

LICENSE AGREEMENT FOR THE USE of

DARJEELING and 

THIS AGREEMENT is made the _____ day of _____ 2005 between Tea Board, India, 14, B.T.M. Sarani (Brabourne Road), P.O. Box No.2172, Kolkata of the first part (herein called "the Proprietor") and

_____ of the second part (herein called "the User").

WHEREAS the Proprietor is the owner of the marks "DARJEELING" and DARJEELING (logo) (fully described in Schedule I hereto and hereinafter called the Marks) relating to tea which meets qualitative requirements (fully detailed in Schedule II and hereinafter called the Qualitative Requirements) imposed by the Tea Board, India as a prerequisite to the grant of an authorization to use the Marks;

AND WHEREAS the User has applied to the Proprietor for an authorization, entitling him to use the Marks in respect of tea conforming to the Qualitative Requirements (hereinafter called "the Goods") within the territory of _____ (hereinafter called "the Territory")

NOW THIS AGREEMENT WITNESSETH that in consideration of the mutual promises and covenants hereinafter contained, the Proprietor and the User hereby agree to the following terms and conditions.

1. GRANT AND CONSIDERATION

- 1.1 The Proprietor hereby grants to the User a non-exclusive authorization or license to use within the Territory the Marks in respect of the Goods.
- 1.2 In consideration of the rights of authorized or licensed use granted hereunder, the User shall pay to the Proprietor a one-time registration fee

and an annual fee computed in accordance with Schedule V towards its operational and administrative costs in controlling the use of the Marks.

2. DURATION AND TERMINATION

2.1 This Agreement shall come into force from the date hereof and shall continue for one year and shall be renewable automatically for subsequent periods of one year unless terminated in accordance with the terms of this Agreement.

2.2 Either party may terminate this Agreement without prejudice to its other remedies forthwith by notice in writing to the other if that other commits a breach of this Agreement, provided that if the breach is capable of remedy the notice shall only be given if the party in breach shall not have remedied the same within one month of having been given notice in writing specifying the breach and requiring it to be remedied.

2.3 If the User uses the Marks in an unauthorized, misleading or deceptive manner, or in any manner that defames or causes disrepute to the Goods, or if the User is convicted of any offense leading to the discredit of his reputation or good faith as a trader, or is adjudicated bankrupt, or goes into liquidation (other than voluntary liquidation for the purpose of amalgamation or reconstruction), or has a receiver appointed over his assets, the Proprietor may terminate the License.

2.4 Except as otherwise set forth herein, and specifically subject to Sections 2.2 and 2.3, the Proprietor may not terminate a License.

3. OWNERSHIP OF THE MARKS

The User hereby acknowledges that the Marks are the absolute property of the Proprietor and any and all rights created by the use of the Marks are the sole property of the Proprietor. The power of issuing and terminating a license is vested in the Proprietor. The decision to issue a license is dependent solely on conformance with the criteria set forth herein.

4. UNDERTAKINGS OF THE USER

4.1 The User undertakes that the Goods in respect whereof it has been authorized by the Proprietor to use the Marks shall conform to the Qualitative Requirements as set forth in Schedule II.

- 4.2 So that the Proprietor may monitor the legitimacy and quality of the Goods, the Proprietor's authorized representatives shall be entitled to inspect, prior to and after the grant of the authorization, during business hours and with reasonable notice to the User, any premises where the Goods are is being processed, manufactured, packed or stored for the purpose of ensuring that the standards laid down by the Proprietor are being adhered to and complied with.
- 4.3 So that the Proprietor may monitor the legitimacy and quality of the Goods, at the Proprietor's request, the User shall submit to the Proprietor a sample of the Goods in relation to which the User uses or intends to use the Marks and/or packaging used by the User. User shall submit any samples requested pursuant to this paragraph to Proprietor within two (2) weeks of receipt of such request from the Proprietor; and
- 4.4 So that the Proprietor may determine the quantities purchased by the User for assessing the annual fee in accordance with Schedule V, the User will maintain adequate systems of control and inspection including books and records. User shall submit to the Proprietor an annual report of purchases, sales and inventory of the Goods in the form of Schedule VI hereto (the "Annual Report"). The Annual Report for each calendar year shall be due to Proprietor immediately on the expiration thereof.
- 4.5 The Marks shall be applied to packaging of the Goods so that they are clearly visible to purchasers/consumers. All presentations of the Marks shall be accompanied by an indication that they are the intellectual property of the Proprietor. Subject to this license, the User shall decide the way in which the Marks may be represented including specifications as to colour, size and lettering of the Marks (with the exception of the DARJEELING Logo, which must appear as presented in Schedule I hereto) and what matter of any description may be used in close association with the Marks and in what relationship, except that the Marks must appear in a different size or font than the Licensee's trademarks and company name. In the event of any representation of the Marks being considered unsuitable by the Proprietor, the User shall terminate such use.
- 4.6 In particular, but without limitation of or prejudice to the generality of the foregoing, the User undertakes to refrain from:
- 4.6(a) registering a mark identical with or similar to the Marks or either of them in respect of any goods;

