



LIMA Webinar  
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# Anatomy of a License Agreement

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# How *NOT* to Negotiate



## MERCHANDISING LICENSE AGREEMENT

**THIS AGREEMENT** is entered into this 1<sup>st</sup> day of October, 2017 (the "Effective Date") by and between **BIG TIME BASEBALL, INC.**, a Nevada corporation with offices at 1 Mandalay Bay, Las Vegas, NV ("Licensor") and **MLB, LLC**, a Grand Cayman Limited Liability Company with offices at 1 Surf Street, Grand Cayman ("Licensee").

### WITNESSETH:

**WHEREAS**, Licensor is the sole and exclusive owner of the Property or Properties identified more fully in Schedule A attached hereto (the "Property"); and

**WHEREAS**, Licensor is the sole and exclusive owner of the trademark identified more fully in Schedule A attached hereto (the "Trademark"); and

**WHEREAS**, Licensor has the power and authority to grant to Licensee the right, privilege and license to use, manufacture and sell those types of products that incorporate or are otherwise based on the Property as identified in Schedule A attached hereto (the "Licensed Products") and to use the Trademark on or in association with such Licensed Products; and

**WHEREAS**, Licensee has represented that it has the ability to manufacture, market and distribute the Licensed Products in the countries identified in Schedule A attached hereto (the "Territory") and the distribution channels listed in Schedule A (the "Distribution Channels") and to use the Trademark on or in association therewith;

**WHEREAS**, Licensee desires to obtain from Licensor a non-exclusive license to use the Property in order to manufacture, have manufactured and sell Licensed Products in the Territory and Distribution Channels and to use the Trademark on or in association therewith; and

**WHEREAS**, both Licensee and Licensor are in agreement with respect to the terms and conditions upon which Licensee shall use the Property in order to manufacture, have manufactured and sell Licensed Products and to use the Trademark.

**NOW, THEREFORE**, in consideration of the promises and agreements set forth herein, the parties, each intending to be legally bound hereby, do promise and agree as follows.

## **1. LICENSE GRANT**

A. License Grant for Property. Licensor hereby grants to Licensee, for the Term of this Agreement, the non-exclusive right and license to use the Property in order to manufacture, have manufactured, sell, distribute, advertise and promote the Licensed Products in the Territory throughout the Distribution Channels in a manner approved by Licensor. The license includes, but is not limited to, a license under any and all current and future copyrights and any applications therefore with respect to the Property. This license shall pertain only to the Property and Licensed Products and does not include any other property or products including, but not limited to premium, promotion, sponsorship, entertainment or retail rights. All rights not expressly granted herein are reserved by Licensor. If Licensee is not in breach of any provision of this Agreement, Licensor agrees not to grant a license to any third party that may be in conflict herewith during the Term.

B. Trademark License. Licensor hereby grants to Licensee, for the Term of this Agreement, a royalty-free, exclusive license to use the Trademark on or in association with the Licensed Products in the Territory as well as on packaging, promotional and advertising material associated therewith.

C. No Sub-Licensing. Licensee may not grant any sublicenses to any third party without the prior express written consent of the Licensor which may be withheld for any reason.

D. No Sales Outside Territory. Licensee shall not sell, offer to sell, market or distribute the Licensed Products outside the Territory or Distribution Channels or knowingly sell or distribute them to persons who are likely to resell them outside the Territory or Distribution Channels

## **2. TERM OF THE AGREEMENT**

This Agreement and the provisions hereof, except as otherwise provided, shall be in full force and effect commencing on the date of execution by both parties and shall extend for a Term as recited in Schedule A attached hereto (the "Term").

