DEED OF LICENCE - PRODUCT

	Licensor	Licensee
Name:	Australian Consumers Association Limited ACN 000 281 925	
Address:	57 Carrington Road MARRICKVILLE NSW 2204	
Term:		
Termination Date:		
Mark:	CHOICE Recommended logo	
Product:	<Name/model of the recommended product>	
Fee:	inclusive of GST	
Dated the	day of	2010

The Licensor is the owner of the Mark. The Licensee has asked the Licensor to allow it to use the Mark for the Term in respect of the Product. The Licensor and the Licensee have agreed that the Licensee may use the Mark in respect of the Product on the terms and conditions of this Licence described in Annexure A.

EXECUTED as a Deed

EXECUTED by **AUSTRALIAN CONSUMERS' ASSOCIATION LIMITED ACN 000 281 925**
By its authorised representative:

_____
Signature

_____
Name (please print)

EXECUTED

pursuant to section 127 of the Corporations Act 2001

_____
Signature

_____
Director (please print)

_____
Signature

_____
Director (please print)

ANNEXURE A

1. THE LIMITED GRANT OF LICENCE

1.1 Provided the Licensee adheres strictly to the terms of this Licence, the Licensor grants to the Licensee a non-exclusive and revocable licence to use the Mark in respect of the Product for the Term and no longer.

2. INTELLECTUAL PROPERTY

2.1 This Licence gives the Licensee no right in the Licensor's intellectual property or intellectual property rights except as provided for under the limited licence described in clause 1.

3. GOODWILL

3.1 The Licensee agrees that all use of the Mark by it is for the Licensor's benefit and all goodwill in the Mark accrues to the Licensor. The Licensee will hold any goodwill in the Mark on trust for the Licensor.

4. ACKNOWLEDGMENT

4.1 Whenever the Licensee uses the Mark, it must acknowledge the Licensor's ownership of the Mark by applying the Acknowledgment.

5. USE

5.1 The Licensee may use the Licensor's Mark only in the form and detail specified in the User Regulations and it agrees to observe any reasonable directions the Licensor gives to the Licensee as to colour, size, position, style or other forms of representation and their manner and disposition on or adjacent to the Product, any containers, packaging, labels, wrappers, advertisements, advertising and point of sale material in any form including hard copy, digital, on-line or web-based. The Licensor may give the Licensee directions or stipulations as it thinks reasonable and necessary to protect the Mark and its use in respect of the Product.

6. APPROVAL

6.1 The Licensee must submit designs for all printed or on-line materials using the Mark to the Licensor for approval as to the manner and context of the intended use of the Mark and shall not make use of the Mark until such design or materials has been approved in writing by the Licensor, which approval may be withheld. If the Licensor does not notify the Licensee of its approval or otherwise within 10 days of receipt of the design, the design shall be deemed to be approved. The Licensor may not use the Mark if it does not follow the directions given by the Licensor. The Licensor accepts no responsibility or liability in respect of any labeling, packaging, advertising, marking or other matters.

7. NO COMPETING USE

7.1 The Licensee shall not use any Similar Mark in respect of the Product and shall not use the Mark or a Similar Mark on any goods or services other than the Brand and the Product.

8. NOT JEOPARDISE THE MARK

8.1 The Licensee undertakes not to do or permit to be done any act which would or might be reasonably expected to jeopardise or invalidate any registration of the Mark or any other mark owned or controlled by the Licensor nor to do any act which might reasonably be expected to assist or give rise to an application to remove the Mark or any mark owned or controlled by the Licensor from the Register of Trade Marks or which might be reasonably expected to prejudice the right or title of the Licensor to the Mark or any of its registered or unregistered marks.

9. ASSISTANCE

9.1 The Licensee will, on request at its own cost, render to the Licensor any assistance reasonably required by the Licensor in maintaining the registration of the Mark.

10. INFRINGEMENT

10.1 The Licensor and the Licensee shall each notify the other immediately either becomes aware of any use or proposed use of the Mark by any other person, firm or company in respect of a brand or goods not endorsed by the Licensor or in any way which amounts or might amount either to infringement of the Licensor's rights in the Mark or to passing off.

