

SNELL-HELMET OWNER LICENSING AGREEMENT

This Agreement, entered into on the day of , 200 between **SNELL MEMORIAL FOUNDATION, INC.**, a non-profit corporation, with an address at 3628 Madison Ave, Suite 11, North Highlands, CA 95660 (hereinafter referred to as "Foundation") and with an address at (hereinafter referred to as "Helmet Owner").

RECITALS

WHEREAS, Foundation is a non-profit corporation engaged, among other things, in research and testing of protective head wear ("helmets") for the prevention or mitigation of accidental trauma; and

WHEREAS, Foundation has established Standards for the performance and testing of such helmets; and

WHEREAS, incidental thereto, Foundation certifies helmets which satisfy the performance requirements of its Standards; and

WHEREAS, Helmet Owner holds right, title and interest to and exclusive authority over the design, manufacture, distribution, marketing and use of all certified helmet models; and

WHEREAS, Helmet Owner wishes to obtain certification by Foundation for one or more of its helmet models; and

WHEREAS, Foundation has registered its name and logo as a mark with the United States Department of Commerce, Patent and Trademark Office, under Reg. No. 1,970,048; has registered its certification program identification marks; and intends to register future marks;

NOW, THEREFORE, in consideration of the premises and mutual covenants and undertakings herein contained, the parties agree as follows:

The Standard

1. Helmet Owner agrees to produce all helmet models on which certification is or hereafter will be granted in accordance with all of the Foundation's Standard(s) for Protective Headgear (hereinafter referred to as the "Standard") which presently are, or hereafter will be effective and applicable to the certified helmet models. Helmet Owner represents that he is familiar with all presently applicable Standards and will become familiar with all future applicable Standards.

The Certified Helmets

2. The Helmet Owner's designations of those models to which this Agreement shall initially apply are:

Additional Helmets

3. All provisions of this Agreement shall apply with equal effect to all additional helmet models for which Helmet Owner desires certification by Foundation and which meet the performance requirements of the Standard.

Notice of Distributors and Designations

4. Concurrent with its signing of this Agreement, Helmet Owner shall provide Foundation with a list of designations and/or trade names which are applied to the helmet model or models certified hereunder. Helmet Owner shall also simultaneously provide Foundation with a list by name and address of all primary distributors of Helmet Owner who distribute the certified helmets. As used herein, the term "primary distributor" shall include all persons or organizations, whether manufacturer, wholesaler, retailer or other, to or through which the Helmet Owner sells or otherwise directly markets its helmet model or models approved hereunder. Helmet Owner shall provide immediate notification by registered or certified mail to Foundation of:

a. all changes in model designation and/or trade names of helmets certified hereunder including changes in those designations or trade names under which the helmet is marketed by primary distributors and

b. all additions, deletions and changes in the names and/or addresses of its primary distributors.

Limited License

5. Upon certification by Foundation of one or more helmet models of Helmet Owner and upon signing of this Agreement, Foundation shall grant Helmet Owner a limited license to use the Snell name and registered mark, it being understood that under no circumstance shall the limited license extend beyond the uses specifically and expressly permitted herein:

a. Foundation shall furnish to Helmet Owner upon written request certification decals which Helmet Owner shall have license to affix solely to helmets of the model or models certified hereunder.

b. Helmet Owner shall place a certification decal upon each helmet of a model which has been certified by Foundation.

c. The Helmet owner shall have license to use the Foundation's name in its advertising by showing pictures of the certification decals or by making specific reference to the Standard but solely in respect of certified models identified by appropriate brand names, model designations and sizes. Any other advertisement must receive permission from the Foundation.

d. This license shall be subject to all of the terms and conditions of this Agreement.

Changes in Certified Helmets

6. Any changes in construction or material of those components related to performance in accordance with the Standard, including shell, energy absorbing system or retention system which may be made in a previously certified model, shall immediately terminate the license herein unless and until such helmets as changed are tested and certified by the Foundation as meeting the performance requirements of the Standard.