### **3. COMPENSATION**

- A. Royalty. In consideration for the licenses granted hereunder, Licensee agrees to pay to Licensor during the Term of this Agreement, a royalty in the amount recited in Schedule A attached hereto (the "Royalty") based on Licensee's Net Sales of Licensed Products.
- B. Sub-Licensing Revenue. In the event that Licensee grants any approved sub-licenses for the use of the Property, Licensee shall pay Licensor EIGHTY PERCENT (80%) of the gross income paid by such approved sub-Licensees prior to the deduction of any commissions or expenses.
- C. Royalty Period. The Royalty owed Licensor shall be calculated on a quarterly calendar basis (the "Royalty Period") and shall be payable no later than thirty (30) days after the termination of the preceding full calendar quarter, i.e., commencing on the first (1st) day of January, April, July and October with the exception of the first and last calendar quarters which may be "short" depending upon the effective date of this Agreement.
- D. Royalty Statements. With each Royalty Payment, Licensee shall submit to Licensor a written royalty statement in a form acceptable to Licensor. Such royalty statement shall be certified as accurate by Licensee's CFO, reciting on a country by country basis, the stock number, item, units sold, description, quantity shipped, gross invoice, amount billed customers less discounts, allowances, returns and reportable sales for each Licensed Product. Such statements shall be furnished to Licensor whether or not any Licensed Products were sold during the Royalty Period.
- E. Guaranteed Minimum Royalty. Licensee agrees to pay to Licensor a Guaranteed Minimum Royalty in the amount recited in Schedule A attached hereto (the "Guaranteed Minimum Royalty"). As further recited in Schedule A, a portion of the Guaranteed Minimum Royalty for the first year shall be payable as an Advance against royalties (the "Advance"). The actual royalty payments shall reflect the amount of all Guaranteed Minimum Royalty payments, including any Advances made.

F. Net Sales Defined. "Net Sales" shall mean Licensee's gross sales (which shall be considered the higher of the amount reflected on Licensee's invoice or Licensee's "A" price list or the highest amount billed any customer) of Licensed Products, less discounts and allowances actually shown on the invoice (except cash discounts not deductible in the calculation of Royalty) and, further, less any bona fide returns (net of all returns actually made or allowed as supported by credit memoranda actually issued to the customers). Licensee's total deductions for all discounts, allowances and returns shall not exceed TEN PERCENT (10%) of Licensee's gross sales for any Royalty Period. No other costs incurred in the manufacturing, selling, advertising, and distribution of the Licensed Products shall be deducted nor shall any deduction be allowed for any uncollectible accounts or allowances or cash discounts.

G. When Sales Are Made. A Royalty obligation shall accrue upon the sale of the Licensed Products regardless of the time of collection by Licensee. For purposes of this Agreement, a Licensed Products shall be considered "sold" upon the date when such Licensed Products is billed, invoiced, shipped, or paid for, whichever event occurs first.

H. Sales to Affiliates. If Licensee sells any Licensed Products to any affiliated party or in any party related to or under the common control with Licensee at a price less than the regular price charged to other parties, the Royalty payable Licensor shall be computed on the basis of the regular price charged to other parties.

I. Challenge of Payments. The receipt or acceptance by Licensor of any royalty statement or royalty payment shall not prevent Licensor from subsequently challenging the validity or accuracy of such statement or payment.

J. Acceleration. Upon expiration or termination of this Agreement, all Royalty obligations, including any unpaid portions of the Guaranteed Minimum Royalty, shall be accelerated and shall immediately become due and payable.

K. Survival. Licensee's obligations for the payment of a Royalty and the Minimum Royalty shall survive expiration or termination of this Agreement and will continue for so long as Licensee continues to manufacture, sell or otherwise market the Licensed Products.

L. Payments in U.S. Currency. All payments due hereunder shall be made in United States currency drawn on a United States bank, unless otherwise specified between the parties.

M. Interest & Collection Costs. Late payments shall incur interest at the rate of ONE PERCENT (1.0%) per month (or the highest rate allowed by applicable law, whichever is highest) from the date such payments were originally due. Licensee shall be responsible for all of Licensor's costs of collection of past due amounts including, without limitation, reasonable attorneys' fees and costs.

N. Local Taxes Licensee shall be responsible for any taxes on revenues received from sublicensing in countries outside the United States while Licensor shall be responsible for any taxes levied on the receipt of income in the United States. Any taxes foreign to United States taxes imposed on fees or royalties payable under this Agreement shall be paid by Licensor or deducted by Licensee from amounts due Licensor hereunder only if such taxes are allowable by the United States as a credit on Licensor's United States income tax return or would be allowable if the particular circumstance of the Licensor (such as that its profits are insufficient) causes disallowance. If not allowable, such taxes, if any, will be paid by the Licensee. Both parties will cooperate with one another to obtain the benefits of such double taxation agreements as may be applicable hereunder.

O. Currency Conversions. All fees payable hereunder shall be based on the official exchange rate on the date on which such payment is due and Licensee shall provide detailed conversion calculations with every payment submitted hereunder. If, by any reason of any governmental or fiscal restrictions effecting the convertibility, payment cannot be made in U.S. funds, then Licensee shall take such reasonable actions with respect to the payment due as Licensor shall direct.

