



Endorsement Agreement

Consumer NZ Incorporated
[insert name of licensee] Limited

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Parties

Consumer NZ Incorporated an incorporated society (registered number 420393) the address of whose registered office is 204 Thorndon Quay, Wellington, New Zealand (**Consumer NZ**)

The person, firm or company whose details are set out in Part 1 of Schedule 1 (**Licensee**)

Background

- A Consumer NZ has awarded 'Consumer Recommends' status to the Licensee's Product.
- B The Licensee wishes to use the Brandmark in respect of the marketing, advertising and promotion of its Product.
- C Consumer NZ is willing to grant a licence to the Licensee to use the Brandmark on the terms set out in this Agreement.

Operative provisions

1 Licence

- 1.1 Consumer NZ grants to the Licensee a non-exclusive licence to use the Brandmark during the Licence Period, in the marketing, advertising and promotion of the Product in the Permitted Media on terms and conditions set out in this Agreement,
- 1.2 The Licence is personal to the Licensee. The Licensee shall not sub-licence or sub-contract any of the rights granted to it under this Agreement.

2 Use of the Brandmark

- 2.1 The Licensee may only use the Brandmark during the Licence Period in relation to the Product for the purpose of exercising its rights and performing its obligations under this Agreement.
- 2.2 The Licensee must ensure that each reference to and use of the Brandmark by or on behalf of the Licensee complies with the Usage Guidelines.

3 Intellectual Property and goodwill

- 3.1 Except as provided in this Agreement, the Licensee will have no rights in respect of the Brandmark, the Intellectual Property or of any goodwill associated with it.
- 3.2 Consumer NZ will have the conduct of all proceedings relating to the Intellectual Property and may, in its sole discretion, decide:

- 3.2.1 what action (if any) to take in respect of any infringement or alleged infringement of, or any other claim relating to, the Intellectual Property; and
- 3.2.2 what steps (if any) to take to defend or resist any claim by third parties in respect of the Intellectual Property.
- 3.3 The License will, at the request and expense of Consumer NZ, do all such things as may be reasonably necessary to assist Consumer NZ in taking or resisting any proceedings commenced by Consumer NZ in accordance with clause 3.2.
- 3.4 Consumer NZ shall not be obliged to bring or defend any proceedings whether for infringement or otherwise in relation to the Intellectual Property or any use of the Brandmark if it decides, in its sole discretion, not to do so and the Licensee shall not be entitled to bring any action for infringement of any registered trade mark comprised in the Brandmark under section 103 of the Trade Marks Act 2002, regardless of any such decision.
- 3.5 The Licensee acknowledges that, except as expressly provided in this Agreement, it will not acquire any rights in respect of the Brandmark and that all such rights and goodwill are and will remain vested in Consumer NZ.

4 Term and Renewal

- 4.1 The Licence Period will commence on the Commencement Date and will remain in force for a period of six months (or three months if the Product is a financial service), unless terminated earlier in accordance with this Agreement (**Initial Term**).
- 4.2 The Licensee may make a request to Consumer NZ to renew the Licence Period for a further six months (or three months if the Product is a financial service) (**Renewal Term**). Such request must be given to Consumer NZ in writing at least 20 Working Days prior to the end of the Initial Term.
- 4.3 Consumer NZ will notify the Licensee of whether or not it consents to a renewal of the Licence Period at least 10 Working Days prior to the end of the Initial Term. Consumer NZ may grant or withhold its consent to extend the Licence Period at its absolute discretion.
- 4.4 If either of the notification requirements in clauses 4.2 or 4.3 above are not satisfied (or waived by Consumer NZ at its sole discretion) then the Licence Period may not be renewed and this Agreement will expire at the end of the Initial Term.

5 Consumer NZ's approval of promotional material

- 5.1 The Licensee must submit to Consumer NZ at least 10 Working Days before the Commencement Date for Consumer NZ's approval:
 - 5.1.1 Samples of all marketing, advertising, and promotional materials (including any point of sale material) which are intended to bear the Brandmark or make reference to 'Consumer Recommends' status; and

- 5.1.2 all excerpts from the material published by Consumer NZ which are intended to be used in any marketing, advertising and promotional materials (including any point of sale material) relating to the Product.
- 5.2 Provided the Licensee has submitted its proposed material by the date in clause 5.1, Consumer NZ will give Notice to the Licensee whether or not it approves the material prior to the Commencement Date. Consumer NZ may give or withhold its approval of the material in its sole discretion.
- 5.3 The Licensee must not use the Brandmark, excerpts from the material published by Consumer NZ, or any reference to 'Consumer Recommends' status without prior approval from Consumer NZ under this clause 5.
- 5.4 The Licensee may submit additional material to Consumer NZ for approval during the Licence Period. Consumer NZ shall respond promptly.
- 5.5 The Licensee must promptly submit to Consumer NZ on demand from time to time samples of all marketing, advertising and promotional materials relating to the Product which bear the Brandmark, including use of the Brandmark on any point of sale material, and print-outs of all instances of on-line usage.

