

LICENSE AGREEMENT

Representing the agreement between
the Kappa Sigma Fraternity, a fraternal organization

Agreement No. A121244040

and

Affinity Test Vendor 2
123 Main Street
Chicago Illinois 92009

THIS LICENSE AGREEMENT is made and entered into this 18 of Dec, 2012, by and between the Kappa Sigma, of 1610 Scottsville Road Charlottesville Virginia 22902, hereinafter referred to as "FRATERNITY" and Affinity Test Vendor 2, of 123 Main Street Chicago Illinois 92009, hereinafter referred to as "LICENSEE".

WHEREAS, FRATERNITY has adopted various distinct insignia for the utilization of the membership of the FRATERNITY, which insignia are the subject of various registrations issued to FRATERNITY by the United States Patent and Trademark Office and as a result of long term utilization of said insignia by members of the FRATERNITY, considerable goodwill has inured to the benefit of FRATERNITY; and

WHEREAS, LICENSEE desires to produce or have produced for it, items which will utilize certain of the insignia of FRATERNITY; and

WHEREAS, the Parties to this License Agreement wish to set forth in writing each and every term and condition of FRATERNITY'S grant to LICENSEE of the limited right to utilize certain of the insignia of FRATERNITY.

NOW, THEREFORE, in consideration of the covenants, conditions and stipulations contained herein, the parties hereto agree as follows:

1. GRANT OF LICENSE: For the duration of this agreement and pursuant to each and every condition hereinafter set forth, FRATERNITY hereby grants to LICENSEE the non-exclusive right to utilize the following insignia of FRATERNITY: See appendix A.

2. ACKNOWLEDGEMENT OF PROPRIETARY RIGHTS: LICENSEE acknowledges the ownership by FRATERNITY of each of these insignia and the goodwill associated therewith and agrees that it will do nothing inconsistent with such ownership and agrees that all goodwill associated with the use of the insignia by LICENSEE shall inure to the benefit of FRATERNITY. LICENSEE agrees that nothing in this License Agreement shall give LICENSEE any right, title or interest in the insignia other than the limited right to use the insignia of FRATERNITY only within the scope of each of the terms and conditions of this License Agreement and LICENSEE agrees that it will neither question nor otherwise attack the ownership by FRATERNITY of any of its insignia. Licensee further agrees that it will not register or attempt to register any trade name, trademark, service mark, or domain name which, in whole or in part, incorporates or is confusingly similar to any of FRATERNITY'S insignia in any jurisdiction. Licensee also agrees not to adopt or use a trademark, service mark, domain name, or any other designation confusingly similar to FRATERNITY'S insignia or that uses an abbreviation of any of FRATERNITY'S insignia, or use any other trademark, word, symbol, letter, domain name, or design in combination with FRATERNITY'S insignia or an abbreviation of FRATERNITY'S insignia in a manner that would or may create a combination mark. This section shall survive expiration or termination of this License Agreement.

Licensee agrees that all work product, including but not limited to copyrightable expressions, inventions (whether patentable or not), improvements, trade secrets, or discoveries created by Licensee shall be deemed to be performed in accordance with Licensee's duties hereunder, shall constitute "works for hire" as defined under the U. S. Copyright Act, and that all copyrights, as well as all other intellectual property rights, in and to the work product, shall be owned by FRATERNITY. To the extent any work product is not "works for hire," Licensee hereby assigns its entire right, title and interest, including but not limited to copyright, in all such work product to FRATERNITY. Licensee agrees to sign all necessary documents to register any copyrights and assign any inventions to FRATERNITY. Further, if Licensee utilizes any subcontractor, employee or non-employee in connection with performing its obligations under this agreement, Licensee warrants that any such subcontractor, employee or non-employee shall be bound by sections 2, 15 and 19 of this agreement before being engaged and, in writing, shall then indicate his or her consent to be bound thereby.

Licensee shall promptly disclose to FRATERNITY all inventions, discoveries, formulas, processes, designs, trade secrets, and other useful information and know-how made, discovered or developed by Licensee under this agreement. For all software developed under this agreement, Licensee shall deliver both source code and object code to FRATERNITY along with documentation of the source code reasonably satisfactory to Licensee. With respect to any third party commercially available software products procured by Licensee on behalf of FRATERNITY, Licensee shall ensure that all licenses and warranties for such products are in the name of FRATERNITY, and that such licenses will allow the use and distribution of the work product reasonably contemplated by the parties.