#### 4. AUDIT

A. Record Inspection. Licensor shall have the right, upon at least five (5) days written notice and no more than once per calendar year, to inspect Licensee's books and records and all other documents and material in the possession of or under the control of Licensee with respect to the subject matter of this Agreement, including all manufacturing, inventory and sales records, at the place or places where such records are normally retained by Licensee in the United States. Licensor shall have free and full access thereto for such purposes and shall be permitted to be able to make copies thereof and extracts therefrom and Licensee shall fully cooperate with such inspection.

B. Underpayment of Royalties. In the event that such inspection reveals a discrepancy in the amount of Royalty owed Licensor from what was actually paid, Licensee shall pay such discrepancy, plus interest as provided for herein. Should the discrepancy be in excess of FIVE PERCENT (5%) of what Licensee actually paid Licensor for any Royalty Period, Licensee shall also reimburse Licensor for the cost of such inspection plus any attorney's fees incurred in connection therewith. Should the discrepancy be in excess of TWENTY-FIVE PERCENT (25%) of the monies actually paid Licensor for any Royalty Period, in addition to all other rights that it may have, Licensor shall also have the right to immediately terminate this Agreement.

C. Record Retention. All books and records relative to Licensee's obligations hereunder shall be maintained and kept accessible and available to Licensor for inspection for at least three (3) years after termination or expiration of this Agreement.

D. Confidentiality. In the event that an investigation of Licensee's books and records is made, certain confidential and proprietary business information of Licensee may necessarily be made available to the person or persons conducting such investigation. It is agreed that such confidential and proprietary business information shall be retained in confidence by Licensor and shall not be used by Licensor or disclosed to any third party for a period of two (2) years from the date of disclosure, or without the prior express written permission of Licensee, unless required by law. It is understood and agreed, however, that such information may be used in any proceeding based on Licensee's failure to pay its actual Royalty obligation.



## 5. **WARRANTIES & OBLIGATIONS**

- A. Power to Grant License and Conflicts. Licensor represents and warrants that it has the right and power to grant the licenses conveyed herein and that there are no other agreements with any other party in conflict herewith.
- B. Non-Infringement. Licensor further represents and warrants that the Property and/or Trademark do not infringe any valid right of any third party.
- C. Best Efforts. Licensee represents and warrants that it will use its best efforts to promote, market, sell and distribute the Licensed Products.
- D. Licensee Responsibilities. Licensee shall be solely responsible for the manufacture, production, sale and distribution of the Licensed Products and will bear all related costs associated therewith. Licensee shall in the manufacture of Licensed Products comply with and require that its manufacturers comply fully with the LIMA Code of Business Practices, a copy of which is attached hereto as Exhibit A.
- E. Product Introduction and Initial Shipment Dates. Licensee shall introduce the Licensed Products throughout the Territory in all Distribution Channels on or before the Product Introduction Dates recited in Schedule A and commence shipment of Licensed Products in all countries in the Territory in all Distribution Channels on or before the Initial Shipment Date recited in Schedule A. Failure to meet either the Product Introduction Date or the Initial Shipment Date shall constitute grounds for immediate termination of this Agreement by Licensor.

## **6. NOTICES, QUALITY CONTROL & SAMPLES**

A. Marking Provisions. The Licenses granted hereunder are conditioned upon Licensee's full and complete compliance with the marking provisions of the intellectual property laws of all countries in the Territory.

B. Legal Notices. The Licensed Products, as well as all promotional, packaging and advertising material relative thereto, shall include all appropriate legal notices as required by Licensor.

C. Quality of Licensed Products. The Licensed Products shall be of a high quality which is at least equal to comparable products manufactured and marketed by Licensee and in conformity with a standard sample approved by Licensor.

D. Failure to Meet Quality Levels. If the quality of a class of the Licensed Products falls below such a production-run quality, as previously approved by Licensor, Licensee shall use its best efforts to restore such quality. In the event that Licensee has not taken appropriate steps to restore such quality within thirty (30) days after notification by Licensor, Licensor shall have the right to terminate this Agreement.

