

## **GREEN TICK TECHNOLOGIES LIMITED**

(GTT)

## **THE LICENSEE NAMED AND DESCRIBED IN SCHEDULE B**

(Licensee)

## **LICENCE AGREEMENT**

**AGREEMENT**      **dated the**                      **day of**

### **PARTIES**

1. GREEN TICK TECHNOLOGIES LIMITED a company incorporated in New Zealand having its registered office at 30-34 Rathbone Street, Whangarei ("GTT").
2. THE LICENSEE NAMED AND DESCRIBED IN SCHEDULE B ("the Licensee")

### **INTRODUCTION**

- A. GTT is the proprietor of the Licensed Mark in New Zealand.
- B. The Licensee is the manufacturer or supplier of certain products.
- C. The Licensee desires to use the Licensed Mark on and in connection with the distribution of those products and GTT agrees to grant to the Licensee a licence to use the Licensed Mark on the terms and conditions of this agreement.

### **AGREEMENT**

1. DEFINITIONS AND INTERPRETATION  
Definitions

1.1 In this agreement unless the context otherwise requires:

"Affiliate" means a person or entity that directly or indirectly controls, is controlled by or is under common control with, a party to this agreement.

"Approved Product" means the product or products specified in Schedule B.

"Business Day" means a day on which registered banks are open for business in Whangarei and the address of the Licensee given in Schedule B, excluding Saturdays, Sundays and public holidays.

"Default Interest Rate" means, in respect of any day of the month, the 90 day bank bill buy rate published on Reuters Screen BKBM at 11.00am on the first Business Day of that month (or, if such rate is not available at that time, the rate which the party to whom the relevant default interest is payable reasonably determines to be the nearest practicable equivalent) plus 3 percentage points.

"GST" means goods and services tax in terms of the Goods and Services Tax Act 1985, at the rate prevailing from time to time.

"GTT" means Green Tick Technologies Limited;

"Licensed Mark" means the trade mark shown in Part 1 of Schedule A ;

"Net Sales" means the amount invoiced for Sales of Approved Products, less the following deductions:

(a) discounts, returns, allowances (including bad debt allowances), and wholesaler chargebacks allowed and taken in amounts customary in the trade;

(b) import, export, excise, sales or use taxes, value added taxes (including GST), and other taxes, tariffs or duties;

(c) freight, handling, transportation and insurance prepaid or allowed;

(d) amounts allowed or credited or retroactive price reductions or rebates.

Any refund of any of the foregoing amounts (including any reversal of bad debt allowances) previously deducted from Net Sales shall be appropriately credited upon receipt thereof.

If a Sale of an Approved Product is to an Affiliate of the seller, then the "amount invoiced" with respect to such Sale shall, for purposes of calculating "Net Sales," be the greater of (a) the actual amount invoiced, and (b) the amount which the invoiced amount would have been had such Sale of the Approved Product been to a person at arm's length with the seller.

"Promotional Material" includes all wrappings, containers, display materials, and advertisements;

"Quarter" means each of the periods:

(a) 1 January to 31 March;

(b) 1 April to 30 June;

(c) 1 July to 30 September; and

(d) 1 October to 31 December,

in each year.

"Regulations" means the regulations relating to use of the Licensed Mark deposited at the Intellectual Property Office of New Zealand under Section 48 of the Trade Marks Act 1953.

"Review" means a review of an Approved Product undertaken to assess its compliance with the Standards;

"Reviewer" means an independent body acceptable to GTT, as defined in the regulations;

"Sale" means the sale or other disposition of an Approved Product by the Licensee.

"Spot Review" means a random inspection of the Licensee's sites or Product by a Reviewer or GTT;

"Standards" means GTT's Certification Standards for Approved Products as may be amended by GTT from time to time;

"Term" means a period of two years commencing on the date of this agreement.

"Usage Guidelines" means the guidelines issued by GTT from time to time, governing the use of the Licensed Mark by the Licensee, the current version of which appears in Schedule D.

## **INTERPRETATION**

1.2 In this agreement:

- (a) All monetary amounts are stated exclusive of GST and are payable, plus GST, in New Zealand dollars, unless provided otherwise;
- (b) References to clauses and schedules are to clauses and schedules in this agreement;
- (c) Where the context permits, the singular includes the plural and vice versa and words importing one gender shall include all other genders;
- (d) References to any "party" means a party to this agreement;
- (e) References to a party in this agreement includes the successors, executors, administrators and permitted assignees (as the case may be) of that party;
- (f) References to a month or a year are references to a calendar month or calendar year;
- (g) All references to legislation are references to New Zealand legislation and include all subordinate legislation, any re-enactment of, or amendment to, that legislation and all legislation passed in substitution for that legislation;
- (h) Headings are used for ease of reference and shall not affect the interpretation of this Agreement.