3. LICENSED PRODUCTS: LICENSEE is granted the non-exclusive right to utilize the insignia specifically referenced in paragraph 1 above only in relation to the following products:

See Appendix B

4. **QUALITY CONTROL:** Licensee represents and warrants that to the best of its knowledge that any merchandise utilizing FRATERNITY'S insignia is in compliance with the FRATERNITY'S high standards, style and image and Licensee agrees to maintain the quality of the merchandise at least at a level that meets industry standards.

LICENSEE shall not commence marketing of any merchandise utilizing FRATERNITY'S insignia until a representative sample has been provided to FRATERNITY and specifically approved in writing by FRATERNITY. Every year thereafter, Licensee shall again provide to FRATERNITY representative samples of any merchandise which utilizes FRATERNITY'S insignia in association with any merchandise which Licensee is requesting the right to market in association with any application for renewal of this License Agreement. Furthermore, Licensee shall supply FRATERNITY with representative samples of the merchandise and Licensee's use of the FRATERNITY'S insignia in connection with the merchandise at any time thereafter, upon thirty (30) days notice from FRATERNITY. Licensee shall cooperate fully with FRATERNITY to facilitate periodic review of Licensee's use of the FRATERNITY'S insignia and of Licensee's compliance with (a) the quality standards described in this License Agreement and (b) the FRATERNITY'S Trademark Usage Manual. In any periodic review of Licensee's compliance, the merchandise will be reviewed under the compliance requirements that were in effect when the merchandise was last submitted to the FRATERNITY for review.

If FRATERNITY, in its sole discretion, determines that any use of the FRATERNITY'S insignia or that the quality of any merchandise submitted to FRATERNITY for quality control purposes fails to conform to this License Agreement, FRATERNITY shall provide the Licensee with written notice of such failure or deficiency, and Licensee shall immediately stop selling and distributing the deficient merchandise. Licensee shall have thirty (30) days after the date of the written notice, or any such longer period of time agreed upon by the parties, to satisfy FRATERNITY that the Licensee has fully corrected and remedied any such deficiencies. Should the Licensee fail to cure the deficiencies within said thirty (30) day, or previously agreed upon time, period, FRATERNITY may terminate this License Agreement with respect to such deficient merchandise.

Licensee represents and warrants that the representative sample of the specific model or version of Licensee's merchandise submitted to FRATERNITY for review accurately represents the specific model or version of the merchandise at all times the merchandise is to be available during the Term of this License Agreement.

Licensee represents and warrants that it will comply with all applicable laws, rules, and regulations regarding promotion and sale of merchandise with any of the FRATERNITY'S insignia, and will not violate or infringe any right of any third party.

5. **PRODUCT MARKING:** Licensee shall identify each licensed article as an officially licensed product of FRATERNITY by incorporating the "Official Licensed Product" seal shown in Appendix C on a sticker, tag, label, imprint, or other appropriate method. Additionally, all marketing, promotional and advertising pieces associated with the licensed products of FRATERNITY must also be represented in the aforementioned manner. Notwithstanding the foregoing, FRATERNITY may notify Licensee that the "Official Licensed Product" seal is not to be used, and if FRATERNITY provides such notice to Licensee, then Licensee shall immediately stop using the "Official Licensed Product" seal as set forth in this section.

Licensee shall also identify each licensed product with the appropriate service mark or trademark symbol in a manner specified in the artwork provided by FRATERNITY upon license approval or as otherwise specified from time to time in writing by FRATERNITY.

6. **ROYALTY:** In relation to all merchandise marketed by or on behalf of LICENSEE utilizing any of FRATERNITY'S insignia, LICENSEE shall pay to FRATERNITY a royalty calculated as follows:

8.5% of gross sales and a \$40 annual advanced, minimum guaranteed royalty

Within thirty (30) days following the end of each calendar quarter, LICENSEE shall provide FRATERNITY with a precise accounting showing the calculation of the royalty owing, along with payment of the royalty owing for said calendar quarter. The quarterly accounting shall include sufficient detail to clearly and understandably provide FRATERNITY with any and all information which is to be taken into account in association with the calculation of the royalty owing and, if requested by FRATERNITY in association with any accountings, LICENSEE shall accurately complete and provide FRATERNITY with any forms of accounting reasonably specified by FRATERNITY.