6 Endorsement Fee

- 6.1 The Licensee must pay Consumer NZ the Endorsement Fee:
 - 6.1.1 For the Initial Term, at least five Working Days before the Commencement Date; and
 - 6.1.2 For any Renewal Term, if Consumer NZ has agreed to renew the Licence Period under clause 4.3, at least five Working Days before the end of the Initial Term.
- 6.2 If the Licensee does not pay the applicable Endorsement Fee by the time specified in clause 6.1 above, then Consumer NZ may terminate this Agreement in accordance with clause 10.

7 Warranty by Consumer NZ

- 7.1 Consumer NZ warrants that so far as it is aware and as at the Commencement Date, Consumer NZ owns and has the right to licence the Brandmark, and the use by the Licensee of the Brandmark upon or in connection with the Product will not infringe the rights of any third party in New Zealand.

8 Licensee's Obligations

- 8.1 The Licensee agrees that during the Term it will:
 - 8.1.1 not describe itself or act as agent or representative of Consumer NZ;

- 8.1.2 comply with all applicable laws, rules and regulations of any governmental or regulatory body and all relevant codes of practice in respect of the Product and marketing, advertising or promotional material relating to the Product and to obtain any required approval relating to the marketing, advertising, promotion or sale of the Product prior to carrying out any such activities;
- 8.1.3 not charge any of its rights or obligations under this Agreement or purport to do so in any way without Consumer NZ's prior written consent;
- 8.1.4 not make any representations to customers or to give any warranties on behalf of Consumer NZ;

Intellectual Property

- 8.1.5 not engage in any marketing, advertising or promotional activities which are likely to reduce or diminish the reputation, image or prestige of the Brandmark or Consumer NZ and to ensure that all such activities are undertaken in a tasteful manner;
- 8.1.6 not apply to IPONZ or any equivalent official or body for either the registration of the licence granted under this Agreement as a licence or the registration of the Licensee as a registered user of any registered trade mark comprised in the Brandmark;

Usage

- 8.1.7 only use the Brandmark in accordance with the Usage Guidelines;
- 8.1.8 only use the Brandmark in respect of any marketing, advertising or promotional material relating to the Product (including on any point of sale material) which is identical in all respects to the Product which was tested or evaluated by Consumer NZ in connection with the award of 'Consumer Recommends' status;
- 8.1.9 only use the Brandmark on marketing, advertising or promotional material (including any point of sale material) bearing the Brandmark which Consumer NZ has approved in accordance with the Usage Guidelines;
- 8.1.10 not use the Brandmark in any marketing, advertising or promotional material relating to a group or class of Product or services or to a brand generally unless the Licensee makes clear that only the Product has been awarded 'Consumer Recommends' status;
- 8.1.11 if the Licensee uses the Brandmark on the internet:
 - (a) use the electronic version of the Brandmark which is supplied by Consumer NZ from time to time in connection with any such internet usage; and
 - (b) ensure that in its use of such electronic version of the Brandmark the hypertext link between such version of the Brandmark and the

website operated by Consumer NZ remains operational at all times.

Notice to Consumer NZ

- 8.1.12 notify Consumer NZ in writing if during the Term any change is made to the specification or any of the qualities or features of the Product;
- 8.1.13 notify Consumer NZ in writing in advance if the Licensee proposes to refer in any way (whether by use of any Brandmark, logo, trade mark, or otherwise) in any marketing, advertising or promotional material relating to the Product (or any point of sale material) to the fact that the Product has been approved, endorsed, recommended, tested or evaluated by any person other than Consumer NZ or has been the subject of any award by any person other than Consumer NZ;