## **2. GRANT OF LICENCE**

2.1 GTT grants the Licensee a non-exclusive, non-transferable licence to use the Licensed Mark on and in connection with the manufacture, distribution and marketing of the Approved Products during the Term, on the terms and conditions of this agreement.

## **3. TERM**

3.1 This agreement shall continue in force for the Term, unless terminated earlier pursuant to clause 10.

## **4. PROTECTION OF LICENSED MARKS**

4.1 The Licensee acknowledges GTT's exclusive right, title to and interest in the Licensed Mark and shall not at any time do, or cause to be done, or assist directly or indirectly, any act or thing which may prejudice the same.

4.2 The Licensee shall not represent that it has any rights in the Licensed Mark except as Licensee pursuant to this agreement.

4.3 The Licensee shall promptly advise GTT of any unlawful use of the Licensed Mark of which it may become aware.

4.4 The Licensee shall use all reasonable endeavours to protect and promote the reputation of the Licensed Mark and the aims and objective associated with it and shall not engage in any conduct which may damage the reputation or goodwill associated with the Licensed Mark.

## **5. FEES**

### Annual Fee

5.1 Immediately on the date of this agreement and again on the first anniversary of that date the Licensee shall pay the annual fee specified in Schedule B, to GTT.

### Royalties

5.2 The Licensee shall pay GTT royalties plus GST (if any) on Net Sales of Approved Products. The royalty rate shall be the percentage of all Net Sales of Approved Products specified in Schedule B.

### Taxes

5.3 Each party shall pay any and all taxes levied on account of royalties or other payments it receives under this agreement, including without limitation withholding taxes where applicable. If laws or regulations require that taxes be withheld, the paying party shall:

- (a) deduct these taxes from the remittable amount;
- (b) pay the taxes to the proper taxing authority;
- (c) send proof of payment to the receiving party within 60 days following that payment;
- (d) immediately apply for any certificate or proof of payment available from the receiving taxing authority for use by the other party and forward the same to the other party upon receipt.

### Currency

5.4 All payments made under this agreement shall be in New Zealand dollars. With respect to any payment based on Net Sales made in a currency other than New Zealand dollars, the Licensee shall convert Net Sales to New Zealand dollars as at the date of the relevant Net Sales report.

### Payment Dates and Mechanics

5.5 Royalty payments shall be payable to GTT upon delivery of each Net Sales Report pursuant to clause 6.1 of this agreement. All payments made by the Licensee under this agreement shall be made by direct transfer of immediately available funds to the account specified by GTT from time to time in writing.

## **6. REPORTING, RECORDS AND ACCOUNTING**

### Net Sales Reports

6.1 Within 30 days after the end date of each Quarter falling after the date of this agreement and immediately after expiry of the Term or termination of this agreement, the Licensee shall provide GTT with a report (a "Net Sales Report"), which will set forth Net Sales of Approved Products made during that Quarter or period ending on that date, and will include reasonable supporting detail regarding the deductions taken from gross Sales of Approved Products to arrive at Net Sales of Approved Products.

## Accounting and Audits

6.2 The Licensee shall keep and maintain proper and complete records and books of account documenting Net Sales of Approved Products. The Licensee shall permit an independent public accountant designated by GTT to have access, at GTT's expense, no more than once in each calendar year during the Term and once during the calendar year following the termination hereof, during regular business hours and upon reasonable notice, to the Licensee's records and books for the sole purpose of determining the actual Net Sales of Approved Products made by the Licensee. Such independent accountant may report to GTT only:

- (a) whether or not Net Sales of Approved Products have been understated for the period being examined;
- (b) if so, the amount of such understatement.

6.3 If an examination under clause 6.2 results in a final determination that Net Sales of Approved Products have been understated, the Licensee shall pay immediately the applicable royalties on understated Net Sales of Approved Products (plus interest thereon, running from the period such payment was due until such payment is made, at the Default Interest Rate). The fees and expenses of any accountant used under clause 6.2 shall be paid by GTT, unless the audit results in a final determination that Net Sales of Approved Products have been understated by more than 5% for the period examined, in which case the Licensee shall pay all reasonable fees and expenses of such accountant.

