts of God, acts of war, accident, labor disruption, acts, omissions and defaults of third parties and official, governmental and judicial action not the fault of the party failing or delaying in performance.
27. No Party to this Agreement has agreed to waive any defense, right, immunity, or other protection under law, including any statutory provision, by entering into this Agreement.
28. No Party assumes the liability for the systems under control of the other Party or for the actions of the employees of the other Party.
29. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. In addition, facsimile or *.pdf* signatures to this document shall have the same force and effect as "ink" signatures and no "ink" copy of any facsimile or *.pdf* signature is required to bind the Party signing by facsimile or *.pdf* to this document. Notwithstanding the preceding sentence, any Party executing this document by facsimile or *.pdf* agrees to deliver "ink" copies of the signature to the other Party promptly following the execution of this document.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date indicated above.

LICENSOR:
WEST ORANGE-COVE CONSOLIDATED
INDEPENDENT SCHOOL DISTRICT

By: _____
Name:
Title:

LICENSEE:
XXXXXXXXXX

By: _____
Name:
Title:

Exhibit “A”

[insert digital images of logos, trademarks, ect...]

Exhibit “B”

[list products, e.g. t-shirts, sweatshirts, baseball caps, buttons, ect...see example below]

1. T-shirts
2. Sweatshirts
3. Baseball caps
4.