E. Inspection of Licensed Products. Prior to the commencement of manufacture and sale of the Licensed Products, Licensee shall submit to Licensor, at no cost to Licensor and for approval, six (6) sets of samples of all Licensed Products which Licensee intends to manufacture and sell and one (1) complete set of all promotional and advertising material associated therewith. Failure of Licensor to approve such samples within ten (10) working days after receipt hereof will be deemed disapproval. If Licensor should expressly disapprove any sample, it shall provide specific reasons for such disapproval. Once such samples have been approved by Licensor, Licensee shall not materially depart therefrom without Licensor's prior express written consent, which shall not be unreasonably withheld.

F. Periodic Samples. Every year, Licensee shall submit to Licensor, for approval, an additional twelve (12) sets of samples.

G. Inspection of Manufacturing Facilities. The Licensee agrees to permit Licensor or its representative to inspect the facilities where the Licensed Products are being manufactured and packaged.

## **7. NOTICE AND PAYMENT**

Any notice required to be given pursuant to this Agreement shall be in writing and delivered personally to the other designated party at the above stated address or mailed by certified or registered mail, return receipt requested or delivered by a recognized national overnight courier service. Either party may change the address to which notice or payment is to be sent by written notice to the other in accordance with the provisions of this paragraph.

## **8. INTELLECTUAL PROPERTY PROTECTION & OWNERSHIP OF RIGHTS**

A. IP Protection. Licensor shall seek, obtain and, during the Term of this Agreement, maintain in its own name and at its own expense, appropriate trademark or copyright protection for the Property and Trademark.

B. Requests by Licensee. In the event that Licensee requests that Licensor obtain patent or trademark protection for a particular item or in a particular country where Licensor had not, heretofore, obtained such protection, Licensor agrees to take reasonable steps to obtain such protection, provided, however, that Licensee shall be obligated to reimburse Licensor for the cost of filing, prosecuting and maintaining same.

C. Ownership of Designs and Works. It is understood and agreed that Licensor shall retain all right, title and interest in the original Property and Trademark including any associated trade dress, as well as in any modifications or improvements made to the Property by Licensee. Licensee shall promptly disclose to Licensor all material bearing the Property, including any product designs and configurations (“Works”) which may qualify for copyright protection under U.S. or local laws and which relates to this Agreement and acknowledges that all such Works shall be deemed a “work made for hire” on behalf of the Licensor or, if such Work does not so qualify, Licensee shall upon the request of Licensor, assign, and hereby does assign, to Licensor all right, title and interest in the rights to such Works throughout the world. Under no circumstances, however, shall Licensee continue to use any such Works specifically developed for the Licensed Products after termination of this Agreement. Similarly, Licensee hereby agrees to and does hereby assign to Licensor all intellectual property rights in any Licensed Product that it may develop using the Licensed Property including, but not limited to, all designs, product configurations, product packaging, trade dress, software and the like that Licensee may use in conjunction with such Licensed Products.

D. Execution of Documents. The parties agree to execute any documents reasonably requested by the other party to effect any of the above provisions.

E. Licensor's Exclusive Rights to Property. Licensee acknowledges Licensor's exclusive rights in the Property and, further, acknowledges that the Property and/or the Trademark are unique and original to Licensor and that Licensor is the owner thereof. Licensee shall not, at any time during or after the effective Term of the Agreement dispute or contest, directly or indirectly, Licensor's exclusive right and title to the Property and/or the Trademark or the validity thereof. Licensor, however, makes no representation or warranty with respect to the validity of any patent, trademark or copyright which may issue or be granted therefrom.

F. Secondary Meaning. Licensee acknowledges that the Property and/or the Trademark have acquired secondary meaning.

G. Use Inures to Benefit of Licensor. Licensee agrees that its use of the Property and/or the Trademark inures to the benefit of Licensor and that the Licensee shall not acquire any rights in the Property and/or the Trademark.

## **9. TERMINATION**

The following termination rights are in addition to the termination rights provided elsewhere in the Agreement:

A. Immediate Right of Termination. Licensor shall have the right to immediately terminate this Agreement by giving written notice to Licensee in the event that Licensee does any of the following:

- (1) fails to meet the Product Introduction Date or the Initial Shipment Date as specified in Schedule A; or
- (2) after having commenced sale of the Licensed Products, fails to continuously sell Licensed Products for three (3) consecutive Royalty Periods; or
- (3) fails to obtain or maintain product liability insurance in the amount and of the type provided for herein; or
- (4) files a petition in bankruptcy or is adjudicated a bankrupt or insolvent, or makes an assignment for the benefit of creditors, or an arrangement pursuant to any bankruptcy law, or is unable to satisfy its obligations when they become due; or if the Licensee discontinues its business or a receiver is appointed for the Licensee or for the Licensee's business and such receiver is not discharged within thirty (30) days; or
- (5) breaches any of the provisions of this Agreement relating to the unauthorized assertion of rights in the Property and/or the Trademark; or
- (6) fails, after receipt of written notice from Licensor, to immediately discontinue the distribution or sale of the Licensed Products or the use of any packaging or promotional material which does not contain the requisite legal legends; or
- (7) fails to comply with the LIMA Code of Business Practices; or
- (8) fails to make timely payment of Royalties when due two or more times during any twelve-month period.