## **7. COVENANTS BY THE LICENSEE**

7.1 The Licensee covenants that:

- (a) It will not sell, assign, mortgage, lease, sublicense or otherwise deal with the rights granted by this agreement;
- (b) Any reputation or goodwill arising from the use of the Licensed Mark by the Licensee pursuant to this agreement shall be and remain the exclusive property of GTT;
- (c) All use of the Licensed Mark shall conform to the standards set out in the Usage Guidelines;
- (d) In respect of each Approved Product it shall only use or reproduce the Licensed Mark in the manner specified in Schedule A;
- (e) A notice in terms of Schedule C, which may be varied by GTT from time to time by notice to the Licensee in writing, shall at all times appear adjacent to the Licensed Mark on all material bearing the Licensed Mark;
- (f) It shall not at any time use the Licensed Mark as part of the logo, business name or corporate identity of the Licensee or of any division or branch thereof;
- (g) It shall permit GTT's approved Reviewers access to its sites for the purposes of a Spot Review of an Approved Product without charge upon reasonable notice from GTT, which notice may be given at any time or times during the term as GTT may determine, at its absolute discretion;
- (h) It shall submit to GTT for approval samples of all Promotional Material, which bears the Licensed Marks or makes any reference to GTT, and will not use or distribute any such Promotional Material until written approval has been gained from GTT;

(i) It shall comply with all advertising and promotional requirements relating to the use of the Licensed Mark or any reference to GTT, notified from time to time by GTT to the Licensee;

(j) It shall ensure that all its Promotional Material, which bears the Licensed Mark or makes reference to GTT, conforms with the samples approved by GTT at all times.

## **8. INDEMNITY AND PRODUCT LIABILITY**

8.1 The Licensee indemnifies and will keep indemnified GTT, its servants, agents and employees from and against all, and any claims, actions, proceedings, demands, costs or expenses (including legal costs on a solicitor-client basis) arising directly or indirectly from the Licensee's use of the Licensed Marks.

8.2 The Licensee acknowledges that the grant of this Licence does not constitute any warranty or representation by GTT that any Product is of any particular quality or has any special properties making it fit for a particular purpose.

8.3 GTT does not by the grant of this Licence accept any liability to the Licensee or any other party for any damage, loss or injury caused as a result of the use of any Product.

## **9. DISPUTES**

9.1 Unless a party has first complied with clauses 9.2 to 9.4 (inclusive) that party may not commence court proceedings relating to any dispute arising from this agreement (except where the party seeks urgent interlocutory relief, in which case that party need not comply with this clause before seeking such relief) and where that party fails to so comply with those clauses, the other party need not comply with those clauses before commencing court proceedings relating to that dispute.

9.2 Either party (referred to in this clause as "the First Party") claiming that a dispute has arisen under this agreement between the parties shall give written notice to the other party (referred to in this clause as "the Second Party") specifying the matter in dispute and designating as its representative in negotiations relating to the dispute a person with authority to settle the dispute. The Second Party shall, within 10 Business Days after receiving the First Party's notice, give written notice to the First Party, designating as its representative in negotiations relating to the dispute, a person with similar authority.

9.3 The parties shall use their reasonable endeavours to procure that the persons designated under clause 9.2 shall, within 10 Business Days of the last designation required by clause 9.2, following whatever investigations each such person deems appropriate, seek to resolve the dispute.

9.4 If the dispute is not resolved within the period referred to in clause 9.3 (or within such longer period as their respective representatives may agree is appropriate) the parties shall within a further period of 10 Business Days (or such longer period as the representatives may agree is appropriate) use their reasonable endeavours to agree, in good faith, on a process for resolving the whole or part of the dispute through means other than litigation (including, without limitation, further negotiations, mediation, conciliation, or independent expert determination) and on:

(a) the procedure and timetable for any exchange of documents and other information relating to the dispute;

(b) procedural rules and a timetable for the conduct of the selected mode of proceedings;

(c) a procedure for selection and compensation of any neutral person who may be employed by the parties in dispute;

(d) whether the parties should seek the assistance of a dispute resolution organisation.

9.5 After the expiry of the time established by or agreed under clause 9.4 for agreement on a dispute resolution process, a party which has complied with the provisions of clauses 9.1 to 9.4 (inclusive) may, by written notice to the other party, terminate the dispute resolution process provided for in those clauses and may then commence court proceedings relating to the dispute.