Quantities of material produced

- 8.1.14 ensure that the quantities of material produced by or on behalf of the Licensee during the Term and bearing the Brandmark or reference to 'Consumer Recommends' status will be consistent with quantities produced prior to the Commencement Date, having regard to the demand for the Product during the Licence Period and to use its best endeavours to ensure that the ordering of stocks of such material produced is managed so as to ensure that such stocks are not stockpiled and are exhausted as at the Termination Date.
- 8.2 Nothing in this Agreement shall prevent the Licensee from using on or in connection with the Product (or any point of sale material) or in any marketing, advertising or promotional material relating to the Product any other Brandmark or award conferred by Consumer NZ provided that any such use is in accordance with the terms applicable to that other Brandmark or award from time to time.
- 8.3 If the Licensee commits a breach of its obligations under this clause 8 or the Usage Guidelines, the Licensee must on receiving Notice from Consumer NZ immediately cease using the Brandmark (including any reference to 'Consumer Recommends' status) until the breach has been resolved to the satisfaction of Consumer NZ, or the Agreement is terminated, whichever is earlier.
- 8.4 The Licensee agrees to indemnify and keep indemnified Consumer NZ from and against any and all Losses suffered by Consumer NZ resulting from the performance or non-performance by the Licensee of this Agreement and from and against any Losses suffered by Consumer NZ arising out of or based upon defects in the Product, except to the extent that such losses are caused by the gross negligence of Consumer NZ.

9 Costs

- 9.1 Each party shall each meet their own costs arising from and incidental to advising, negotiation, preparation, completion and execution of this Agreement and any renewal of this Agreement.

- 9.2 The Licensee will pay all reasonable costs, charges and expenses for which Consumer NZ becomes liable including all legal costs on a solicitor/client basis as a result of or in connection with any breach by the Licensee of its obligations under this Agreement.

10 Termination

- 10.1 Consumer NZ may terminate this Agreement immediately by Notice to the Licensee if:
- 10.1.1 the Licensee has committed any material breach of the terms of this Agreement;
 - 10.1.2 the Licensee has not paid the Endorsement Fee in accordance with clause 5;
 - 10.1.3 the Licensee has entered into liquidation either compulsory or voluntary (save for the purpose of amalgamation or reconstruction) or had an administrative receiver, receiver or administrator appointed in respect of the whole or part of its assets or made an assignment for the benefit of or composition with its creditors or anything analogous to any of the above occurs in relation to the Licensee;
 - 10.1.4 the Licensee challenges the validity or ownership of the Intellectual Property or any right or interest that Consumer NZ may have in it; or
 - 10.1.5 the Licensee has committed any material breach of the terms of any other licence which has been granted by Consumer NZ to the Licensee and Consumer NZ serves or has served notice on the Licensee to terminate such licence as a result.

11 Consequences of termination

- 11.1 In the event of expiry or termination of this Agreement howsoever caused the Licensee undertakes (subject to the provision of clause 11.2):
- 11.1.1 immediately to cease using the Brandmark or the Intellectual Property upon or in connection with the Product or any marketing, advertising or promotional materials relating to the Product;
 - 11.1.2 immediately withdraw from circulation any marketing, advertising or promotional materials relating to the Product bearing the Brandmark which are within the possession, power or control of the Licensee;
 - 11.1.3 to use all reasonable endeavours to withdraw as soon as reasonably practicable and in any event within seven days of the Termination Date any marketing, advertising or promotional materials relating to the Product bearing the Brandmark which are not within the possession, power or control of the Licensee

- 11.1.4 to ensure that there is no further publication or distribution of any marketing, advertising or promotional materials relating to the Product bearing the Brandmark
 - 11.1.5 immediately to destroy or procure the destruction of all advertising, promotional and marketing materials relating to the Product in each case bearing the Brandmark and being in the possession, power or control of the Licensee
 - 11.1.6 to use its best endeavours to destroy or procure the destruction as soon as reasonably practicable and in any event within seven days of the Termination Date of any advertising, promotional and marketing materials relating to the Product in each case bearing the Brandmark which are not within the possession, power or control of the Licensee, and
 - 11.1.7 if so requested by Consumer NZ at any time, to deliver to Consumer NZ in such terms as Consumer NZ may request a statement duly sworn by an officer of the Licensee confirming that all use by the Licensee of the Brandmark was fully in accordance with the terms of this Agreement and that the Licensee has complied with the provisions of this clause 11.
- 11.2 If this Agreement is terminated by Consumer NZ pursuant to clause 10 the Licensee shall have the shorter of the period of seven days and the period from the Termination Date until the date that this Agreement would otherwise have expired within which to comply with the provisions of clause 11.1 provided always that during such period the Licensee shall not be entitled to enter into any further agreement relating to, or in any other way authorise, the production, distribution or publication of any marketing, advertising or promotional material relating to the Product bearing the Brandmark and for a period afterwards Consumer NZ may decline a request for a Licence.
- 11.3 If the Licensee commits a material breach pursuant to clause 11.1 then Consumer NZ is entitled to publish the breach in their published material and refuse to grant any other licence for use of the Brandmark.
- 11.4 The expiry or termination of this Agreement shall be without prejudice to any rights which have already accrued to either of the parties.