B. Immediate Right to Terminate a Portion. Licensor shall have the right to immediately terminate the portion(s) of the Agreement relating to any Property and/or Licensed Product(s) and/or for any country in the Territory if Licensee, for any reason, fails to meet the Product Introduction Dates or the Initial Shipment Dates specified in Schedule A or, after the commencement of manufacture and sale of a particular Licensed Product in a particular country, ceases to sell commercial quantities of such Licensed Product in such country for three (3) consecutive Royalty Periods.

C. Right to Terminate on Notice. This Agreement may be terminated by either party upon thirty (30) days written notice to the other party in the event of a breach of a material provision of this Agreement by the other party, provided that, during the thirty (30) days period, the breaching party fails to cure such breach.

D. Licensee Right to Terminate. Licensee shall have the right to terminate this Agreement at any time on sixty (60) days written notice to Licensor. In such event, all moneys paid to Licensor shall be deemed non-refundable and Licensee's obligation to pay any guaranteed moneys, including the Guaranteed Minimum Royalty, shall be accelerated and any yet unpaid guaranteed moneys shall become immediately due and payable.

## **10. POST TERMINATION RIGHTS**

A. Inventory. Not less than thirty (30) days prior to the expiration of this Agreement or immediately upon termination thereof, Licensee shall provide Licensor with a complete schedule of all inventory of Licensed Products then on-hand (the "Inventory").

B. Sell-Off Period. Upon expiration or termination of this Agreement, except for reason of a breach of Licensee's duty to comply with the quality control or legal notice marking requirements, Licensee shall be entitled, for an additional period of three (3) months and on a nonexclusive basis, to continue to sell such Inventory. Such sales shall be made subject to all of the provisions of this Agreement and to an accounting for and the payment of a Royalty thereon. Such accounting and payment shall be due and paid within thirty (30) days after the close of the said three (3) month period. Within 10 business days after the Sell-Off Period has expired, Licensee shall provide Licensor with an inventory report detailing all remaining inventory and the location of such inventory. All such remaining inventory shall, at Licensor's election, be either destroyed by Licensee or donated to Kids In Distressed Situations ("K.I.D.S."). If donated, Licensee shall fully cooperate with K.I.D.S. in facilitating such donation. Licensee shall deliver to Licensor an affidavit, signed by an officer of Licensee, attesting to the destruction or donation of such remaining inventory, in such form as Licensor may in its sole discretion require.

C. Reversion of Rights. Upon the expiration or termination of this Agreement, all of the rights of Licensee under this Agreement shall forthwith terminate and immediately revert to Licensor and Licensee shall immediately discontinue all use of the Property and the like, at no cost whatsoever to Licensor.

D. Return of Materials. Upon termination of this Agreement for any reasons whatsoever, Licensee agrees to immediately return to Licensor all material relating to the Property including, but not limited to, all artwork, color separations, prototypes and the like, as well as any market studies or other tests or studies conducted by Licensee with respect to the Property, at no cost whatsoever to Licensor.

## **11. GOOD WILL**

Licensee recognizes the value of the good will associated with the Property and acknowledges that the Property and all rights therein including the good will pertaining thereto, belong exclusively to Licensor.

## **12. INFRINGEMENTS**

A. Right To Sue Infringers. Licensor shall have the sole right, but not the obligation, to institute and prosecute lawsuits against third persons for infringement of the rights licensed in this Agreement.

B. Licensee Right to Initiate Actions. If Licensor does not institute an infringement suit within ninety (90) days after Licensee's written request that it do so, Licensee may request approval from Licensor to be able to institute and prosecute such lawsuit on its own behalf, such approval not to be unreasonably withheld or delayed. Any lawsuit shall be prosecuted solely at the cost and expense of the party bringing suit and all sums recovered in any such lawsuits, whether by judgment, settlement or otherwise, in excess of the amount of reasonable attorneys' fees and other out of pocket expenses of such suit, shall be divided equally between the parties.

