

## TERMS AND CONDITIONS - PATENT SHARING AND PROTECTION AGREEMENT BETWEEN RED DAWN (IP) HOLDINGS AND BEVERAGE PRODUCERS

### Terms and Conditions (T's & C's) applicable to:

1. Any and all **Beverage Producers, Persons, Entities and/or Companies**, herein after referred to as **BP(s)** that are granted official **Limited Batch Patent Use Beverage Making Licenses**, herein after referred to as **LUPL**, allowing **BP(s)** to legally produce patent process produced beverages, relevant to Red Dawn (IP) Holdings (Pty) Ltd (herein after referred to as **RDIP**) registered patents and intellectual property as specified in its patents in the jurisdictions in which they are granted.
2. **Red Dawn Licensing (Pty) Ltd registration number: 2015 / 309898 / 07** (herein after referred to as **RDL**) is subcontracted and authorised by **RDIP** to license **BP(s)** on behalf of **RDIP**, in order to commercialise the Intellectual Property, by issuing **LUPL's** to **BP's** and in particular, the batch licensing of the process of manufacture required to produce the Products, as described more fully in the Patent, and allow **BP's** to offer the Products for sale on the open market. The authority given to **RDL** by **RDIP**, which authority the **BP** agrees not to dispute or challenge in any way
3. **BP(s)** acknowledge that by signing an official **RDL** tannin/extract order form they are granted an official **LUPL** by **Red Dawn (IP) Holdings (Pty) Ltd**, registration number: 2012 / 097097 / 07
4. The **LUPL** only becomes official once **RDIP** has received a copy of a signed **LUPL** order form from **RDL** and registered the **BP** on this website as an official user of **RDIP** patent and intellectual property in the form of **LUPL's**, thereby being granted a legal licence, allowing it to produce limited batches of patent process produced beverages.
5. Once the **BP** has signed an **LUPL** order form and is reflected on this website it may make use of **RDIP's** patent, intellectual property and other forms of Intellectual Property as defined in the patent specification and these T's & C's.
6. The **BP** confirms that the person signing the **LUPL** is authorised to do so and confirms it has read, agrees with and is bound by the T's & C's as stipulated on this website which may be changed from time to time at the sole discretion of **RDIP**.
7. By signing the **LUPL** order form **BP's** clearly indicate that they acknowledge and agree to all T's & C's, without exclusion, including interpretation and definitions, as follows:

- 7.1 **Intellectual Property** - shall mean the Patent, the Copyright, the Confidential Information, the Know-How and registered **RDIP** Trade Marks;
- 7.2 **Products** - shall mean all products produced under this agreement and that fall within the scope of the granted claims of the Patent, manufactured using one or more forms of the Intellectual Property;
- 7.3 **Patent** - shall mean, as the context permits, one or more patents or patent applications as listed in this website and as may be relevant which may be updated from time to time at the sole discretion of **RDIP**. For purposes of this Agreement, any reference to the "Primary Patent" shall mean a reference to South African patent 2014/03329, claiming earliest priority dated 11 November 2011, as a granted patent. Any reference to a patent other than the Primary Patent shall mean any one or more of the remainder patents or patent applications, not including the Primary Patent, as reflected on this website.

## 8. **BP OBLIGATIONS**

- 8.1 The **BP** undertakes to only source tannin/extracts and other indigenous South African plant material for use in **LUPL** beverage production from **RDL**. This preferred material supply arrangement may be altered from time to time at the sole discretion of **RDIP**.
- 8.2 The **BP** understands that all products are made at the sole risk of the **BP** and that **RDIP** and **RDL** are both indemnified by the **BP** for any and all eventualities as may come to pass in the manufacture and sale of all and any Products produced in terms of its use of either Red Dawn branded tannin/extracts and/or the use of the patent process and/or intellectual property.
- 8.3 The **BP** undertakes and confirms that the Products in either a Ready-to-Drink or Bulk form will only be sold to other **BP's** who have a signed agreement with **RDL** and who are reflected on the **RDIP** website.
- 8.4 The **BP** agrees not to manufacture **LUPL** Products on behalf of or assist, enable, aid, abet or permit any third party to manufacture Products unless the third party also holds a **LUPL** agreement with **RDL** and is reflected on the **RDIP** website as a **LUPL** beverage producer.
- 8.5 The **BP** shall ensure that the Products manufactured according to the Intellectual Property shall be to the requisite quality control standards and legislation set by the authorities in the country of production and also comply with all rules and regulations pertaining to the movement of the products across borders.