Random Sample Testing

7. Foundation at its sole option may test random samples of certified helmet models taken from stocks of primary distributors or dealers. In connection with random sample testing, the following shall apply:

a. Helmet Owner shall reimburse Foundation its costs incurred in the procurement of helmets for random sample testing and its fees for such testing. So long as a helmet model does not fail initial random sample testing, and provided that helmets of that model are produced in commercially reasonable quantities, the volume of random sample testing shall not exceed one percent (1%) of Helmet Owner's output for that helmet model.

b. In the event that a sample helmet fails random sample testing, three additional helmets of that model may be tested by Foundation. If these pass, Foundation shall notify Helmet Owner of the random test result, but certification of Helmet Owner's product shall continue. Thereafter, Foundation may, in its discretion, test additional helmets of that model in such quantities without limitation and for such period of time as it deems necessary to assure itself that Helmet Owner's product continues to meet the performance requirements of the Standard.

c. In the event that one or more of the three helmets referred to above or any subsequently tested helmet fails in addition to the initial random sample testing failure, Helmet Owner shall be so notified. Under such circumstances:

(1) Helmet Owner shall immediately and without further notice cease inclusion of Foundation's decals in the helmet model and use of the Foundation's name and registered mark in advertising, packaging or otherwise concerning such helmet model until investigation of the cause of failure has been completed and corrective measures have been applied to the satisfaction of Foundation.

(2) Upon instruction by Foundation, Helmet Owner shall forthwith:

(i) notify its outlets and request the removal of decals and of the Foundation's name and mark from the helmet model involved and from packaging concerning that model which have been manufactured subsequent to the date of manufacture of those helmets which failed in the aforementioned testing and

(ii) request withdrawal of the Foundation's name and mark from all previously placed advertising in conjunction with such helmet model.

d. The results of the random sample testing shall be deemed conclusive and Helmet Owner shall comply with the results as herein provided.

e. Helmet Owner understands that because the testing conducted by Foundation is destructive of the helmet, only specific areas of the helmet can be and have been tested. By signing this agreement, Helmet Owner warrants, represents and induces Foundation to rely thereupon in executing this agreement that the helmet for which the license is granted meets each of the requirements imposed by the Standard under which the helmet is certified including the requirement that the protection provided in the helmet is equally distributed throughout the area of coverage designated by the applicable Standard. In the event that during random sample testing the helmet fails to satisfy the Standard, it shall be immaterial and of no consequence as to whether or not the areas of the helmet tested in initial and subsequent testing are identical.

Inspections
8. At the request of Foundation, Helmet Owner shall permit or make arrangements for annual or less frequent inspections by Foundation of the manufacturing facilities for the certified helmet models upon reasonable notice and during normal business hours. The purpose of the visits shall be to ascertain compliance by Helmet Owner with its obligations under this Agreement. Information obtained during the inspection shall remain confidential.

Non-destructive Tests

9. Foundation reserves and shall have the right to examine certified helmet models which are provided by Helmet Owner directly to teams or individuals for use in formal competitive events and which therefore may not have passed through the normal customer distribution system. In connection with these examinations, the following shall apply:

a. The examination shall consist of visual inspection, weighing and other non-destructive tests conducted at or near the venues of the formal competitions so as to impose a minimum of inconvenience on the contestants. The purpose of the examination will be primarily to determine whether the product represents the same design, materials and production as the samples originally submitted. A secondary purpose will be to determine whether any post-production modifications may have seriously compromised the product's impact protection capability or its retention system strength. The examination is necessarily limited in scope. The findings constitute neither authorization nor approval of helmet modifications; nor will they absolve or release the parties responsible from the consequences of those modifications.

b. Helmet Owner shall provide to Foundation lists of all certified products so distributed. This list shall include the name and address of the team or individual receiving the product, the date the product was received, the model name and size of the product, the date of manufacture, the weight of the product and the Foundation's decal serial number.

c. In the event that the examination indicates any significant unauthorized deviation from

the original model submitted for certification, Helmet Owner shall be obliged to reclaim the product either for destruction, or to remove the Foundation decal and to efface the model name and any reference to Foundation. Helmet Owner shall effect this requirement and report disposition to Foundation within two weeks of receiving notification from Foundation.

d. The findings of the examination shall be deemed conclusive and Helmet Owner shall comply with the findings as hereby provided.