C. Cooperation. Upon request of the party bringing the lawsuit, the other party shall execute all papers, testify on all matters, and otherwise cooperate in every way necessary and desirable for the prosecution of any such lawsuit. The party bringing suit shall reimburse the other party for the expenses incurred as a result of such cooperation.

### **13. INDEMNITY**

A. Licensee Indemnity. Licensee agrees to defend and indemnify Licensor, its officers, directors, agents and employees, against all costs, expenses and losses (including reasonable attorneys' fees and costs) incurred through claims of third parties against Licensor based on the manufacture or sale of the Licensed Products including, but not limited to, actions founded on product liability or any of its other actions or inactions under this Agreement.

B. Licensor Indemnity. Licensor agrees to defend and indemnify Licensee, its officers, directors, agents and employees, against all costs, expenses and losses (including reasonable attorneys' fees and costs) incurred through claims of third parties against Licensee challenging the authenticity of the originally submitted Property provided, however, that such indemnity shall only be applicable in the event of a final decision by a court of competent jurisdiction from which no appeal of right exists and shall be limited up to the amount of the actual moneys received by Licensor under this Agreement. Further, this indemnity does not cover any modifications or changes made to the Property by Licensee.

### **14. INSURANCE**

Licensee shall, throughout the Term of the Agreement, obtain and maintain at its own cost and expense from a qualified insurance company licensed to do business in New York and having a Best Rating of at least A-, standard Product Liability Insurance naming Licensor as an additional named insured. Such policy shall provide protection against any and all claims, demands and causes of action arising out of any defects or failure to perform, alleged or otherwise, of the Licensed Products or any material used in connection therewith or any use thereof. The amount of coverage shall be as specified in Schedule A attached hereto. The policy shall provide for ten (10) days notice to Licensor from the insurer by Registered or Certified Mail, return receipt requested, in the event of any modification, cancellation or termination thereof. Licensee agrees to furnish Licensor a certificate of insurance evidencing same within thirty (30) days after execution of this Agreement and, in no event, shall Licensee manufacture, distribute or sell the Licensed Products prior to receipt by Licensor of such evidence of insurance.



## **15. FORCE MAJEURE**

It is understood and agreed that in the event of an act of the government or terrorism, or war conditions, or fire, flood or labor trouble in the factory of Licensee or in the factory of those manufacturing parts necessary for the manufacture of the Licensed Products, prevent the performance by Licensee of the provisions of this Agreement, then such nonperformance by Licensee shall not be considered as grounds for breach of this Agreement and such nonperformance shall be excused while the conditions herein prevail and for two (2) months thereafter.

## **16. JURISDICTION & DISPUTES**

A. Jurisdiction. The parties recognize and agree that this Agreement was negotiated in the state of Nevada and, as such agree that any disputes under this Agreement shall be governed in accordance with Nevada law.

B. Disputes. All disputes under this Agreement shall be resolved by the state and federal courts in Nevada and the parties all consent to the jurisdiction of such courts, agree to accept service of process by mail, and hereby waive any jurisdictional or venue defenses otherwise available to it. Prior to the filing of any lawsuit, however, the Parties agree to submit the dispute to binding mediation before the American Arbitration Association and engage in good faith negotiations to settle the matter. If the dispute cannot be settled within 60 days after such submission, the aggrieved party may commence such action.

## **17. AGREEMENT BINDING ON SUCCESSORS**

The provisions of the Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their heirs, administrators, successors and assigns.

## **18. WAIVER**

No waiver by either party of any default shall be deemed as a waiver of prior or subsequent default of the same or other provisions of this Agreement.

## **19. SEVERABILITY**

If any term, clause or provision hereof is held invalid or unenforceable by a court of competent jurisdiction, such invalidity shall not affect the validity or operation of any other term, clause or provision and such invalid term, clause or provision shall be deemed to be severed from the Agreement.

## **20. NO JOINT VENTURE**

Nothing contained herein shall constitute this arrangement to be employment, a joint venture or a partnership.

## **21. ASSIGNABILITY**

The license granted hereunder is personal to Licensee and shall not be assigned by any act of Licensee or by operation of law unless in connection with a transfer of substantially all of the assets of Licensee or with the consent of Licensor which may be granted or withheld in its sole discretion.

