

Brand Partner Programme



1.

LICENCE AGREEMENT

Between

NEW ZEALAND TRADE AND ENTERPRISE (NZTE),
a crown entity established under NZTE section 7 of the
New Zealand Trade and Enterprise Act 2003, of PO Box
2878, Wellington, New Zealand

(THE LICENSOR)

And

(THE LICENSEE)

INTRODUCTION

- (a) The New Zealand Way Limited ('NZW') is the jointly owned company of the licensor and Tourism New Zealand, and is the owner of the fern leaf device trademark ('the trademark').
- (b) The extent of NZW's rights to the trademark worldwide are determined by trademark laws in each jurisdiction. Rights to a mark can be acquired at law ('trademark rights').
- (c) NZW owns rights to and has applied to register the trademark in New Zealand in certain countries and classes internationally. The overseas countries and classes are detailed in the Brand Partnership Schedule of Trademark Applications and Registrations and may be updated by the licensor from time to time.
- (d) When the trademark is used in combination with the words 'New Zealand' the device is known as the Brand New Zealand Fern Mark (the Fern Mark). The licensor has been exclusively licensed to use, and sub-licence use of, the Fern Mark by NZW.
- (e) The licensee wishes to obtain a licence to use the Fern Mark, and the licensor has agreed to grant a licence to the licensee on the terms set out in this agreement.

2.

GRANT OF LICENCE

- (a) Subject to clause 1(b), NZTE grants to the licensee a non-exclusive licence to use the Fern Mark internationally for the duration of the licence on or in relation to the marketing or promotion of the following products and/or services, as set out below.

Your product or service (please write a brief description below)

Your use of the Fern Mark
(please tick as appropriate)

- marketing materials e.g. brochures, posters, company newsletters
- on company website
- corporate stationery e.g. business cards, letterhead, internal newsletters
- on product or product packaging.
- (b) to avoid doubt, the licence to use the Fern Mark granted under this licence is limited to the trademark rights only. The licensee agrees and acknowledges that it will use the Fern Mark in accordance with the trademark rights only. The Brand Partnership Schedule of Trademarks Applications and Registrations as at 04 July 2007 forms part of the trademark rights.
- (c) The licensee acknowledges that the Fern Mark is the absolute property of the licensor and that the licensor grants non-exclusive licences to other licensees.
- (d) The licensee's subsidiary companies:

may also use the Fern Mark if, at the time of use, the licensee owns at least 51% of the subsidiary's shares.

3.

DURATION

(a) This agreement is effective from the date the licensor approves the licensee's application by signing this agreement and shall continue for two years from the following date:

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DD	MM	YYYY

(b) At the end of the term, and any subsequent two-year period, this agreement may be renewed for further two-year periods, upon:

- i the completion of a formal reassessment of the licensee by the licensor or their appointed assessor; and
- ii the licensee certifying in writing that no substantial or relevant change has occurred to the Licensee's products and services or the use of the Fern Mark, which would be likely to cause the licensor to review its decision to grant a licence under this agreement.

(c) The licensee agrees to pay the cost of reassessment at the end of each two-year period, as detailed in the Brand Partnership programme information documents.

4.

GOVERNING LAW

This agreement shall be governed by New Zealand law.

The parties have signed this agreement on the dates noted below. The date inserted below by the authorised signatory of the licensor is the date of commencement of this agreement.

For and on behalf of NEW ZEALAND TRADE AND ENTERPRISE

authorised signatory

name

date

For and on behalf of

full legal name of licensee

authorised signatory

name

date

TERMS AND CONDITIONS

Conditions of grant of licence for use of the Fern Mark

- (a) The licensee shall use the Fern Mark in a manner that supports and enhances the objectives of the licensor. The licensee shall not use the Fern Mark in a manner or in circumstances that may damage the reputation of the Fern Mark, New Zealand, NZW or the licensor.
- (b) The licensee is entitled to use the Fern Mark on or in connection with packaging, advertising, direct marketing, public relations and other forms of promotion (all of which are collectively referred to as materials) specifically relating to the Licensee's products and services.
- (c) The licensee acknowledges it is to use the Fern Mark only in a manner and only on or in relation to the licensee's products and services and materials as approved by the licensor, and shall contact the licensor about using the Fern Mark in a manner different from that approved.
- (d) The licensee shall notify the licensor of:
- any changes to the licensee's product and services and materials for which it is licensed to use the Fern Mark and which may have a bearing on its eligibility to use the Fern Mark
 - any agreement, arrangement or other transaction which results, or will result, in a change of 50 percent or more in the beneficial ownership of the licensee or any significant change of effective control or management of the licensee.

In either case the licensor has the right to review the eligibility of the licensee to use the Fern Mark, and may terminate this agreement if, in its opinion, the licensee's products and services and/or the circumstances in which they are produced have changed since the approval of the licensee's application.

- (e) The licensee shall, if requested to do so, supply to the licensor samples of materials, or other examples of use of the Fern Mark and customer references.
- (f) The licensee shall, if requested to do so, provide to the licensor information on promotional activities, offshore marketing expenditure and the percentage of offshore marketing expenditure that relates to use of the Fern Mark.

Any information provided to the licensor under this clause 3(f) will only be used for statistical purposes and will not be disclosed in a form that could reasonably be expected to identify the licensee.