## **10. TERMINATION**

10.1 This agreement may be terminated at any time and with immediate effect by written notice given by either party (referred to in this clause as "the First Party") to the other party (referred to in this clause as "the Second Party") if:

(a) the Second Party has failed to comply with an earlier written notice given by the First Party specifying a material breach of this agreement by the Second Party and, in the case of a breach which is capable of remedy, requiring that the Second Party remedy that breach within 30 days after receipt of that earlier notice, provided that the First Party may not at any time give such a notice terminating this agreement if, at that time, the First Party is in default under this agreement;

(b) the Second Party goes into liquidation (otherwise than for a solvent restructuring which has been previously approved in writing by the First Party (which approval may not be unreasonably withheld)) or is removed from the New Zealand Companies Register or if a receiver or statutory manager has been appointed in respect of the Second Party or any material part of its assets or if any event analogous in nature has occurred in respect of the Second Party under the laws of any relevant jurisdiction;

(c) the Second Party suspends, for 10 Business Days or longer, or ceases, or sells, its principal business undertaking or assets without the prior written consent of the First Party (which the First Party may withhold at its absolute discretion);

(d) the Second Party makes any assignment to, or enters into an arrangement for the benefit of, its creditors (other than for the purposes of a solvent restructuring);

(e) the Second Party becomes unable to pay its debts as they fall due or is presumed pursuant to section 287 of the Companies Act 1993 to be unable to pay its debts.

10.2 Upon termination or expiry of this agreement for whatever reason:

(a) any termination shall be without prejudice to the rights and remedies of either party in respect of any breach of this agreement by the other party, where such breach occurred prior to the termination of this agreement;

(b) the Licensee shall forthwith cease to use the Licensed Mark or to hold itself out as being entitled to use the same;

(c) GTT may require the Licensee to recall any Approved Products already sold by the Licensee within one calendar month, or such further period of time as GTT may permit, from any date of termination, for the purpose of removing the Licensed Mark from those products.

## **11. PARTIAL TERMINATION**

11.1 If the Licensee fails to maintain the standards of quality of any Approved Product or any Promotional Material in the form used by the Licensee in relation to any Approved Product has not been approved by GTT, GTT may terminate this licence so far as it relates to that Approved Product by notice in writing to the Licensee whereupon the Licensee shall cease to use the Licensed Mark in respect of the Approved

Product to which the notice relates or to hold itself out as being entitled to use the same in relation to that Approved Product.

11.2GTT may require the Licensee to recall any Approved Product already sold by the Licensee, for which GTT has issued a notice pursuant to clause 11.1, within one calendar month, or such further period of time as GTT may permit, from the date of the notice issued pursuant to clause 11.1, for the purpose of removing the Licensed Mark from those products.

## **12. RELATIONSHIP OF THE PARTIES**

12.1The relationship between the Parties is purely that of the licensor and licensee and nothing contained in this agreement shall constitute or be deemed to constitute the parties as partners or joint venturers and the Licensee shall have no power to incur any obligations on behalf of or to pledge the credit of GTT in any manner whatsoever.

## **13. NOTICES**

13.1Any notice, demand, consent or request required or permitted to be given or made under this agreement shall be in writing and shall be deemed to be properly given if delivered or sent by mail or facsimile and addressed as set out below or to such other address as the party to be notified may advise for the purpose from time to time to the person named below.

13.2Any notice or document so given shall be deemed to be given at the time when it was actually delivered, sent by facsimile or within 48 hours after the time it was mailed to the authorised representative of the recipient party at the respective address set forth below.

GTT

Green Tick Technologies Limited

Level 4, Gilmore Brown Building, 30-34 Rathbone Street

WHANGAREI

Attention: Chief Executive Officer

Facsimile (09) 430 8602

The Licensee

To the address and facsimile number appearing in Schedule B.

## **14. GENERAL**

Entire Agreement

14.1This agreement constitutes the entire agreement between the parties and supersedes all prior agreements, oral or written, and all other communications between the parties relating to the subject matter of this agreement. The parties further agree that neither party places any reliance whatsoever on any representations, agreements, statements or, understandings made prior to the date of execution of this agreement whether orally or in writing other than those which have been expressly incorporated or referred to in this agreement.

## Copies

14.2 This agreement may be executed in one or more counterpart copies which, read together, shall constitute one and the same instrument.

14.3 Any facsimile copy of this agreement (including any facsimile copy of any document evidencing the execution of this agreement by either party) may be relied upon by the other party as though it were an original copy.

## Non Assignment or Sublicensing

14.4 The Licensee may not transfer or assign any of its liabilities or rights under this agreement to any other person without the prior written consent of GTT, which consent may withheld at the absolute discretion of GTT.

14.5 The Licensee may not sublicense any of its rights or obligations under this agreement.

## Waivers

14.6 The failure of any party to insist on the performance of any obligation hereunder shall not be deemed to be a waiver of such obligation. Waiver of any breach of any provision hereof shall not be deemed to be a waiver of any other breach of such provision or any other provision.