- 4.6(b) using for any purpose a mark identical with or similar to the Marks or either of them except as permitted by the Proprietor in this Agreement;
 - 4.6(c) using the name 'Darjeeling' as part of its corporate name or trading style.
 - 4.6(d) opposing the use and the registration of a mark identical with or similar to the Marks or either of them or contesting the validity of any such registration;
 - 4.6(e) causing or assisting any person to do any of the things mentioned in the above sub-clauses 4.6(a)-(d).
- 4.7 The obligations set out in the above clause 4.6 hereinbefore shall survive termination of this Agreement for whatsoever reason.
- 4.8 The User undertakes to bring to the notice of the Proprietor all cases of wrongful use or infringement of the Marks or either of them registration or attempted registration of a mark identical with or similar to the Marks, or either of them. In the event of the Proprietor undertaking any opposition to or any action to restrain or punish such act or acts, the User agrees to co-operate fully and freely with the Proprietor and undertakes to do all such acts and things as the User shall reasonably require to assist the Proprietor in any legal proceedings in respect of infringement or use or registration of the Marks or either of them or any mark similar thereto.
- 4.9 The User will not claim, in relation to the Goods bearing the Marks that the Goods possess any characteristic not specified in the specifications prescribed for such Goods by the Proprietor so as to suggest that such claim is certified by the Marks or in any way controlled by the Proprietor.

5. INDEMNITY

The User shall be liable for and shall indemnify the Proprietor (together with its officers, servants and agents) against any and all liability, loss, damages, costs, legal costs, professional and other expenses of any nature whatsoever incurred or suffered by the Proprietor whether direct or consequential (including but without limitation any economic loss or other loss of profits, business or goodwill) arising out of any dispute or contractual, tortious or other claims or proceedings brought against the Proprietor by a third party claiming relief against the Proprietor by reason of the manufacture, use or sale of any Goods by the User or the use by the User of the Marks, except insofar as any such claims may arise from:

- (a) any breach of this Agreement by the Proprietor;

- (b) any invalidity or defect in the title of the Proprietor to the Marks not caused by any act or default of the User, or
- (c) from the instructions given to the User by the Proprietor provided such instructions have been properly carried out by the User.

6. ASSIGNMENT

Neither party shall assign, transfer, sub-contract or in any other manner make over to any third party the benefit and/or burden of this Agreement without the prior written consent of the other.

7. SEVERABILITY

If any term, paragraph or provision of this Agreement shall be held to be invalid for any reason whatsoever, such invalidity shall not affect the validity or operation of any other term, paragraph or provision thereof, and such invalid term, paragraph or provision shall be deemed to have been deleted from this Agreement. The parties will negotiate in good faith to replace any such invalid term, paragraph or provision with a valid term, paragraph or provision which is as nearly as possible in conformity or keeping with the spirit of the invalid term, paragraph or provision and this Agreement generally.

8. NOTICES

Any notice given by the Proprietor in pursuance of this authorization, to the User shall be deemed to have been duly given if forwarded through the post by prepaid letter addressed to such authorized user at his address in the Register. Any notice given by the User to the Proprietor shall be deemed to have been duly given if forwarded through the post by prepaid letter addressed to the Proprietor at Director of Tea Promotion, Tea Board, 5th Floor, 14 B.T.M. Sarani (Barabourne Road), PO Box No. 2172, Kolkata 700 001, India.

9. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of _____.

IN WITNESS WHEREOF the Proprietor and the User have executed this Agreement the date and year first above written.

For and on behalf of the PROPRIETOR

For and on behalf of the USER

Title: _____

Title: _____

Date: _____

Date: _____