11. NOTICE

11.1 If either party becomes aware that any other person, firm or company alleges that the Mark is invalid or that the use of the Mark infringes any rights of another party or in any other way attacks the Mark, it shall give the other full particulars thereof and make no comment or admission to any third party in respect thereof.

12. PROSECUTION

12.1 The Licensor reserves the right to vigorously protect its intellectual property rights and to use reasonable efforts to bring to an end any infringement of the Mark of which it becomes aware during the Term. It is not required in any specific case to institute infringement proceedings. The Licensee must assist the Licensor in any infringement proceedings it undertakes. The Licensee may not, without the written consent of the Licensor, institute any proceedings in respect of the Mark itself.

13. LICENSEE'S OBLIGATIONS

13.1 The Licensee must:

(1) comply with the User Regulations at all times;

(2) give, when asked by the Licensor, but no more than once every 3 months, a declaration that the Licensee's use of the Mark complies with this Licence;

(3) maintain Records of the use of the Mark and provide the Records to the Licensor immediately when demanded;

(4) co-operate with the Licensor as it may reasonably require in the Licensor's monitoring of the Licensee's compliance with this Licence;

(5) establish a procedure for the handling of complaints regarding the use of the Mark or the Product and disclose such procedure (and any amendments to it) to the Licensor and immediately pass on any such complaint it receives;

(6) implement systems to demonstrate to the Licensor's reasonable satisfaction that it is meeting its obligations pursuant to this Licence and ensuring that its employees, agents, dealers, consultants and resellers understand the terms of this Licence and the restrictions placed on the use of the Mark;

(7) comply with all statutory obligations regarding the use of the Mark including, without limitation, laws regarding trade marks and trade practices;

(8) not make any representation or do any act which might be taken to indicate that it has any right, title or interest in or to the use of the Mark except as described in clause 1 of this Licence;

(9) not to use the Mark contrary to law nor in a scandalous manner nor in any way which makes the Mark incapable of distinguishing the goods or services to which the Mark is applied from other goods and services;

(10) not use the Mark in marketing materials which feature other goods or services or brands not specified as the Product except where the marketing material makes it clear that the Mark refers only to the Product .

(11) ensure that any use of the Mark on the internet must be in the form of the Electronic Logo and be accompanied by the Referral Link;

(12) ensure that the Mark is clearly distinguishable from any other test results, claims or statements made by the Licensor;

(13) not use the term 'CHOICE Recommended in any marketing materials relating to goods or services other than the Product .

(14) not use the Mark in a way that is likely to reduce or diminish the reputation, image or prestige of the Mark or the Licensor; and

(15) pay the Fee to the Licensor before it starts to use the Mark pursuant to this Licence.

14. PRODUCT

14.1 It is an essential term of this Licence that the Mark is applied in respect of the Product only and may be used to advertise or promote the Product only. The Licensor's endorsement is limited to the Product as tested by the Licensor without any modifications, enhancements, upgrade or accessories not part of the Product when tested by the Licensor; The Mark may not be represented as applying to a group or class of goods or a brand generally

15. LIMITED TIME

15.1 It is an essential term of this Licence that the Mark is licensed to the Licensor on the terms of this Licence only for the period of the Term. At the end of the Term, or on earlier termination of this Licence, the Licensee must cease use of the Mark in any form and must:

(1) immediately cease using the Mark and immediately withdraw from circulation materials in the control of the Licensee; and

(2) in respect of material which is not within the control of the Licensee, withdraw as soon as reasonably practicable and in any event within 3 months of termination or expiry of this Licence.

16. NOTIFICATION

16.1 The Licensee must notify the Licensor immediately it becomes aware:

(1) that the User Regulations are not being met by it or a third party;

(2) that the Mark is continuing to be applied in respect of the Product after the expiry of the Term;

17. INDEMNITY

17.1 The Licensee indemnifies the Licensor from and against any and all costs, losses, claims, damages and liabilities whatsoever resulting directly or indirectly from:

(1) any breach by the Licensee or any of its employees, agents, representatives or resellers of this Licence or any warranty, representation, covenant or obligation contained in this Licence;

(2) any use of the Product including any product liability action whether based in statute, tort, contract, or otherwise; and

(3) any representation by the Licensor in connection with the grant of this Licence to the effect that the Product is superior to any other similar goods or services

17.2 This indemnity is unconditional, irrevocable and continuing and extends to the payment of legal fees and other costs on a solicitor and own client basis incurred by the Licensor as a consequence of the above.