## **22. BLOCKED CURRENCY**

A. In the event that any payment required to be made to Licensor pursuant to this Agreement cannot be made when due because of the exchange control of any country in the Territory and such payment remains unpaid for twelve (12) months, Licensor may, by notice served to Licensee, elect any of the following alternative methods of handling such payment:

1. If the currency can be converted into currency other than U.S. Dollars for purposes of foreign remittance, Licensor may elect to receive such payment in any such currencies as it may specify and, in such case, the amount payable in the foreign currency so selected shall be determined by reference to the then existent legal rate of exchange which is most favorable to Licensor.
2. Licensor may elect to have payment made to it in the local currency, deposited to the credit of Licensor in a bank account in such country designated by Licensor, in which event Licensee shall furnish to Licensor evidence of such deposit.
3. Licensor may elect to receive payment in shares of stock in the Licensee corporation at such price as Licensor and Licensee may agree to at such time.

B. All expenses of currency conversion and transmission shall be borne by Licensee and no deduction shall be made from remittances on account of such expense. Licensee from time to time may prepare all applications, reports or other documents which may be required by the government of the applicable country in order that remittances may be made in accordance with this Agreement.

**23. INTEGRATION**

This Agreement constitutes the entire understanding of the parties, and revokes and supersedes all prior agreements between the parties which may have been entered into between the parties, and is intended as a final expression of their Agreement. It shall not be modified or amended except in writing signed by the parties hereto and specifically referring to this Agreement. This Agreement shall take precedence over any other documents which may be in conflict with said Agreement.

**IN WITNESS WHEREOF**, the parties hereto, intending to be legally bound hereby, have each caused to be affixed hereto its or his/her hand and seal the day indicated.

**BIG TIME BASEBALL, INC.**

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**XYZ, LLC**

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

## **SCHEDULE A**

### **1. Property**

BIG TIME BASEBALL including all member team names and logos and designs.

### **2. Trademarks**

BIG TIME BASEBALL including U.S. Trademark Registration No. 1,234,567

### **3. Licensed Products**

The following Licensed Products form part of this Agreement:

Wool Baseball Caps

### **4. Territory**

The following countries shall constitute the Territory:

Worldwide

### **5. Channels of Distribution**

Mass Market Retail Stores such as WalMart, Kmart etc. and Specialty Retailers carrying comparable brands as specifically authorized in writing by Licensor.

Off-Price Retailers: TJ Maxx and Marshalls. Off-priced goods are not to exceed more than twenty percent (20%) of total Net Sales in any Royalty Period and may not commence until at least the second year of the Term.

Internet Sales shall only be permitted on Licensee's own website or on the website of the approved Department Store or Specialty Retailer and shall be restricted to sales within the Territory.

### **6. Term**

This Agreement shall commence on the date executed by both parties and shall extend for an initial Term of: TWO (2) YEARS

Licensor hereby grants Licensee two (2) separately exercisable options (the "Options") to renew this Agreement for additional two (2) year extended Terms on the same terms and conditions provided for herein, provided: a) Licensee provides written notice of its intention to exercise this Option within sixty (60) days prior to expiration of the then in-effect Term; and b) Licensee shall have paid Licensor total royalty income of at least ONE MILLION UNITED STATES DOLLARS (\$1,000,000.00) during the then in-effect Term.

**7. Royalty Rate**

Licensee shall pay the following royalty rates:

TEN PERCENT (10%) based on domestic sales;

FOURTEEN PERCENT (14%) based on F.O.B. sales;

FIVE PERCENT (5%) based on direct sales.

**8. Guaranteed Minimum Royalty and Advance**

Licensee agrees to pay Licensor an Advance of FIFTY THOUSAND UNITED STATES DOLLARS (US \$50,000.00) upon execution of this Agreement.

Commencing in 2018, Licensee agrees to and will pay Licensor a Guaranteed Minimum Royalty of ONE HUNDRED THOUSAND UNITED STATES DOLLARS (\$100,000.00) for each calendar year during the Term of this Agreement.

**9. Product Liability Insurance**

Five Million Dollars (\$5,000,000) combined single limit, with a deductible amount not to exceed Two Thousand, Five Hundred Dollars (\$2,500), for each single occurrence for bodily injury and/or for property damage.

**10. Product Introduction/Initial Shipment**

The Product Introduction Date for all Licensed Products shall be no later than MAGIC, 2018.

