


TRADEMARK AND BRAND LICENSE/SUB-LICENSE AGREEMENT

THIS AGREEMENT is entered into on _____ (“Effective Date”) by and between Craft Maltsters Guild, an association, whose address principal address is 12 Gerber Road, Suite C, Asheville, NC 28803 (“Mark Owner” or “Licensor”), _____, a Member Malthouse of the Licensor (“Licensee”), and _____ a premium beverage producer, whose principal place of business is located _____ (“Sub-Licensee”).

WHEREAS, there exists certain intellectual property including a trademark and recognized brand (“Intellectual Property”) associated with use of locally sourced and independently produced malt serving the beverage industry. This property is related to and includes the

marks ™ and CERTIFIED CRAFT MALT™, as well as the goodwill associated with these marks. The marks may include the term “BREWERY” or “DISTILLERY” as appropriate and outlined in this Agreement.

WHEREAS, Licensor is the sole and exclusive owner of the Intellectual Property including, but not limited to: Trademarks, Copyrights, Trade Dress, Ornamentation and design, and Brand and brand style;

WHEREAS, Licensee is a member of the Craft Maltsters Guild and is designated as a Member Malthouse;

WHEREAS, Member Malthouse has been granted the power and authority to grant to Sub-Licensee the right, privilege, and license to use the Intellectual Property on or in association with the goods and/or services covered by Licensor’s trademark and intellectual property rights;

WHEREAS, Sub-Licensee is a producer of premium alcohol beverages and desires to use the Intellectual Property for its own marketing and branding effort and to promote the mission and identity of Licensor: and

NOW, THEREFORE, in consideration of the promises and agreements set forth herein, the parties, each intending to be legally bound hereby, do promise and agree as follows.

1. LICENSE GRANT

- A. Licensor, through Licensee and on Licensee’s representation that Sub-Licensee meets the requirements set forth by Licensor, hereby grants to Sub-Licensee a non-exclusive, global license to use the Intellectual Property on or in association with the Licensees products, as well as on packaging, promotional, and advertising material associated. The grant to Sub-Licensee is good only so long as Sub-Licensee maintains their status as a member in good standing of the Craft Maltsters Guild and Sub-Licensee continues to meet the minimum purchasing requirements as outlined for the use of the mark(s).

- B. Sub-Licensee may not grant any sublicenses to any third party, other than that of printing or producing packaging or marketing material expressly for use by Licensee, without the prior express written consent of the Licensor.

2. TERM OF THE AGREEMENT

- A. This Agreement and the provisions hereof, except as otherwise provided, shall be in full force and effect commencing on the Effective Date and shall extend for one year (the “Term”).
- B. This License shall automatically renew annually, for successive Terms, without the need for additional approval of such renewal. Licensor shall provide thirty (30) days written notice to Licensee of Licensor’s intent not to renew this License.
- C. Licensor shall have the right to terminate this license grant immediately should Licensee misuse the Intellectual Property or cease to use locally sourced and independently produced malt from one or more of the members of Licensor.
 - i. This license is subject to regular review and termination based on reports from Licensor’s members or annual audits or review of Sub-Licensee’s products using locally sourced and independently produced malt from one or more Member Malthouses

3. COMPENSATION

- A. As material consideration for the use of the Intellectual Property, Sub-Licensee commits to use EITHER (check one):
 - i. AT LEAST 10% or more local or independent malt purchased from one or more Member Malthouses in at least one product. If Sub-Licensee uses \geq 10% local/independent malt, Sub-Licensee may use the Intellectual Property in the marketing, labeling, and promotion of that/those product(s). Sub Licensee may not use the intellectual property in the marketing, labeling, or promotion of any other products or the Sub-Licensee itself. OR
 - ii. AT LEAST 10% or more local or independent malt purchased from one or more Member Malthouses in all products. If Sub-Licensee uses \geq 10% local/independent malt, Sub-Licensee may use the Intellectual Property in the marketing, labeling, and promotion of all products. Additionally, Sub-Licensee may use the term “distillery” or “brewery,” as appropriate, along with the Intellectual Property in marketing, labeling, or promoting the products as well as the Sub-Licensee itself. Licensor shall provide artwork specifically including the term “DISTILLERY” or “BREWERY” for Sub-Licensee’s use.
 - B. The parties expressly agree that Sub-Licensee’s use of the Intellectual Property to promote the mission of Licensor and the interests of Licensor’s members together with Sub-licensee’s membership in the Craft Maltsters Guild is adequate consideration exchanged for the license granted in this Agreement.
 - C. Failure by Sub-Licensee to use the requisite locally sourced or independently produced malt from one or more Member Malthouses of Licensor or use of the Intellectual Property on products which do not use locally sourced and independently produced malt from one or more Member Malthouses of Licensor shall constitute failure of consideration and shall result in immediate termination of this license grant.
4. **AUDIT.** Licensor and Licensee shall have the right, to audit Sub-Licensees products and marketing to ensure use and adequate Consideration. Licensor may rely on reports and feedback from its Member Malthouses to support or ensure adequate Consideration.