Any royalty or other amount owing from LICENSEE to FRATERNITY which is not paid within seven (7) days of the due date thereof shall accrue interest at the rate of ten (10%) percent per annum. Any royalty report not received within seven (7) days of the due date thereof shall incur an administrative fee of fifteen (\$15) dollars.

7. **RECORD KEEPING/AUDIT RIGHTS:** For a period of at least three (3) years following each transaction involving merchandise containing FRATERNITY insignia, Licensee agrees to maintain true, correct and orderly records in conformity with reasonably recognized accounting standards, including all production records, order forms and purchase orders reflecting the total quantity of licensed merchandise manufactured and the total quantity of licensed merchandise sold or otherwise distributed, including true, accurate and complete accounting records of all consideration received by or on behalf of Licensee in relation to any licensed merchandise produced by or on behalf of Licensee, as well as any other records reasonably specified by FRATERNITY.

The records to be kept by LICENSEE shall be reasonably available for audit or inspection by or on behalf of FRATERNITY.

Should any such inspection or audit disclose that royalties paid to FRATERNITY were less than the amount actually owing, LICENSEE shall forthwith pay to FRATERNITY the deficiency with interest at the rate of ten (10%) percent per annum from the date when the deficient amount should have been paid to FRATERNITY. Furthermore, should the audit or inspection disclose that royalties paid by LICENSEE were intentionally understated in any amount, or unintentionally understated in an amount of at least five (5%) percent less than the actual royalty owing for any quarterly period, LICENSEE shall be responsible to immediately reimburse FRATERNITY for all fees and expenses incurred by FRATERNITY in relation to the

inspection or audit.

8. **INSURANCE:** The LICENSEE is obligated to maintain comprehensive general and product liability insurance protecting against claims of any sort for loss or damage arising out of the design, manufacture or marketing of licensed products, said liability insurance to be maintained in the face amount of one million dollars (\$1,000,000.00), which policy of insurance shall name FRATERNITY as a co-insured and shall provide that FRATERNITY is to be given at least thirty (30) days notice from the insurer prior to cancellation or amendment of such insurance policies. The LICENSEE shall provide FRATERNITY with certificates of insurance evidencing that the required insurance has been procured before commencing with the manufacture or marketing of any merchandise bearing insignia of FRATERNITY. Should the LICENSEE fail to maintain the required insurance, FRATERNITY may, but is not required to, procure same and the LICENSEE shall promptly reimburse FRATERNITY for the cost of same.

9. **DURATION:** This License Agreement shall remain in effect up through the 30th day of June next following the execution of this agreement and is automatically renewed for an additional year in accordance with the section 10 hereof unless either party mails written notice to the other party on or before May 31 of the then current year notifying LICENSEE that this agreement will not be renewed and will terminate effective June 30 of that year. Notwithstanding the foregoing, FRATERNITY may terminate this License Agreement with or without cause upon thirty (30) days prior written notice.

10. **RENEWAL:** Unless terminated pursuant to any of the terms and conditions of this License Agreement, this License Agreement is automatically renewed for an additional year beginning on July 1 of each year, pursuant to the following conditions:

- a. At least 30 days prior to July 1 of each year, Licensee shall provide FRATERNITY with representative samples of any merchandise which Licensee wishes to market pursuant to a renewal of this License Agreement;
- b. FRATERNITY shall have thirty (30) days to examine said merchandise in its sole discretion determine whether to authorize renewal of this License Agreement in relation to any or all of said proposed items;
- c. Should FRATERNITY elect not to renew this License Agreement in relation to any of the proposed merchandise, it will provide LICENSEE with written notice of such, along with specification of which items of the proposed merchandise are not approved for the renewal year.

11. **DEFAULT:** FRATERNITY shall have the right to terminate this License Agreement prior to the duration thereof pursuant to the following conditions:

- a. FRATERNITY has the right to immediately terminate this License Agreement through written notice to LICENSEE upon the occurrence of any of the following situations:
 1. Willful and material falsification of any records required to be maintained or reports required to be provided by the LICENSEE to FRATERNITY;
 2. Willful and material deception of customers in relation to the production, marketing or other distribution of products containing FRATERNITY insignia;
 3. Failure of the LICENSEE to maintain liability insurance in compliance with section 8 of this License Agreement.

