

Non-Exclusive License Agreement — Great American Beer FestivalSM

AGREEMENT made on the date specified herein by and between Brewers Association, a Colorado corporation, d/b/a The Great American Beer FestivalSM ("GABFSM"), with offices located at 736 Pearl Street, P.O. Box 1679, Boulder, Colorado 80306-1679, (hereinafter "Licensor") and the Licensee below specified.

WHEREAS, Licensee is engaged in manufacturing, selling and distributing American made malt beverages and has entered its products in the GABFSM event; and

WHEREAS, Licensor desires to grant a non-exclusive license to Licensee upon winning one or more medals ("Medal") at the GABFSM event to use its name and registered trademark, and the right to reference the Medal in its future advertising, merchandising, promotion, sale and distribution of the products of Licensee winning the Medal.

NOW, THEREFORE, in consideration of the performance of the terms and conditions hereafter set forth, Licensor and Licensee do hereby respectively grant, covenant and agree as follows:

1. **Effective Date.** This License Agreement ("Agreement") is entered into and executed as a part of Licensee's registration for the GABFSM event and shall be effective upon notification that Licensee has won a Medal for one or more of its products (hereinafter the "Product").
2. **GRANT OF NON-EXCLUSIVE LICENSE.** Subject to Licensee's compliance with this Agreement, Licensor grants to Licensee a non-transferable, non-assignable, non-sublicensable and non-exclusive world-wide license to use the name and trademark, The Great American Beer FestivalSM and GABFSM, to refer to the Medal, and to use the likeness of the Medal (collectively the "Licensed Trademarks") solely on and in association with Licensee's advertising, promotion, and sale of the Product(s) on labels, packaging and print and electronic media. This grant of license does not include any rights to utilize the Licensed Marks in other merchandising activities, such as on shirts, novelties, glassware, etc.
3. **TERM OF LICENSE.** The term shall be for an initial one (1) year term, and shall be automatically extended for successive one (1) year renewal terms, unless terminated by Licensor at the end of any term upon thirty (30) days advance written notice, or termination pursuant to Paragraph 4 herein. If Licensee wins additional Medals during a renewal term, then the same shall automatically be deemed to be included in the term "Product."
4. **DUTIES OF LICENSEE**
 - 4.1 **Compliance with Post Event Publicity Rules.** Licensee agrees to comply with the Post Event Publicity Rules issued by the Rules Committee of Licensor, incorporated herein by reference, and with any changes or modifications thereto; provided that any changes or modifications to the Post Event Publicity Rules shall not be binding and enforceable against Licensee until ten (10) months after Licensee receives a copy of the same.
 - 4.2 **Prior Approval by Licensor. All advertising and promotional material, labels, packaging, etc., in any form or media, which will be used by Licensee referring to and/or utilizing, directly or indirectly, the Licensed Trademarks, or any derivation thereof, shall be submitted by Licensee to Licensor in writing for Licensor's written approval prior to any release or use by Licensee. Licensor shall be entitled to approve, disapprove, or require a modification of any submission within its sole discretion. The first five submissions by Licensee (per award winning brand) shall be at no charge. In the event Licensee shall make more than five (5) submissions per calendar year then the sixth and each subsequent submission shall include an administrative fee payment of \$200.00. If an approval or response is not received by Licensee within twenty-one (21) business days after Licensor's receipt of such request, such right of approval shall be deemed waived and such material shall be considered approved for so long as this Agreement is in full force and effect. Once approvals have been obtained, further approval need not be obtained for future or repeated use, unless the materials are modified or changed, or unless changes are required pursuant to Paragraph 4.1 herein due to a change or modification of the Post Event Publicity Rules.**
 - 4.3 **Sublicenses and Assignments.** Licensee shall not have the right to sublicense or assign this Agreement without the prior written consent of Licensor.
 - 4.4 **Use by Licensee.** Whenever Licensee directly or indirectly uses the Licensed Trademarks in any form or media, Licensee shall indicate the ownership of Licensor in the manner specified by Licensor.
 - 4.5 **Quality Control.** Licensee agrees to furnish random samples of its advertising and promotional materials, labels, packaging and the like, to Licensor twice a year, at no cost to Licensor, to ensure quality control.
5. **TERMINATION**
 - 5.1 **Termination Without Notice.** If Licensee makes an assignment of assets or business for the benefit of creditors, if a trustee or a receiver is appointed to administer or conduct its business or affairs, or if it is adjudged as bankrupt, then all rights granted herein shall cease and terminate without prior notice or legal action. In addition, this Agreement shall terminate without prior notice or legal action if Licensee assigns or sublicenses this Agreement, or attempts to assign or sublicense, without the express consent of Licensor, or if Licensee's use of the Licensed Trademarks materially impairs the reputation and goodwill of Licensor, as solely determined by Licensor.
 - 5.2 **Termination With Notice.** Should Licensee fail to comply with the terms and conditions of this Agreement, including with the Post Event Publicity Rules and any changes or modifications thereof, subject to the requirements of Paragraph 4.1 herein, then the Licensor may terminate this Agreement upon thirty (30) days written notice to Licensee describing the non-compliance; provided that Licensee has not corrected such default during the notice period. The determination of whether Licensee has corrected the default shall be determined solely by Licensor in its reasonable discretion. If Licensee fails to comply more than once during the initial term or during any renewal term, in its sole discretion, Licensor shall be entitled to terminate this Agreement upon ten (10) days notice.
 - 5.3 **Duties Upon Termination.** Upon termination of this Agreement, Licensee shall immediately destroy and withdraw any advertising and promotional materials, packaging, etc. which utilizes the Licensed Trademarks and cease and desist from all use of the same.
6. **OWNERSHIP OF TRADEMARKS.** Licensee recognizes and agrees that Licensor owns the exclusive right, title and interest in and to the Licensed

Trademarks, agrees that it will not represent in any manner that it has any ownership in the Licensed Trademarks, and acknowledges that all uses and resulting goodwill shall inure to the benefit of Licensor.