12 Confidentiality

- 12.1 Except as provided by clauses 12.2 and 12.3 each party shall at all times during and after the Term:
- 12.1.1 keep all information relating to the business or affairs of the other party (**Confidential Information**) confidential and accordingly not disclose any Confidential Information to any other person, and
 - 12.1.2 not use any Confidential Information for any purpose other than the performance of its obligations under this Agreement.

- 12.2 Any Confidential Information may be disclosed by either party to:
- 12.2.1 any employees of that party to such extent only as is necessary for the purposes contemplated by the Agreement, subject to that party procuring that the person in question keeps the same confidential and does not use the same except for the purposes for which the disclosure is made, or
 - 12.2.2 any person as is required by any statute or regulation or under any laws or pursuant to any order of a court of competent jurisdiction.
- 12.3 Any Confidential Information may be used by either party for any purpose or disclosed by the party to any person, to the extent only that:
- 12.3.1 it is at the date hereof, or hereafter becomes, public knowledge through no fault of that party (provided that in doing so that party shall not disclose any Confidential Information which is not public knowledge), or
 - 12.3.2 it can be shown by that party, to the reasonable satisfaction of the other party, to have been known to the party prior to its being disclosed by one party to the other.
- 12.4 On the expiry or termination of the Agreement, each party shall return to the other party or at a party's request otherwise dispose of or destroy all tangible Confidential Information of that party being in the possession, custody or control of the other party.

13 Notices

- 13.1 Day to day communication between Consumer NZ and the Licensee may be made by electronic mail to the relevant contact set out in Schedule 1.
- 13.2 Any notice or communication given to a party required under a clause of this Agreement is only given if it is in writing and sent in one of the following ways:
- 13.2.1 Delivered or posted to that party at its address and marked for the attention of the relevant department or officer (if any) set out in Schedule 1.
 - 13.2.2 Faxed to that party at its fax number and marked for the attention of the relevant department or officer (if any) set out in Schedule 1.

Change of address or fax number

- 13.3 If a party gives the other party three Working Days' notice of a change of its address or fax number, any notice or communication is only given by that other party if it is delivered, posted or faxed to the latest address or fax number.

Time notice is given

- 13.4 Any notice or communication is to be treated as given at the following time:
- 13.4.1 If it is delivered, when it is left at the relevant address.

13.4.2 If it is sent by post, two (or, in the case of a notice or communication posted to another country, nine) business days after it is posted.

13.4.3 If it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.

13.5 However, if any notice or communication is given, on a day that is not a Working Day or after 5pm on a Working Day, in the place of the party to whom it is sent it is to be treated as having been given at the beginning of the next Working Day.

14 GST payable by Licensee

14.1 Unless otherwise stated, all amounts and values referred to in this Agreement are exclusive of GST.

14.2 To the extent that any supply from Consumer NZ to the Licensee under this Agreement constitutes a taxable supply for GST purposes (**Taxable Supply**), an amount equal to the GST chargeable on that Taxable Supply, as between Consumer NZ and the Licensee, will be payable by the Licensee to Consumer NZ in addition to the amount payable for the Taxable Supply. The Licensee will pay the GST amount at the same time and in the same manner as payment of the Taxable Supply is required, provided that on or before the time Consumer NZ has issued to the Licensee a GST Invoice.

15 Waiver

15.1 No failure or delay on the part of either of the parties to exercise any right or remedy under this Agreement shall be construed or operate as a waiver of this Agreement nor shall any single or partial exercise of any right to remedy preclude the further exercise of such right or remedy as the case may be. The rights or remedies provided in this Agreement are cumulative and are not exclusive of any rights or remedies provided by law.

16 No partnership or agency

16.1 The parties are not partners or joint venturers nor is the Licensee able to act as agent of Consumer NZ.

17 Survival of terms

17.1 Clauses 1, 11, 12 and 22, and all (if any) other provisions of this Agreement which in order to give effect to their meaning need to survive its termination shall remain in full force and effect after the Termination Date.

18 Severability

- 18.1 The invalidity of any part or provision of this Agreement shall not affect the enforceability of any other part or provision of this Agreement.