The Initial Shipment Date for all Licensed Products in the United States shall be September 1, 2018. The Initial Shipment Date for all Licensed Products in countries outside the United States shall be September 1, 2018

## EXHIBIT A

### **LIMA Code of Business Practices**

The International Licensing Industry Merchandisers' Association, Inc. ("LIMA") is committed on behalf of its member companies to the operation of factories manufacturing licensed products in a lawful, safe, and healthful manner. It upholds the principles that no underage, forced, or prison labor\* should be employed; that no one is denied a job because of gender, ethnic origin, religion, affiliation or association, and that factories comply with laws protecting the environment. Supply agreements with firms manufacturing licensed products on behalf of LIMA members should also provide for adherence to these principles.

The role of LIMA is to inform, educate, and survey its members so that individual member companies can adhere to its Code of Business Practices. As an Association, it also acts to encourage local and national governments to enforce wage and hour laws and factory health and safety laws. Specific operating conditions that member companies are encouraged to meet and obtain contractor agreement in advance are as follows:

#### **1) LABOR**

- a) That wages and overtime pay practices comply with the standards set by law, including the payment of compensation for overtime hours at such premium rates as is legally required in that country, but not less than at a rate equal to their regularly hourly compensation rate.
- b) That working hours must exceed prevailing local work hours in the country where the work is to be performed, except with respect to appropriately compensated overtime; must not require in excess of a 60 hour week on a regularly scheduled basis; and must permit at least one day off in every 7 day period.
- c) That no one under the legal minimum age is employed in any stage of manufacturing; that a minimum age of 14 applies in all circumstances, but notwithstanding the foregoing, that C138 Minimum Age Convention (1973) and C182 Worst Forms of Child Labor Convention (1999) of the International Labor Organization apply.
- d) That no forced or prison labor is employed\*, that workers are free to leave once their shift ends, and that guards are posted only for normal security reasons.
- e) That all workers are entitled to sick and maternity benefits as provided by law.
- f) That all workers are entitled to freely exercise their rights of employee representation as provided by local law.

#### **2) THE WORKPLACE**

- a) That factories provide a safe and healthy working environment for their employees and comply with or exceed all applicable local laws concerning sanitation and risk protection.
- b) That the factory is properly lighted and ventilated and that aisles and exits are accessible at all times.
- c) That there is adequate medical assistance available in emergencies and that designated employees are trained in first aid procedures.

- d) That there are adequate and well-identified emergency exits, and that all employees are trained in emergency evacuation.
- e) That protective safety equipment is available and employees are trained in its use.
- f) That safeguards on machinery meet or exceed local laws.
- g) That there are adequate toilet facilities which meet local hygiene requirements and that they are properly maintained.
- h) That there are facilities or appropriate provisions for meals and other breaks.
- i) If a factory provides housing for its employees, it will ensure that dormitory rooms and sanitary facilities meet basic needs, are adequately ventilated and meet fire safety and other local laws.
- j) That all employees are treated with dignity and respect and that no employee shall be subjected to any physical, sexual, psychological or verbal harassment or abuse.
- k) That no mental or physical disciplinary practices are employed.
- l) That factories shall recognize and respect the rights of employees to associate, organize and bargain collectively in a lawful and peaceful manner, without penalty or interference.
- m) That factories shall not discriminate on the basis of race, religion, age, nationality, social or ethnic origin, sexual orientation, gender, political opinion or disability.

### **3. COMPLIANCE**

- a) The purpose of this Code is to establish a standard of performance, to educate, and to encourage a commitment to responsible manufacturing, not to punish.
- b) To determine adherence, LIMA member companies will evaluate their own facilities as well as those of their contractors. They will examine all books and records and conduct on-site inspections of the facilities and request that their contractors follow the same practices with subcontractors.
- c) An annual statement of compliance with this Code should be signed by an officer of each manufacturing company or contractor.
- d) Contracts for the manufacture of licensed products should provide that a material failure to comply with the Code or to implement a corrective action plan on a timely basis is a breach of contract for which the contract may be canceled.
- e) Because of the great diversity in the kinds of licensed products manufactured and the manufacturing methods used, as well as the wide range in factory sizes and numbers of employees, a rule of reason must be used to determine applicability of these provisions.
- f) This Code should be posted or available for all employees in the local language.

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\* Many countries recognize that prison labor is essential to the rehabilitation process. This provision prohibits the exportation of prison-made goods to countries that prohibit or restrict the importation of such goods.