Notification of Revised Standard

10. No less than six (6) months preceding any and all revisions of Foundation's Standard in respect of which certification is granted hereunder, Foundation shall notify Helmet Owner in writing of the specific revisions in such Standard and the effective date thereof. No revision shall be made more frequently than once every twelve (12) months.

Effect of Revised Standard

11. As of the effective date of the revised Standard, the limited license including certification under the previous Standard shall automatically terminate. Thereupon, Helmet Owner shall discontinue use of Foundation's certification decals, save for application to helmets already manufactured or in the process of manufacture. In no event, save for compliance with the provisions of Paragraph 12 hereof, shall Helmet Owner sell a helmet bearing the Foundation certification decal or use the name of the Foundation in its advertising more than six (6) months after the effective date of the revised Standard.

Certification Under Revised Standard

12. Helmet Owner may apply to Foundation for certification of its helmet under the revised Standard. Granting of such certification by Foundation will be subject to satisfactory compliance by applicable helmet models with the performance requirements of the revised Standard and such other terms and conditions as may be established by Foundation. Unless otherwise expressly agreed by Foundation in writing, all of the terms, conditions, requirements and obligations provided under this Agreement shall apply with full force and effect as if the helmet models and the revised Standard were expressly identified herein.

Advertising and Labeling

13. Any advertising or labeling beyond those allowed in paragraph 5.c. of this agreement and in which reference is made to the Foundation, its marks and/or its certification must be submitted to the Foundation for its prior approval. No changes may be made to a mark except for reasonable modifications of its size. Foundation shall attempt to review and approve or disapprove the advertisement or labeling within two (2) weeks after receipt thereof. If the advertisement or labeling is disapproved, reasons for the disapproval shall be furnished. The following conditions shall apply to all advertising and labeling:

a. No reference shall be made in the advertisement or labeling to uncertified helmet models unless it is clearly stated that such helmet models are not certified by Foundation.

b. Unless every helmet model of the Helmet Owner is certified by the Foundation, the

advertisement or labeling may not suggest or imply that the certification applies to other than specifically identified helmet models.

Quarterly Statements by Helmet Owner

14. Helmet Owner shall submit to Foundation a quarterly statement containing the following information for each certified model: the quantities by size produced during the previous quarter; the quantities by size shipped to each primary distributor during the previous quarter; and the ranges of certification decal serial numbers used during the previous quarter by helmet size.

Confidentiality

15. Foundation shall not divulge any information as to testing of helmet models, materials used by, or manufacturing processes employed by the Helmet Owner, or any designs, drawings, specifications, or other technical or confidential information as to Helmet Owner's products or prototypes of products, to anyone without prior written permission of Helmet Owner, although it is understood that general data derived from testing may be published in a reputable journal by Foundation without, however, disclosing any brand names or Helmet Owner identifications. Helmet Owner hereby waives all requirements of confidentiality with respect to its primary distributors and to the following persons or entities:

Sample Document

Name

Address

Invoices

16. Foundation shall invoice Helmet Owner for its certification details and for its certification and random sample testing. Helmet Owner shall pay any and all invoices of the by Foundation under this Agreement within thirty (30) days of the billing date, unless Foundation agrees in writing to an extension of such payment date. Any extension hereunder shall be subject to such terms and conditions as may lawfully be imposed by Foundation.