5. WARRANTIES AND OBLIGATIONS

- A. Licensor represents and warrants that it has the right and power to grant the licenses granted herein and that there are no other agreements with any other party in conflict herewith.
- B. Licensor further represents and warrants that to the best of its knowledge, the Intellectual Property does not infringe any valid right of any third party.
- C. Sub-Licensee represents and warrants that it will use its best efforts to ensure that the use of the Intellectual Property is appropriate, professional, and in the spirit of the Licensor.

6. LIMITATION ON LICENSE

- A. Sub-Licensee shall only use the Intellectual Property on products which, in fact, contain 10% or more locally sourced or independently produced malt from one or more Member Malthouses of Licensor.
- B. Sub-Licensee agrees to use the Intellectual Property “as-is,” meaning that Sub-Licensee shall not adjust font, color, shape, size, appearance, or any attribute which would change the impression or identity of the Intellectual Property or marks.
- C. The licenses granted hereunder are conditioned upon Sub-Licensee's full and complete compliance with the marking provisions of the trademark and copyright laws of the United States.
- D. Any products, as well as all promotional, packaging, and advertising material relative thereto, shall include all appropriate legal notices as required by Licensor, if any.
- E. Sub-Licensee's products shall be of a high quality which is at least equal to comparable products previously manufactured and marketed by Sub-Licensee under its own marks and in conformity laws of the local, state, and federal government.

7. NOTICE

- A. Any notice required to be given pursuant to this Agreement shall be in writing and delivered personally to the other designated party at the above stated address or mailed by certified or registered mail, return receipt requested or delivered by a recognized national overnight courier service, except e-mail may be used for day-to-day operations and contacts but not for ‘notice’ or other communications required under this agreement or by law.
- B. Either party may change the address to which notice, or payment, is to be sent by written notice to the other in accordance with the provisions of this paragraph.

8. PATENTS, TRADEMARKS AND COPYRIGHTS

- A. Licensor shall seek, obtain and, during the Term of this License, maintain in its own name and at its own expense, appropriate protection for the Intellectual Property, and Licensor shall retain all right, title and interest in the Intellectual Property as well as any modifications made to the Intellectual Property by Sub-Licensee. Licensee agrees that its use of the Intellectual Property inures to the benefit of Licensor and that the Licensee shall not acquire any rights in the Intellectual Property.
- B. The parties agree to execute any documents reasonably requested by the other party to effect any of the above provisions.