7. GENERAL PROVISIONS.

- 7.1 Amendment/Entire Agreement. This Agreement may be amended or supplemented only by a writing signed by both parties, and shall bind and inure to the benefit of the Licensor and its successors and assigns. This Agreement may not be assigned by the Licensee without consent. This Agreement, including the referenced Post Event Publicity Rules, as amended or modified, constitutes the entire agreement between the parties relating to this subject matter and supersedes all prior or simultaneous representations, discussions, negotiation, and agreements, whether written or oral.
- 7.2 Waiver. No term or provision shall be considered waived, and no breach excused, regardless of conduct, unless such waiver or consent is in writing and signed on behalf of the party against whom the waiver is asserted. No such consent or waiver to a breach by either party, shall constitute a consent, waiver, or excuse of any other, different, or subsequent breach.
- 7.3 Notices. Any notice provided for or permitted under this Agreement will be treated as having been given when (a) delivered personally, evidenced by a signed receipt, (b) sent by confirmed telex or telecopy, (c) sent by commercial overnight courier with written verification of receipt, or (d) mailed postage prepaid by certified or registered mail, return receipt requested, to the party to be notified, at the address set forth below, or at such other place of which the other party has been notified in accordance with the provision of this Paragraph 7.3. Such notice will be treated as having been received upon the earlier of actual receipt or five (5) days after posting.
- 7.4 Relationship of Parties. There is no relationship of agency, partnership, joint venture, employment, or franchise between the parties. Neither party has the authority to bind the other or incur any obligation on its behalf.
- 7.5 Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- 7.6 Covenant of Further Cooperation. Each of the parties agrees to execute and deliver such further documentation and to cooperate in such manner as may be necessary to implement and give effect to the agreements, warranties and obligations contained herein. Upon request of Licensor, Licensee agrees to use its best efforts to assist Licensor in terminating infringing uses of the Licensed Trademarks by third parties.
- 7.7 Arbitration. Any claim, dispute or controversy arising out of or in connection with or relating to this agreement or breach or alleged breach thereof shall be submitted by the parties to binding arbitration in accordance with the State of Colorado Uniform Arbitration Act, C.R.S. §13-22-201, et seq., and in accordance with the rules of the American Arbitration Association. Each party will choose one arbitrator within thirty (30) days of receipt of the notice of intent to arbitrate. Within sixty (60) days of receipt of the notice of intent to arbitrate, the two arbitrators will choose a neutral third arbitrator who will act as chairman. All arbitrators shall have expertise with respect to intellectual property and trade dress issues. At least one of the arbitrators shall be an attorney. The arbitration shall take place at a mutually satisfactory place in Boulder, Colorado. If no place can be agreed upon, the arbitrators shall designate the same. The award rendered by the arbitrators shall include the costs of arbitration, reasonable attorney's fees for the prevailing party, and all other reasonable costs and expenses. Any award shall also include an award of all compensable damages for which the prevailing party is entitled to recover by law, including, by way of example but not limitation, damages recoverable under the Lanham Act and the Uniform Deceptive Trade Practices Act as adopted in Colorado. The parties hereto agree to be bound by any award, consent to the filing of the same with the appropriate court as a basis of judgment, and further agree that an execution may issue for its collection. Nothing in this Agreement shall be construed to prevent Licensor from seeking injunctive relief (or any other provisional remedy) from any court having jurisdiction, as necessary to protect Licensor's proprietary rights, without the necessity of proof of actual damages.
- 7.8 Governing Law. This Agreement shall be governed by the laws of the State of Colorado. Venue for any dispute arising out of or concerning this license Agreement, including enforcement of any arbitration award, shall be vested in the Boulder District Court in and the U. S. District Court for the District of Colorado, as appropriate.
- 7.9 Authority of Licentiate or agent executing this Agreement as a part of the registration for the GABFSM event has authority to bind Licensee in all respects for the performance of this Agreement, which falls within the ordinary course of business of Licensee.

LICENSOR, Brewers Association

Authorized Signature: *Nancy Johnson*

Print Name of Above: Nancy Johnson

Title: Event Director

Date: 6/5/09

Address: 736 Pearl St.
Boulder, Colorado 80302

Telephone: 303-447-0816

Fax: 303-447-2825

E-mail: nancy@brewersassociation.org

LICENSEE, Company Name: _____

Authorized Signature: _____

Print Name of Above: _____

Title: _____

Date: _____

Address: _____

City _____ State: _____ Zip _____

Telephone: _____

Fax: _____

E-mail: _____