18. LIMITATION OF LIABILITY

18.1 The Licensor has no liability or responsibility to the Licensee for any loss, damage or injury whether arising from statute, in contract, tort, equity or otherwise and which does not flow directly from a breach of this Licence, including any consequential loss, loss of profits or sales or loss of opportunity. In no case shall the Licensor be liable to the Licensee under the terms of this Licence or at law for any amount in excess of the sum equal to the amount received by the Licensor from the Licensee under this Licence.

19. TERMINATION

19.1 Either party may terminate this Licence upon written notice to the other immediately the other party breaches any provision of this Licence.

20. RIGHTS CEASE

20.1 From and after termination or expiry, all rights and licences granted to the Licensee under this Licence shall immediately cease and the Licensee shall not use the Mark in any form. Termination of this Licence does not relieve the Licensee of any obligation it has under this Licence.

21. DISPUTE RESOLUTION

21.1 A party must use the mediation procedure described in this clause to resolve a dispute before commencing legal proceedings.

21.2 Mediation shall be undertaken under the auspices of the Australian Commercial Disputes Centre (ACDC) and in accordance with the rules of mediation of ACDC. If a dispute once referred to ACDC is not resolved within fourteen (14) days after appointment of the mediator (or such longer time as the parties might agree) the mediation must cease. The terms of any settlement reached at a mediation binds the parties.

22. INTERPRETATION

In this Licence, unless the context otherwise requires:

(1) this Licence includes any schedule or annexures.

(2) reference to legislation includes any amendment to it, any legislation substituted for it, and any subordinate legislation made under it;

(3) reference to a person includes a reference to a natural person, a company, a firm or any other legal entity whether acting as a trustee or not or a person's

executors, administrators, successors, substitutes (including, but not limited to, persons taking by novation) and assigns;

(4) headings do not affect interpretation;

(5) a provision must be read down to the extent necessary to be valid. If it cannot be read down to that extent, it must be severed;

(6) if a thing is to be done on a day which is not a Business Day, it must be done on the Business Day after that day;

(7) another grammatical form of a defined expression has a corresponding meaning;

(8) no rule of construction applies to the disadvantage of a party because that party put forward this document or any portion of it;

(9) the use of 'including' or similar expressions does not limit what may be included;

(10) an agreement, deed, covenant, representation or warranty on the part of two or more persons binds them jointly and severally; and

(11) general words following words describing a particular class or category are not restricted to that class or category.

23. GOVERNING LAW

23.1 This Licence is governed by the laws of New South Wales and the parties irrevocably submit to the non-exclusive jurisdiction of the Courts of New South Wales.

24. DEFINITIONS

(1) **Acknowledgment** means an acknowledgment in the form provided by the Licensor from time to time;

(2) **Electronic Logo** means the form of the Mark prescribed by the Licensor from time to time for electronic and web based use;

(3) **Fee** means the fee identified on the front page of this Licence;

(4) **Mark** means the mark identified on the front page of this Licence;

(5) **Product** means the product identified on the front page of this Licence;

(6) **Records** means documentation created and maintained by the Licensee setting out details of use of the Mark by the Licensee on every occasion the Mark is used by the Licensee;

(7) **Referral Link** means the hyper link prescribed by the Licensor from time to time linking the Licensee's use of the Mark to the Licensor's designated web-page;

(8) **Similar Mark** means any mark, device or name which is likely to deceive or cause confusion, be deceptively similar or substantially identical to the Mark or any mark owned or controlled by the Licensor;

(9) **Term** means the term identified on the front page of this Licence;

(10) **Termination Date** means the termination date identified on the front page of this Licence;

(11) **User Regulations** means the user regulations in the form provided by the Licensor from time to time.