

## CERTIFIED VENDOR LICENSE AGREEMENT

THIS LICENSE AGREEMENT (“Agreement”) is entered into and is made effective as of \_\_\_\_\_, 20\_\_ between Delta Sigma Theta Sorority, Incorporated (“Delta” or “Licensor”), a 501(c)7 not-for-profit corporation organized and existing under the laws of the District of Columbia and having its offices and place of business at 1707 New Hampshire Avenue Northwest, Washington, DC 20009 (“Delta”, and \_\_\_\_\_, a Delta Certified Vendor Partner (“Licensee” or “Certified Vendor”, together, with the Company, (the “Parties” and each, individually, a “Party”)), a (**circle one**) Corporation / Limited Liability Company / Partnership / Sole Proprietorship / Other (specify) \_\_\_\_\_ organized and existing under the laws of \_\_\_\_\_ (specify state), and having its principal \_\_\_\_\_ place \_\_\_\_\_ of \_\_\_\_\_ business \_\_\_\_\_ at \_\_\_\_\_ (insert address).

### **DEFINITIONS**

1. **Licensees** are Certified Vendors.
2. **Certified Vendor Licensees** are those individuals and businesses a) with whom Delta has entered into a contract (License Agreement) signed by the vendor and the National President or Executive Director of Delta, authorizing the vendor to use Delta’s Marks on merchandise to be manufactured and advertised, displayed and sold or otherwise distributed (“marketed”) and b) who receive a License Certificate issued and executed by Delta (“Certificate”). Individuals and businesses that make goods bearing Delta’s Marks for no more than four distribution channels (meaning Licensee makes goods for more than 4 other individuals or businesses that sell Delta branded merchandise) are considered Certified Manufacturer Licensees *not* Certified Vendor Licensees and must contact Delta individually for specific license requirements. Owners of or suppliers to college bookstores; or stores, franchises, chains of stores or companies that cater to Universities or Colleges are *not* considered Certified Vendor Licensees and *must* contact Delta individually for specific license requirements.

### **RECITALS**

**WHEREAS**, Delta, is the owner of certain trademarks and service marks (“Marks”) registered on the Principal Register of the United States Patent and Trademark Office, and is also the owner of certain common law Marks that have been used by Delta for decades;

**WHEREAS**, both Delta’s registered and unregistered Marks are protected by Federal law, common law and District of Columbia law;

**WHEREAS**, Delta is entitled to the exclusive use of Delta’s Marks; and

**WHEREAS**, Licensee desires, and Delta is willing to grant, a license to Licensee to use those of its Marks that are depicted in the attached **Schedules A and B** on merchandise that is to be designed, manufactured and/or sold by Licensee (“Mark-Bearing Merchandise”), provided that Licensee shall confine its sales of such Mark-Bearing Merchandise as follows: a Certified Vendor Licensee shall not sell Mark-Bearing Merchandise through the Internet or via other software or software applications, unless approved by Delta separately in advance and in writing.

**NOW, THEREFORE**, in consideration of the promises and covenants contained herein and for other good and valuable consideration, the Parties, intending to be bound legally, agree as follows:

### **LICENSE TERMS**

- 1. Grant of License.** Delta hereby grants Licensee a non-exclusive, non-transferable license (the “Associated License”) to use Mark-Bearing Merchandise for the purposes of designing, manufacturing, and/or selling Merchandise pursuant to the terms of this Agreement, which incorporates by reference Delta Sigma Theta Sorority, Inc.’s Operating Guidelines and Code of Conduct for Licensees (“Licensee Code” – attached hereto as **Schedule C**), and in accordance with any requirements, specifications, or standards prescribed by Delta relating to Licensee’s use of Delta’s Marks, it being understood that such requirements, specifications, or standards are designed only to protect the value of Delta’s Marks. For the avoidance of doubt, Licensee understands, acknowledges and agrees that it shall not market, offer or sell any recurring physical delivery services that distribute Mark-Bearing Merchandise on a subscription basis (“Subscription Products”). See, Code of Conduct paragraph number 17.
- 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 not partake in activities that are 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, attach or contest Delta’s title to, or rights or interests in, any Mark; 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. **Limitations on Sales.** Licensee is authorized to sell Mark-Bearing Merchandise, subject to the restrictions and conditions imposed by Delta, which Licensee expressly acknowledges and agrees to, including the restrictions stated in the fourth WHEREAS paragraph of this Agreement; and the restrictions stated in Delta's Licensee Code.
  