19 Governing law and jurisdiction

- 19.1 This Agreement shall be governed by and construed in accordance with New Zealand law.

20 Execution of separate documents

- 20.1 This Agreement is properly executed if each party executes either this document or an identical document. In the latter case, this Agreement takes effect when the separately executed documents are exchanged between the parties.

21 Entire Agreement

- 21.1 This Agreement contains everything the parties have agreed in relation to the subject matter it deals with. No party can rely on an earlier written document or anything said or done by or on behalf of another party before this Agreement was executed.
- 21.2 Amendments or additions to this Agreement shall only be effective if made in writing and signed by an authorised representative from each of the parties.

22 Definitions and interpretation

Definitions

- 22.1 Unless the context otherwise requires, the following terms used in this Agreement shall have the following respective meanings:

Agreement means this written agreement including the Schedules.

Brandmark means the 'Consumer Recommends' brandmark provided to the Licensee by Consumer NZ, incorporating the details of the Product and includes any material published by Consumer NZ that refers to the 'Consumer Recommends' status.

Commencement Date means the date set out in Schedule 1 provided that Consumer NZ has approved of promotional material under clause 5 and the client has paid the Endorsement Fee in accordance with clause 6, or such later date as is agreed between the parties in writing.

Confidential Information has the meaning given to it in clause 12.1.1.

Endorsement Fee means \$10,000 excluding GST.

GST Invoice means a tax invoice complying with the requirements of section 24 of the Goods and Services Tax Act 1985.

Holding Company has the meaning as defined by sections 5 of the Companies Act 1993.

Initial Term has the meaning given to it in clause 4.1.

Intellectual Property means the intellectual property rights of whatever nature in the Brandmark (including the goodwill and copyright in the Brandmark).

IPONZ means the Intellectual Property Office of New Zealand.

Licence means that licence granted by Consumer NZ to the Licensee under clause 1.1 of this Agreement.

Licence Period means the period from the Commencement Date to the Termination Date (inclusive in both cases).

Losses mean any and all damages and losses, liabilities, judgments, demands, fees, costs, expenses (including legal fees and disbursements on a full indemnity basis).

Notice means notice in writing served in accordance with the provisions of clause 13.

Permitted Media means

- (a) any form of static print media including newspapers, magazines, posters (including posters on the sides of buses and other vehicles) leaflets, circulars, tickets or similar material
- (b) the internet provided that any internet usage is limited strictly to the static appearance of the Brandmark on any webpage
- (c) television
- (d) radio
- (e) point of sale

and any other permitted media that Consumer NZ agrees to in writing.

Product means the goods or services details of which are set out in Schedule 1.

Term means the period from the date of execution of this Agreement to the Termination Date (inclusive in both cases).

Termination Date means the date set out in Schedule 1 or date of termination of this Agreement howsoever arising.

Usage Guidelines means the guidelines relating to the use of the Brandmark set out in Schedule 3.

Working Day means any day other than a Saturday or a Sunday or any public holiday in New Zealand.

Interpretation

22.2 In this Agreement (except where the context otherwise requires):

22.2.1 The schedules are integral parts of this Agreement and any reference to this Agreement includes the schedules.

Execution and date

Executed as an agreement.

Date:

Signed on behalf of
Consumer NZ Incorporated
in the presence of:

) _____
) Authorised signatory
) _____
Authorised signatory

Witness signature:

Witness name:

Occupation:

Address:

Signed by [**Licensee**]
in the presence of:

) _____
) Director
) _____
Director/Authorised signatory

Witness signature:

Witness name:

Occupation:

Address:

Schedule 1

Licensee's details	
Name:	[Name]
Address:	[Postal address]
Address for Notices:	[Physical address]
Fax number:	[Fax number]
Attention:	[Name]
Representative for day to day communication	[Name]
	[Phone]
	[Email]
Consumer NZ's details	
Name:	Consumer NZ Incorporated
Address:	204 Thorndon Quay, Wellington, New Zealand
Address for Notices:	[Physical address]
Fax number:	[Fax number]
Attention:	[Name]
Representative for day to day communication	[Name]
	[Phone]
	[Email]
Dates	
Commencement Date	[As agreed]
Termination Date	[The date 6 months from the Commencement Date (or 3 months if the product is a financial service)]
Product	
[NB precise details of goods including model numbers or services are to be included]	

Schedule 2

The Brandmark

The Advertising Brandmark



The Point of Sale Brandmark



Schedule 3

Usage Guidelines (on following pages)