## Amendments and Waivers

14.7 No waiver, modification, release or amendment of any obligation under, or provision of, this agreement shall be valid or effective unless in writing and executed by both parties in the same manner as that in which this agreement has been executed.

## **15. GOVERNING LAW**

15.1 This agreement is governed by the laws of New Zealand and the parties submit the non-exclusive jurisdiction of the Courts of New Zealand.

## EXECUTION

GREEN TICK TECHNOLOGIES LIMITED  
for and on behalf of Green Tick Technologies Limited:

\_\_\_\_\_  
Signature of authorised person

\_\_\_\_\_  
Office held

\_\_\_\_\_  
Name of authorised person

THE LICENSEE  
for and on behalf of the Licensee:

\_\_\_\_\_

Signature of authorised person

\_\_\_\_\_  
Office held

\_\_\_\_\_  
Name of authorised person

#### SCHEDULE A: Licensed Marks

Part 1 Licensed Marks

Part 2 Presentation of Licensed Mark

Approved Products with Green Tick Sustainable Certification:

Approved Products with Green Tick GE-Free Certification:

Approved Products with Green Tick Organic Certification:

Approved Products with Green Tick Natural Certification:

Approved Products with Green Tick Fair Trader Certification:

#### SCHEDULE B: Particulars of Licence

### **1. LICENSEE**

Licensee:

Address:

Facsimile No:

Description of Approved Products:

Description of Approved Products with "Green Tick Sustainable", "Green Tick GE-Free", "Green Tick Organic", "Green Tick Natural" or "Green Tick Fair Trader" Certification:

Annual Fee: A sum based on 0.5% (50c in every 100 dollars) of net sales of the Approved Product in the business quarter previous to the date of this Agreement, or such other sum as may be agreed between GTT and the Licensee.

Royalty in Percentage of Net Sales: 0.5% (50c in every 100 dollars) per Approved Product, or such other sum as may be agreed between GTT and the Licensee.

## **2. REVIEWER**

Reviewer Name:

Reviewer Address:

Facsimile No:

SCHEDULE C: Notice to Appear Adjacent to Licensed Mark

© 2005 Green Tick Technologies Limited

Used Under Licence

SCHEDULE D: Licensed Mark Usage Guidelines

### 1. Principals of Use

1.1 The Licensed Mark must not be used in a way that is misleading, likely to adversely affect the interests of (GTT) or the public.

1.2 The Licensed Mark may only be used in association with an Approved Product.

### 2. Issue of Permission to Use the Licensed Mark

2.1 GTT must approve in writing any application to use the Licensed Mark in respect of any Product, by the completion of a License Agreement with the successful applicant.

2.2 GTT must approve in writing all proposed reproductions of the Licensed Mark, including packaging, display materials and print, radio and television advertising. All references to the Licensed Mark must also be approved by GTT prior to distribution.

2.3 GTT reserves the right to accept or reject any advertising or packaging material used in conjunction with an Approved Product.

## **3. GREEN TICK LOGO PRODUCTION GUIDELINES**

3.1 The "Green Tick Sustainable", "Green Tick GE-Free", "Green Tick Organic", "Green Tick Natural" or "Green Tick Fair Trader" logos must be reproduced in PMS362 and PMS3308. (See Figures 1.1, 1.2, 1.3 for example representations). Black and white reproduction must be as shown in Figure 1.4.

3.2 The "Green Tick" logo must not be distorted in any way, and must appear with the word "Sustainable" or "GE-Free" or "Organic" or "Natural" or "Fair Trader" inside the lower half of the circle whichever is appropriate for the certification for those goods or services. It must also bear a ribbon across its base with the word "Certified" inside the ribbon in black or white print.

3.3 The trade mark symbol TM must appear on the logo, with the following phrase "© 2005 Green Tick Technologies Limited used under licence" on the material.

3.4 The "Green Tick" logo must not be impinged upon by text, pictorial or photographic background.

3.5 The "Green Tick" logo must not be printed smaller than 22mm including the tail of the Green Tick. Therefore the diameter of the outer circle should never be below 15mm (see figure 2.1).

3.6 The "Green Tick" logo printed for stickers on products must be as figure 3.1 as per respective categories.

#### **4. PRODUCTS AND SERVICES REPRESENTATIONS**

4.1 Any claims (text and pictorial) associated with Approved Products must not be confusing or misleading, must be technically correct, and must comply with the New Zealand Fair Trading Act 1986.