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 Mark-Bearing Merchandise is designed, manufactured, advertised, marketed, and/or sold in conformance with 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 Mark-Bearing Merchandise 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 further warrants that it will notify Delta of any circumventions of Delta's sales/use restrictions that come to Licensee's attention, including any diversion of Mark-Bearing Merchandise to unlicensed vendors for unrestricted sale, and attempted purchases in quantities indicating an intent to resell (which Licensee agrees to disallow).
  
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 includes any failure by Licensee

to conform to Delta's requirements, specifications or standards prescribed hereunder in Licensee's design, manufacturing, advertising, packaging, marketing, promotion, display delivery, distribution or sale of Mark-Bearing Merchandise;

b. To inspect Licensee's books and records documenting Licensee's business activities and transactions relating to the use of Delta's Marks, including income and/or sales tax returns filed by Licensee for the period(s) (including any part thereof) during which Delta's Marks have been used; and

c. To communicate with Delta members without restriction regarding Delta's Marks and any uses thereof, including the circulation of lists of vendors authorized by Delta to use its Mark(s), and requesting information as to the source of purchases of Mark-Bearing Merchandise.

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

a. That it will guarantee that the quality of all Mark-Bearing Merchandise it sells or otherwise distributes is of the standard Delta requires timely delivery of all orders 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 (3) years, following expiration or 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 Mark-Bearing Merchandise 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 as a vendor it will display the associated Certificate at all times when displaying or selling Mark-Bearing Merchandise, at conventions and other locations and events at which Delta has approved the sale of Mark-Bearing

Merchandise by way of laminating and placing in a conspicuous location that is easily seen and identified; and

f That it will comply with all provisions of Delta's Licensee Code (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 unlicensed vendors, for any purpose, either through sale, gift, or consignment arrangement.

h That it will refrain from seeking or accepting any gifts, favors, entertainment, payments, or loans for themselves or their family members from any Delta member, board member or staff member; clients; customers; vendors; suppliers; licensees; or contractors except for gifts with a value of less than one-hundred dollars (\$100.00). Licensees are prohibited from providing gifts in exchange for favors, favorable treatment, and/or gifts. A Licensee's failure to comply with this policy will result in a suspension of the license with Delta.

7. **Personal Information.** Licensee agrees that any personally identifiable information or personal data ("Personal Information") disclosed to Licensee pursuant to this Agreement whether disclosed directly to Licensee or indirectly through provision of the Services, shall be maintained in compliance with any and all applicable local, state, federal and international laws, rules and regulations. The Parties agree that Personal Information is defined as information that someone can use to identify, locate, or contact a specific individual, either alone or when combined with other information reasonably available to them, including information that relates to an identifiable individual or expresses an opinion about that individual, e.g., an individual's: name; home or other physical address; E-mail address; telephone number; social security number; passport number; driver's license number; bank account number; credit or debit card number; personal characteristics, including photographic image, fingerprints, handwriting, or other unique biometric data.
8. **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. Licensee further agrees that it will cooperate with Delta in any enforcement action or effort that Delta may undertake to protect its intellectual property rights.

## 9. **Equitable Relief; Liquidated Damages**

a. **Equitable Relief.** Licensee acknowledges and agrees that any unauthorized use by it of any of Delta's Marks will cause irreparable harm and significant injury to Delta; that damages from such harm or injury would be difficult to determine and, in any event, cannot be determined 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 for Dealing with Unlicensed Vendors.** Licensee and Delta agree that should Licensee purchase or otherwise procure Mark-Bearing Merchandise from or sell or otherwise distribute Mark-Bearing Merchandise to any unlicensed 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, a Certified Vendor Licensee shall pay Delta the sum of twenty-five thousand dollars (\$25,000) per Delta Mark, per type of merchandise involved, as liquidated damages, which sum is fixed as a reasonable estimate of probable loss, and not as a penalty.

c. **Liquidated Damages for Internet Sales.** Licensee and Delta agree that should Licensee sell Mark-Bearing Merchandise through the Internet or via other software or software applications, without written permission from Delta, Licensee will breach this Agreement and harm Delta, and it will be difficult to quantify the exact measure of damages resulting from such a breach. Therefore, in the event of such a breach of this Agreement, Licensee shall pay Delta the sum of ten-thousand dollars (\$10,000) per design or style of item bearing Delta's Marks sold online, **plus** an amount equal to five hundred (\$500) per day, per design or style of item sold online, for each day, or portion thereof, that the item remains for sale online, starting three (3) days after the date that Licensee is notified by Delta of the breach. For purposes of this paragraph, Licensee is deemed notified of the breach on the date of delivery of Notice of Breach sent by any of the means for providing notice pursuant to Section 15.