- C. Licensee acknowledges Licensor's exclusive rights in the Intellectual Property and, further, acknowledges that the Intellectual Property is unique and original to Licensor and that Licensor is the owner thereof. Sub-Licensee shall not, at any time during or after the effective Term of the License dispute or contest, directly or indirectly, Licensor's exclusive right and title to the Intellectual Property or the validity thereof. Licensor, however, makes no representation or warranty with respect to the validity of any patent, trademark or copyright which may issue or be granted therefrom.
- 9. UNILATERAL CHANGES.** The parties agree that Licensor may, from time to time, alter, improve, or revise the Intellectual Property. Licensee and Sub-Licensee agree that Licensor may make alterations in its sole and unfettered discretion and without the consent of Licensee or Sub-Licensee. Any such changes will be incorporated and adhered to by Licensee and Sub-Licensee as though it/they were the original Intellectual Property.
- 10. TERMINATION OR EXPIRATION**
- A. In addition to the termination rights that may be provided elsewhere in this Agreement, either party may terminate this Agreement upon thirty (30) days written notice to the other party in the event of a breach of a material provision of this License by the other party, provided that, during the thirty (30) day period, the breaching party fails to cure such breach.
- B. Upon expiration or termination, Licensee shall immediately cease use of the Intellectual Property.
- C. Upon the expiration or termination of this Agreement, all of the rights of Sub-Licensee under this Agreement shall terminate and immediately revert to Licensor and Licensee shall immediately discontinue all use of the Intellectual Property at no cost whatsoever to Licensor, and Licensee shall immediately return to Licensor all material relating to the Intellectual Property at no cost to Licensor.
- 11. INFRINGEMENTS.** If an action for infringement of the rights licensed in this License is brought, each party shall execute all papers, testify on all matters, and otherwise cooperate in every way necessary and desirable for the prosecution of any such lawsuit.
- 12. INDEMNITY.** Sub-Licensee agrees to defend and indemnify Licensor, its officers, directors, agents and employees, against all costs, expenses and losses (including reasonable attorneys' fees and costs) incurred through claims of third parties against Licensor based on the manufacture or sale of the products including, but not limited to, actions founded on product liability.
- 13. JURISDICTION AND DISPUTES**
- A. This Agreement shall be governed in accordance with the laws of the State of North Carolina, United States of America.
- B. Any controversy, claim or dispute arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate (except at the option of either party for any application for injunctive relief) shall be finally settled by arbitration in Buncombe County, North Carolina under the rules of the American Arbitration Association (AAA) before one arbitrator and judgment upon the award rendered may be entered in any court having jurisdiction. In this regard, the parties submit to the personal subject matter jurisdiction of the State of North Carolina. The arbitration provisions of this Section shall be interpreted according to, and governed by, the Federal Arbitration Act, and any action to enforce any rights hereunder shall be brought exclusively in NC Superior Court for Wake County, North Carolina. **EACH PARTY**

HERETO KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT TO A TRIAL BY JURY OF ANY DISPUTE RELATING TO THIS AGREEMENT AND AGREES THAT ANY SUCH ACTION SHALL BE ADJUDICATED BY AN ARBITRATOR AND WITHOUT A JURY.

- C. The arbitrator may, in the Award, allocate all or part of the costs of the arbitration, including the fees of the arbitrator and the reasonable attorneys' fees of the prevailing party.
- 14. AGREEMENT BINDING ON SUCCESSORS.** The provisions of this License shall be binding on and shall inure to the benefit of the parties hereto, and their heirs, administrators, successors, and assigns.
- 15. WAIVER.** No waiver by either party of any default shall be deemed as a waiver of prior or subsequent default of the same or other provisions of this License.
- 16. SEVERABILITY.** If any term, clause, or provision hereof is held invalid or unenforceable by a court of competent jurisdiction, such invalidity shall not affect the validity or operation of any other term, clause or provision and such invalid term, clause or provision shall be deemed to be severed from the License.
- 17. NO JOINT VENTURE.** Nothing contained herein shall constitute this arrangement to be employment, a joint venture, or a partnership.
- 18. ASSIGNABILITY.** The license granted hereunder is personal to Licensee and shall not be assigned by any act of Licensee or by operation of law unless in connection with a transfer of substantially all of the assets of Licensee or with the consent of Licensor.
- 19. INTEGRATION.** This License constitutes the entire understanding of the parties, and revokes and supersedes all prior agreements between the parties, including any option agreements which may have been entered into between the parties, and is intended as a final expression of their agreement. It shall not be modified or amended except in writing signed by the parties hereto and specifically referring to this Agreement. This Agreement shall take precedence over any other documents which may be in conflict with said Agreement.
- 20. AMENDMENTS.** Any amendment to this Agreement must be in writing and signed by an authorized person of each party.

[Remainder of Page Left Intentionally Blank, Signatures to Follow]

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have each caused to be affixed hereto its or his/her hand and seal the day indicated.

Licensors

Licensee (Member Malthouse)

Name:
Title:
Company: Craft Maltsters Guild
Date

Name:
Title:
Company:
Date

Sub-Licensee (brewery/distillery)

Name:
Title:
Company:
Date