## 9. PATENT BATCH LICENSING USE IDENTIFICATION:

The **BP** (end user packager) must ensure that the following **under licence**, patent use wording appears on final ready to drink beverage packaging:

9.1 Patent Licensed: [www.reddawnip.co.za](http://www.reddawnip.co.za)

or

9.2 Patent Licensed: SA 2014/03329

or

9.3 any other official **RDIP** approved contraction or variation thereof in any jurisdiction.

## 10. WARRANTIES BY RDIP

10.1 **RDIP** warrants that it is the owner of the Intellectual Property, but does not warrant the validity of any item.

10.2 The **BP** understands that all products are made at the sole risk of the **BP** and that both **RDIP** and **RDL** are hereby indemnified by the **BP** for any and all eventualities as may come to pass in the manufacture and sale of all and any Products produced it in terms of either Red Dawn branded tannin/extract and/or the use of the patent process and/or intellectual property.

10.3 Under this agreement the **BP** shall not be entitled to recover any payment already made in terms of this Agreement nor recover any damages whatsoever arising from neither such revocation nor any other cause of action or remedy.

10.4 **RDIP** warrants that at the date of signature of the **BP** on the **LUPL** tannin/extract order form Agreement by it, there are no pending applications for the infringement of any competing third party rights in relation to the Intellectual Property or its use.

10.5 The following provisions will apply to any claim made against the **BP** arising from any alleged infringement of the intellectual property rights of a third party or to legal proceedings arising out of such a claim:

10.5.1 the **BP** must immediately notify **RDIP** of the claim and **RDIP** may elect to defend the claim and any legal proceedings arising from it, the expense of which shall be borne jointly between the Parties;

10.5.2 where **RDIP** exercises its election to defend any claim against the **BP**, the **BP** shall give **RDIP** all reasonable help to defend the claim at **RDIP's** expense; and

10.5.3 **RDIP** may in its discretion abandon the defence to the claim or settle the claim.

## 11. WARRANTIES BY RDL

- 11.1 **RDL** warrants that it is sub-contracted by **RDIP** to take orders for **LUPL** tannin/extract and supply **RDL** branded tannin to **BP's**.
- 11.2 **RDL** confirms that it is not the owner of the Intellectual Property; neither does it warrant the validity of any item.
- 11.3 The **BP** understands that all products are made at the sole risk of the **BP** and that **RDL** is hereby indemnified by the **BP** for any eventuality as may come to pass in the manufacture and sale of all and any Products produced in terms of this Agreement.
- 11.4 The **BP** shall not be entitled to recover any payment already made in terms of this Agreement from **RDL**, nor to recover any damages whatsoever arising from any action related to this agreement, what so ever.

## 12. UNDERTAKINGS BY THE BP

The **BP** hereby warrants and undertakes that:

- 12.1 it will not dispute the validity, the novelty or inventiveness of the Patent or patent applications nor will it assist any other party to do so during the subsistence of this Agreement and thereafter; and
- 12.2 it shall not infringe the Patent in any manner, nor will it act in any manner whatsoever to undermine any of the patent applications, nor will it assist or encourage any third party to do so.

## 13. INFRINGEMENT

If the **BP** becomes aware of any infringement or illegal use of any item of the Intellectual Property by any third party during the Agreement period, the **BP** must notify **RDL** of such infringement or illegal use.

- 13.1 The **BP** agrees that it will never bring any proceedings arising out of the infringement or illegal use of any item of the Intellectual Property without the prior written consent of **RDIP**.
- 13.2 Any damages awarded in infringement proceedings in which the **BP** is not or elects to not be involved as a party will be for the benefit of the **RDIP**.

14. **CESSION AND ASSIGNMENT (TRANSFER OF RIGHTS)**

The rights and obligations of the **BP** are personal and may not be ceded, assigned, let or otherwise disposed of in any manner without the prior written consent of **RDIP**.

15. **SUB-LICENSING OR SUB-CONTRACTING**

The **BP**, **LUPL** licence is personal and only applicable to the **BP**. The **BP** may not enter into any sub-license of any part of the Intellectual Property or sub-contract any part of the manufacture of the patent processed Products with a third party who has not been granted a **LUPL** license by **RDIP** and who is not reflected on this website as a official **LUPL** contracted official licence holder.

16. **INSURANCE**

16.1 The **BP** hereby indemnifies both **RDIP** and **RDL** against all and any claims which may be made against it arising out of the manufacture and sale of the Products.

16.2 **RDIP** recommends that the **BP** effects a suitable public liability insurance policy so as to ensure that there is suitable cover for claims arising from the manufacture and sale of the Products