12. **OBLIGATIONS UPON TERMINATION:** The continuing obligations of the LICENSEE after termination or expiration of this License Agreement are as follows:

1. To pay any sums then or subsequently owing to FRATERNITY;
2. To cease any production, use, marketing or distribution of any merchandise bearing the insignia of FRATERNITY and LICENSEE shall cease holding itself out as being a LICENSEE of, or otherwise affiliated with, FRATERNITY and the LICENSEE shall not advertise or otherwise publicize the former affiliation with FRATERNITY;
3. FRATERNITY, in its sole discretion, has the option to purchase from LICENSEE any portion of the supplies or materials remaining on hand containing any of the insignia of FRATERNITY which items shall be provided to FRATERNITY at cost; and
4. LICENSEE shall destroy any other items on hand bearing FRATERNITY insignia or otherwise remove such insignia from any merchandise, equipment, fixtures and structures as to any items remaining on hand bearing the insignia of FRATERNITY which FRATERNITY does not wish to purchase pursuant to subsection c. above.

13. **NO WAIVER:** The failure of either party to exercise any power or right under this License Agreement or to insist at any time upon the strict compliance with any of the provisions hereof shall not constitute a waiver of said party's right to thereafter demand exact compliance with the terms hereof. A waiver shall only be effective if it is contained in a writing signed by the party against whom the waiver is claimed and shall not preclude that party from declaring default as to any further continuation or occurrence of that or any other grounds to declare default of this License Agreement.

14. **NO AGENCY:** LICENSEE acknowledges that this License Agreement does not in any way establish LICENSEE as an agent or employee of FRATERNITY. LICENSEE acknowledges that it is entering into this agreement solely to become a LICENSEE of FRATERNITY with no right or authority to assume or create any obligation on behalf of FRATERNITY.

15. **INDEMNIFICATION:** Licensee will defend, indemnify, and hold harmless FRATERNITY from any and all liability,

damages, claims, allegations, suits and losses, including attorneys' fees, relating to Licensee's performance under this License Agreement. This includes, and is not limited to, claims or allegations of intellectual property infringement by third parties.

16. **INVALIDITY OF TERMS:** Any provision of this Agreement prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remaining provisions of this Agreement.

17. **NOTICES:** Any notices required to be given pursuant to this License Agreement should be addressed as follows:

LICENSOR: Executive Director
Kappa Sigma Fraternity
1610 Scottsville Road
Charlottesville, VA 22902

LICENSEE: Affinity Test Vendor 2
123 Main Street
Chicago Illinois 92009

18. **BREACH OF CONTRACT:** Should LICENSEE materially breach any provision of this License Agreement, it shall be required to pay any reasonable attorneys' fees, as well as any litigation or other expenses resulting there from incurred by the FRATERNITY.

19. **BINDING EFFECT:** This License Agreement is not assignable by either party and shall be binding upon any employees, agents, heirs, executors, administrators, assigns, or successor in interest of any of the parties.

20. **HEADINGS:** The section headings herein are for convenience only and shall not affect the meaning or interpretation of any provision of this agreement.

21. **ENTIRE AGREEMENT:** This License Agreement contains the entire understanding and agreement between the parties, and any statements, promises, or inducements made by either party, or agent of either party, that is not contained in this License Agreement shall not be valid or binding, nor may this License Agreement be enlarged, modified, or altered, except in writing signed by the parties.

22. **CHOICE OF LAW:** This License Agreement shall be interpreted and applied according to the laws of the State of Virginia.

IN WITNESS WHEREOF, the parties have executed this License Agreement this day and year first above written.

FRATERNITY:
Kappa Sigma Fraternity

Signature

Title

Date
Agreement No. A121244040

LICENSEE:
Affinity Test Vendor 2

Signature

Title

Date

Appendix A

Greek letters of Organization, the crest, badge, and name "Kappa Sigma.", including nicknames and symbols commonly used by FRATERNITY in trade, as determined by FRATERNITY from time to time. It is understood and agreed that LICENSEE will not utilize any variations on any of the foregoing insignia, or any insignia confusingly similar to any of these insignia absent prior written approval from FRATERNITY.

Appendix B

Agreement No. A121244040

General Product description: T-shirts, Sweatshirts, Hats

Appendix C