## 10. **Liability; Indemnification**

a. **Liability.** Delta assumes no liability to Licensee or any third party for any losses, demands, claims, damages, or other liabilities, including attorneys' fees, arising from or relating to 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 (3) 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.

11. **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 ventures, 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 the 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.

12. **Term and Publication of Non-Renewal or Termination**

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 (2) years for a Certified Vendor unless sooner terminated pursuant to the "Termination" provisions set forth in this Agreement, at which point all rights licensed hereby shall cease immediately. Provided that the Agreement has not been updated or modified, upon expiration of the initial term, this License Agreement and the Associated Certificate may be extended for an additional term by mutual agreement of the Parties, effective upon Delta's approval of a renewal application and receipt from Licensee of the applicable fee. The Parties agree that if the Certified Vendor fails to submit the required renewal Application and fee within 2 months of the termination of the License, the Certified Vendor will be required to resubmit a new License application; new samples and a license fee.

b. **Publication of Non-Renewal or Termination.** 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 and/or termination of Licensee's Agreement and Associated License in the most convenient medium, including posting the fact of the non-renewal and/or termination and the reason(s) therefore on Delta's public website.

### 13. Fee.

- a Certified Vendor Fee: A Certified Vendor shall pay Delta a flat fee of two-thousand dollars (\$2,000.00) for a two (2) year license. This 2-year license fee of \$2000 includes a \$250 application fee and a \$1750 licensing fee.

*Certified Vendor-Manufacturers are subject to different fee arrangements and a Manufacturer Licensing Agreement.*

### 14. Termination.

#### a. Right to Terminate.

- i Delta may terminate this Agreement upon written notice to Licensee, or 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 Licensee Code) by unauthorized use of any Mark – such as, for example, violation of Section 7 of the Licensee Code with respect to the design, marketing, advertising, promotion, display, or sale of such merchandise – or by failure to comply with the restrictions set forth in this Agreement -- for example, for failure to timely deliver Mark-Bearing Merchandise to buyers; or otherwise failing to meet Licensee's obligations under this Agreement, etc.

- iii Licensee may terminate this Agreement at any time upon written notice to Delta that Licensee has ceased its use of all of Delta's 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 designing, 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, and Licensee must, at Delta's direction, either destroy all inventory bearing Delta's Marks or dispose of the inventory in another manner acceptable to Delta, with any disposition confirmed by Licensee in a written, notarized statement, sworn subject to the penalty of perjury. Delta's right to equitable relief and to liquidated damages pursuant to Section 8 shall survive any termination of this Agreement.

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, ten months, or more after the fee has been paid and the associated Certificate has been issued).

15. **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 to all Parties listed below must be given by certified 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 (2 individuals):**

Tameka Simmons  
Director, Legal Affairs  
Delta Sigma Theta Sorority, Inc.  
1707 New Hampshire Ave., NW  
Washington, D.C. 20009

Facsimile number: (202) 986-2513

**For Licensee:**

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

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

**For Delta (courtesy copy):**

Nicole Lenon Johnson  
Intellectual Property Specialist  
Delta Sigma Theta Sorority, Inc.  
1707 New Hampshire Ave., NW

Washington, D.C. 20009

Facsimile number: (202) 986-2513

16. **Licensee Obligation to Notify Delta Regarding Change of Contact Information.** Licensee shall provide Delta at least ten (10) business days advance notice, in writing, of any impending change in the contact information provided in Paragraph 14, providing also the effective date for such change.
17. **No Waiver.** No term or provision of this Agreement can be waived or modified, except by written agreement executed by the 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.
18. **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 and approval of the proposed sublicensing agreement. 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.
19. **No Use of Unauthorized Trade Names.** The use by Licensee of any trade names (or company name) other than or in addition to those provided in this Agreement to manufacture or market Mark-Bearing Merchandise must be approved by modification of this Agreement in accordance with Paragraph 21. Licensee's use of any trade name (or company name) not disclosed in this Agreement to manufacture or market Mark-Bearing Merchandise shall constitute a breach of this Agreement, which may result in termination of this Agreement and prosecution for breach of contract, trademark infringement, and related infractions.
20. **Entire Agreement.** This Agreement (including the incorporated Schedules A-C) 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.
21. **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.

22. **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.
23. **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.
24. **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.

[intentionally blank]

DELTA SIGMA THETA SORORITY, INCORPORATED

Licensors

\_\_\_\_\_  
By: Dorcas Washington

\_\_\_\_\_  
Deputy Executive Director

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Licensee

\_\_\_\_\_  
By: (Print Name)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date