- (g) The licensee shall notify the licensor of any forthcoming promotions or events involving use of the Fern Mark which offer the opportunity for joint promotion with other licensees or approved users of the Fern Mark.
- (h) The Fern Mark shall not be used by the licensee in place of the trademarks (i.e. brands, logos etc) of the licensee or be used in conjunction with trademarks of the licensee in such a manner as to appear to be part of such trademarks.
- (i) The licensee shall, where practicable, print on packaging and materials adjacent to the licensee contact details or in other appropriate locations the trade mark notice "The Fern Mark is a trademark of New Zealand Way Limited".
- (j) The licensee shall comply with the guidelines in the accompanying NZTE Brand Partnership Brand Guidelines (and updates) for the use and reproduction of the Fern Mark. The licensor may unilaterally amend these guidelines from time to time and will give reasonable notice to the licensee of such changes. No variation of the Fern Mark is permitted, except with the prior written approval of the licensor, and any unapproved variation shall be withdrawn immediately.
- (k) The licensee shall immediately inform the licensor of:
- any infringement of the Fern Mark by third parties including, but not limited to, where damage to the reputation or to the prestige of New Zealand, the licensor or the Fern Mark is possible, or where there is false representation of origin or false descriptions of the Fern Mark

- any legal action, pending or threatened, or of administrative procedures, that may concern the Fern Mark or the licensee's products and services.
- (l) Any lawsuit or other action necessary for the purpose of protecting the Fern Mark shall be taken at the sole discretion of the licensor. This clause shall survive termination of this agreement.
- (m) The licensor shall not be liable for damages suffered by the licensee due to infringement of the licensor's rights in the Fern Mark. This clause shall survive termination of this agreement.
- (n) The licensee shall allow the licensor to publish its name, address, contact details and any other information in the licensor's promotional material relating to the Fern Mark and, if the licensee is an individual, he or she acknowledges, for the purposes of the Privacy Act 1993, that the licensor is entitled to publish such information.

Intellectual property rights

- (a) The licensee acknowledges and agrees that any and all goodwill arising from the licensee's use of the trademark is for the benefit of NZW and that the licensee will have no rights in the trademark other than those referred to in this agreement.
- (b) The licensee will not seek to apply or register the trademark in its own name or otherwise hold itself out as the owner of the trademark.
- (c) The licensee acknowledges and agrees that NZW owns all rights in and to the trademark (including copyright).
- (d) Any lawsuit or other action necessary for the purpose of protecting the trademark will be taken at the sole discretion of NZTE in consultation with NZW.
- (e) This clause 4 will survive termination of this agreement.

Amendment

- (a) The licensee may if necessary revise or alter the Fern Mark, but in doing so, will allow the licensee to continue using the Fern Mark in its existing form for a period to be agreed upon by the parties on notification of the change.
- (b) The licensor may amend or modify the terms and conditions of this agreement, on 30 days notice to the licensee, provided it is consistent with the licensor's statutory obligations and functions.

Non-assignment or transfer

This agreement is personal to the licensee and the licensee may not transfer, assign or license its rights to any party whatsoever, unless it obtains the licensor's prior written approval.

Termination

- (a) This agreement may be terminated by the licensor:
- if the licensee ceases or fails to comply with any of the conditions of this agreement, or if any information provided by the licensee to the licensor at the time of assessment or reassessment of the eligibility of the licensee to hold a licence was incorrect at the time it was provided
 - if the licensee is convicted of any offence that discredits its reputation and good faith as a trader
 - if, in the case of a body corporate or incorporate licensee, a receiver or liquidator is appointed; or in the case of an individual licensee, that individual is declared bankrupt or insolvent
 - if, pursuant to clause 3(d), the licensee's products and services and/or the circumstances in which they are produced have changed in the manner set out in clause 3(d)
 - if, in the opinion of the licensor, the image of the licensee's products and services has altered to the extent that there is the potential to damage the reputation of the Fern Mark, New Zealand or the licensor

- if, in the opinion of the licensor, the licensee ceases to be active in the marketplace for a period of more than six consecutive months due to a lack of marketing or a cessation of the export of the licensee's products and services

vii by the giving of three months' written notice.

- (b) If the licensor considers it appropriate, it shall notify the licensee that it is considering termination of this agreement and shall clearly set out the reasons for the potential termination. The licensee shall be given an opportunity to address and rectify the situation to the satisfaction of the licensor or will voluntarily cease using the Fern Mark.
- (c) Upon termination of this agreement, the licensee will forthwith cease to use the Fern Mark, and will:
- withdraw all of the materials bearing the Fern Mark or, with the consent in writing of the licensor, obliterate or cover the Fern Mark to the licensor's satisfaction
 - sign a notice of cessation of use of the Fern Mark which the licensor may require for its purposes.

- (d) This agreement may be terminated by the licensee by the giving of 30 days' written notice to the licensor.

Appeals

Notwithstanding any existing statutory or other right of appeal, the licensee may appeal any decision of the licensor to the Board of the licensor.

Indemnity

The licensee shall indemnify the licensor, its shareholders and its authorised agents in matters relating to the Fern Mark from any claims, costs, damages or expenses arising from the breach of this agreement, or from any use of the Fern Mark not within the terms of this agreement, by the licensee. This clause shall survive termination of this agreement.

Waiver

Any delay or failure by the licensor to exercise any right, power or remedy under, or in connection with, this agreement will not operate as a waiver of such right, power or remedy. A waiver of any breach of any provision of this agreement will not be effective unless that waiver is in writing and is signed by the licensor. A waiver of any breach will not be, or be deemed to be, a waiver of any other or subsequent breach.

Arbitration

Any differences or disputes between the parties relating to this agreement will be referred to a single arbitrator to be agreed upon by the parties and, failing agreement, by the President of the Wellington District Law Society. The decision of the arbitrator will be final and binding on the parties and the parties will abide by the findings of such arbitrator.