Indemnification

17. Helmet Owner warrants and represents that he holds exclusive right, title and interest to and authority over the design, manufacture, distribution, marketing and use of all certified helmet models, it being understood that Foundation has no control whatsoever over any of these processes. Helmet Owner shall be exclusively responsible for and shall indemnify and hold Foundation, its directors, officers, agents, employees, successors and assigns harmless from and against all loss, expense, damage, cost or claim resulting from any bodily injury, sickness, or death at any time sustained by any person or persons as a result of the use of any helmet for which this Agreement or any prior agreement between the parties applies or applied. This provision shall prevail over any contrary provision which may be furnished by Helmet Owner in a purchase order or otherwise.

Termination for Cause

18. In the event of the failure of Helmet Owner to fulfill all of his obligations under this Agreement, including, without limitation, the payment of invoices when due, the furnishing of

periodically required information, or the production of helmets which consistently meet the Foundation's performance requirements, Foundation may at its sole option terminate the limited license granted herein, including certification, and announce publicly its withdrawal thereof. Upon notice by Foundation to Helmet Owner of such termination, Helmet owner shall immediately:

- a. cease application of Foundation's certification decals in any of its helmets;
- b. cease distribution of helmets which make reference to the Foundation or its marks in the helmet, its packaging, labeling or advertising;
- c. remove certification decals and all references to the Foundation, its marks or its certification from all packaging, labeling and advertising;
- d. cease advertising which makes reference to the Foundation, its marks or its certification; and
- e. immediately return all unused decals to Foundation.

Sample Document

Termination at Will

19. This contract may be cancelled by either party for any or no reason upon ninety (90) days' notice to the other in writing, in which event the limited license shall terminate and Helmet Owner shall immediately, upon sending or receiving said notice, cease using Foundation decals, return all unused decals to Foundation and refrain from acting in any way to indicate Foundation certification of its helmets, except as to those helmets already shipped to customers or dealers and advertising already placed by contract or printed. However, in no event shall any such printed matter or advertising be allowed to be distributed to public in excess of nine (9) months after the date of said notice.

Injunctions and Other Relief

20. Helmet Owner understands that the violation of any of the terms, conditions, obligations or restrictions of the limited license herein provided shall constitute an unlawful violation of the Foundation's registered mark and, further, shall cause irreparable injury to Foundation which may not be compensable in monetary damages. Helmet Owner therefore agrees that in the event of such violation, in addition to any other relief available to it in law or equity, Foundation shall be entitled to injunctive relief restraining the violation of the license and/or the mark and to mandatory injunctive relief directing Helmet Owner to comply with its obligations concerning delivery of decals and notification of withdrawal of the license. In addition, if Foundation is required to enforce and protect its rights through legal proceedings, Helmet Owner shall pay Foundation's costs and expenses thereof including the reasonable attorneys' fees therein incurred.

Miscellaneous

21. This Agreement shall be governed by the laws of the State of California. It constitutes the entire understanding of the parties. It cannot be modified unless in writing and signed by the party against whom the modification applies. No waiver by Foundation of any provision of this

Agreement shall constitute a waiver of any future violation of said provision or of any other provision of this Agreement. Paragraph headings used herein shall be for identification purposes only and shall not constitute part of this Agreement. This agreement supersedes all prior agreements made between Helmet Owner and Foundation for all helmet models of Helmet Owner which presently or hereafter are under license by Foundation.

California Forum

22. Helmet Owner agrees that it will be subject to the personal jurisdiction of the State and Federal courts of California with respect to any disputes arising under this Agreement and that all such disputes shall be resolved solely in such forums and Helmet Owner further agrees that service of process may be effected upon it by mailing such process to the Helmet Owner's then current address by certified or registered mail, return receipt requested.

Prior Agreements

23. This agreement supersedes all prior agreements between Foundation and Helmet Owner, its affiliates and subsidiaries.

IN WITNESS WHEREOF

Sample Document

SNELL MEMORIAL FOUNDATION, INC.

By: _____
Harold A. Fenner, MD, President Snell Board of Directors

, Helmet Owner

By: _____