

THE CONFECTIONERY TRUST

LICENCE AGREEMENT

BETWEEN **CONFECTIONERY BTW PTY LTD** ACN 155 761 989, as trustee of the Confectionery Trust of Level 2, 444 St Kilda Road, Melbourne, Victoria, 3004 (“Licensor”)

AND **The company or entity identified in the execution clause of this Agreement** (“Licensee”)

BACKGROUND

- A. Licensor is the owner in Australia of the Intellectual Property.
- B. Licensor agreed to grant to Licensee, and the Licensee agrees to accept, a licence to use the Intellectual Property in Australia on the terms set out in this agreement.

AGREED TERMS

1. Definitions

In this agreement

“**Licensee Group Company**” means any company in the Licensee group of companies and any Related Bodies Corporate, as that term is defined in the *Corporations Acts 2001* (Cth), of those entities.

“**Intellectual Property**” means the intellectual property rights set out in the schedule to this agreement.

“**Trust**” means the Confectionery Trust established under the Trust Deed.

“**Trust Deed**” means the trust deed dated 2 August 2012 under which the Trust was established.

2. Grant of Licence

- 2.1 Licensor hereby grants to Licensee a royalty-free, charge-free, perpetual, irrevocable, non-exclusive licence to use the Intellectual Property in Australia with effect from the date of this agreement.
- 2.2 Licensor agrees that the Licensee may include the Intellectual Property on any materials, including its packaging, advertising and promotional material.
- 2.3 To the extent the Licensee has any pre-existing rights (as at the date of this agreement) to any or all of the Intellectual Property, whether or not such rights have been the subject of any prior transfer as between the licensor and any successor, this agreement records all of the Licensee's rights to the Intellectual Property and the Licensee hereby forever foregoes those pre-existing rights (regardless of who granted them).

3. Use of trade marks

- 3.1 To the extent that the Intellectual Property comprises one or more trade marks, Licensee must:
- 3.1.1 comply with, and use those trade marks according to any style guide for their use issued by Licensor from time to time and any other reasonable directions of Licensor. Licensor will allow Licensee a reasonable period in which to implement any changes to the style guide or any other reasonable directions of Licensor;
 - 3.1.2 only use those trade marks on products of an appropriate standard generally;
 - 3.1.3 not alter or deface those trade marks or use them in any manner that is reasonably likely to mislead, deceive or cause confusion;
 - 3.2.4 not act or omit to do anything that would bring those trade marks into disrepute or damage the goodwill and reputation associated with them or the owner of the marks.

4. Infringement of Intellectual Property

- 4.1 Other than as permitted by clause 8, Licensee must not, without Licensor's prior written consent (in Licensor's discretion), threaten to bring proceedings for infringement of the Intellectual Property against any person.
- 4.2 Licensor (in its discretion) has the right, but not the obligation, to bring proceedings for infringement of the Intellectual Property.

5. Assignment and Sub-licences

- 5.1 Licensor may assign all of the Intellectual Property to another person provided Licensor:
- 5.1.1 provides Licensee with at least 60 days prior notice; and
 - 5.1.2 ensures that the assignee takes the Intellectual Property subject to this agreement (whether by assignment or otherwise) and, if required by Licensee, takes a novation of this agreement from Licensor on terms reasonably acceptable to Licensor. Any such novation will not delay the time at which the assignment by Licensor under this clause takes effect.
- 5.2 Licensee may, by notice to Licensor, novate all of its rights and obligations under and the benefits of this agreement (on terms reasonably acceptable to Licensor) provided that the proposed novatee would be entitled to receive a direct licence of the Intellectual Property in accordance with the terms of the Trust Deed.
- 5.3 Licensee may sub-license its rights under this agreement to any person, including any Licensee Group Company, that would be entitled to receive a direct licence of the Intellectual Property in accordance with the terms of the Trust Deed provided that the sub-licensee is bound by the terms of this agreement as though it were party to it and Licensee is responsible to Licensor for any breach of that sub-licence by the sub-licensee.

6. Release

Licensee releases Licensor from any claim Licensee has against Licensor or any predecessor in title to the Intellectual Property in connection with use of the Intellectual Property by Licensee before the date of this agreement. For the avoidance of doubt, nothing in this clause prevents either party from making any claim to enforce its rights under this agreement.

7. Warranties

- 7.1 Licensor represents and warrants that to the best of its knowledge and belief:
- 7.1.1 the Trust is validly constituted and is currently in existence;
 - 7.1.2 Licensor is, at the date of this agreement, the sole Trustee of the Trust, and, at the date of this agreement:
 - 7.1.2.1 no resolution has been passed or direction or notice has been given removing Licensor as Trustee of the Trust; and
 - 7.1.2.2 Licensor has not given notice of resignation as Trustee of the Trust; and
 - 7.1.3 the Trust Deed is the only document governing the Trust.

8. Disputes

- 8.1 Neither party may initiate legal proceedings with respect to the subject matter of this agreement (other than interlocutory proceedings) unless it has first given notice of the dispute to the other party requiring that they reasonably negotiate to resolve the dispute, having regard to the terms of the Trust Deed (as applicable).
- 8.2 If a notice of dispute is given under clause 8.1, both parties must act reasonably to seek to resolve that dispute within a reasonable period of time, failing which either party may take such further action as it believes appropriate in the circumstances provided that it must give the other party not less than 30 days notice of its intention to take such further action.

9. Notices

- 9.1 Any notice, approval, request, demand or other communication (“Notice”) to be given under this agreement must be in writing.
- 9.2 Notice given:
- (a) personally shall be deemed served upon delivery;
 - (b) by mail shall, in the absence of evidence to the contrary, be deemed served four business days after mailing;
 - (c) by overseas air mail shall, in the absence of evidence to the contrary, be deemed served within seven business days after mailing; and
 - (d) by email transmission shall, in the absence of evidence to the contrary, be deemed served upon receipt of a read receipt transmission report by the computer from which the email was sent indicating the email had been received in its entirety by the designated email address.

10. Further Assurances

Each party must do all things necessary or reasonably desirable to give effect to this agreement to the extent that such does not conflict with the terms of the Trust Deed.

11. Legal Relationship

This agreement does not create a partnership, agency, trust or fiduciary relationship between the parties.

12. Costs and stamp duty

- 12.1 Each party must bear its own costs arising out of the negotiation, preparation and execution of this agreement.
- 12.2 All stamp duty (including fines, penalties and interest) that may be payable on or in connection to this agreement and any instrument executed under this agreement must be borne by Licensee.

13. Governing law and jurisdiction

This agreement is governed by the laws of Victoria, Australia. Each party submits to the jurisdiction of the courts exercising jurisdiction there, and waives any right to claim that those courts are an inconvenient forum.

14. Counterparts

This agreement may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.

EXECUTED AS AN AGREEMENT

For and on behalf of **LICENSEE**

Full Legal Name of Licensee: _____

ACN /ARBN: _____

(If Licensee is a Trust include full details of the Trustee and name of the Trust and its ABN:

Address: _____

Contact details: _____

Email: _____

Telephone: _____

Date: _____

By its authorised Officer/delegate on DATE: _____

Name

Signature

In the presence of:

Name of Witness

Signature of witness

SIGNED by **the LICENSOR** by its authorised delegate on DATE

Name

Signature

In the presence of:

Name of Witness

Signature of witness

SCHEDULE
of
INTELLECTUAL PROPERTY

(to be completed by Licensor)