

**THIS TRADEMARK LICENCE AGREEMENT** is dated SEPTEMBER 2019  
**BETWEEN**

- (1) **DIANA FOOD S.A.S.** incorporated and registered in France with company number 308 235 715 whose registered office is at 5 Rue de la Gare, 35560 Antrain, France (the 'Licensor')
- (2) **TSUNAMI NUTRITION S.R.L.** incorporated and registered in ITALY with company number 14212051008 whose registered office is at VIA MARCANDREOLA 5 – 00043 CIAMPINO – ROME -ITALY (the 'Licensee').

**BACKGROUND:-**

- (A) The Licensor is the owner of the Trade Marks and the Designs.
- (B) The Licensee wishes to use the Marks in the Territory in relation to the Products (as defined below) and the Licensor is willing to grant to the Licensee a licence to use the Marks on the terms and conditions set out in this agreement.

**AGREED TERMS:-**

**1. Definitions**

<b>Business Day</b>	a day other than a Saturday, Sunday or public holiday in France when banks in Paris are open for business.
<b>Designs</b>	all rights including copyright, unregistered designs and rights in the nature of copyright subsisting in the designs for any of the Trade Marks in any part of the world to which the Licensor is, or may become, entitled.
<b>Effective Date</b>	the date of this agreement set forth above
<b>Graphic Guide</b>	the Licensor's guidelines prescribing the permitted form and manner in which the Marks may be used, a copy of which is attached to this agreement at Schedule 2 and initialled by the parties for the purposes of identification, including any amendments or additions notified in writing by the Licensor to the Licensee from time to time.
<b>Products</b>	Licensor's final product containing <b>Beet4Perf</b> i.e TSUNAMI PURE PROFESSIONAL (Pre Workout)
<b>Marks</b>	the Trade Marks and the Designs.
<b>Territory</b>	Italy
<b>Trade Marks</b>	the registered trade mark(s) and any applications for registered trade mark(s), particulars of which are set out in <b>Errore. L'origine riferimento non è stata trovata.</b> of Schedule 1, and such other registered trade mark(s)/application(s) for registered trade marks(s) that may be agreed between the Licensor and the Licensee from time to time.

**2. Grant**

- 2.1. The Licensor hereby grants to the Licensee a non perpetual, non transferable and non-exclusive licence to use the Marks (including their Designs) on and in relation to the Products in the Territory, including in connection with the promotion, distribution, supply and/or sale of the Products.
- 2.2. For the avoidance of any doubt, the Licensee shall not prevent the Licensor from using and/or allowing others to use any of the Marks and/or Designs in the Territory in connection with any goods or services.

**3. Title, goodwill and registrations**

- 3.1. The Licensee acknowledges that the Licensor is the owner of the Trade Marks and the Designs. The Licensee agrees to execute/procure the execution of such documents and do such other things as the Licensor may reasonably request from time to time, including after termination or expiry of this licence, to confirm ownership of such rights to the Licensor.
- 3.2. The Licensee shall procure that all Products manufactured and/or sold by and/or on behalf of the Licensee and all related quotations, specifications and descriptive literature, and all other materials carrying the Marks, be marked with:  
**Beet4Perf™** is the trade mark of and is used under licence from DIANA FOOD." or with any other statement as notified in writing from the Licensor to the Licensee.
- 3.3. The Licensee shall not apply for, or obtain, registration of the Marks (including any part of their Designs) for any goods or services in any country.
- 3.4. The Licensee shall not apply for, or obtain, registration in any country of any trade or service mark which consists of, or comprises, or is confusingly similar to, the Marks.
- 3.5. The Licensor may, at its absolute discretion, on 30 days' written notice to the Licensee, delete any or all of the entries in Schedule 1.

**4. Quality control**

The Licensee shall, in exercising its rights under this agreement, comply with, and shall ensure that each Product manufactured, stored, distributed, promoted, supplied, sold or otherwise supplied by and/or on behalf of the Licensee and the manner of such manufacture, storage, distribution, promotion, supply or sale by and/or on behalf of the Licensee complies with, all applicable laws, regulations, industry standards and codes of practice.

**5. Application of the Marks, marketing, advertising and promotion**

- 5.1. The Licensee shall comply strictly with the directions of the Licensor regarding the form, appearance and manner of the application of the Marks and the Licensee shall at all times comply with the directions contained in the Graphic Guide.
- 5.2. The Licensee shall not use in its business any other trade mark confusingly similar to the Marks and shall not use the Marks or any word confusingly similar to the Marks as, or as part of, its corporate or trading name.
- 5.3. The Licensee shall not do, or omit to do, or permit to be done, any act that will or may weaken, damage or be detrimental to the Marks, the reputation or goodwill associated with the Marks or the Licensor, or that may invalidate or jeopardise any application or registration for any of the Marks.
- 5.4. The Licensee shall not, nor directly or indirectly assist any other person to:
  - 5.4.1. use any of the Marks except as permitted under this agreement; or

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- 5.4.2. do or omit to do anything to diminish the rights of the Licensor in any of the Marks or impair any application or registration for any of the Marks.
- 5.5. The Licensee undertakes to ensure that its advertising, marketing and promotion of Products shall in no way reduce or diminish the reputation, image and/or prestige of the Marks.
- 5.6. The Licensee shall bear the costs of all advertising, marketing and promotion for Products in the Territory.
- 6. Recordal of licence and future filings**
- 6.1. The Licensor may, at its absolute discretion and at its own cost, record the licence granted by it in clause 2 at any of the relevant registries located anywhere in the Territory against any relevant registrations/applications for any of the Marks.
- 6.2. The Licensee shall, at the Licensor's cost (as to reasonable out of pocket expenses only), provide all necessary assistance, including signing such documents and taking such actions and steps, as the Licensor may request from time to time to assist the Licensor to take the steps mentioned in clause 6.1.
- 7. Conditions for Royalty Free Licence**
- In consideration of the right granted to the Licensee to use the Marks on a royalty-free basis, the Licensee agrees to grant Diana the right to use Licensee's products for promotion purpose of Diana's products. The Licensee's products will be notably used on Diana's promotion materials including, without this list being exhaustive, presentations and tradeshows.*
- 8. Warranty waiver**
- 8.1. Nothing in this agreement shall constitute any representation or warranty that:
- 8.1.1. any registered Mark is valid and/or enforceable;
- 8.1.2. if applied for, any Mark shall proceed to registration or, if registered, shall be valid and/or enforceable; or
- 8.1.3. the exercise by the Licensee of any of the rights granted to it under this agreement will not infringe the rights of any other person.
- 8.2. To the fullest extent permitted by law, all implied warranties, representations, terms and/or conditions, whether statutory, regulatory, customary or otherwise, are excluded and do not apply.
- 9. Liability and indemnity**
- 9.1. To the fullest extent permitted by law, the Licensor shall not (unless expressly stated elsewhere in this agreement) be liable to the Licensee for any costs, expenses, loss or damage (whether direct, indirect or consequential, and whether economic or otherwise) arising from the Licensee's exercise of the rights granted to it under this agreement.
- 9.2. The Licensee shall indemnify the Licensor against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect and/or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Licensor arising out of or in connection with:
- 9.2.1. the Licensee's exercise of its rights granted under this agreement,;
- 9.2.2. the Licensee's breach or negligent performance or non-performance of this

agreement;

- 9.2.3. any claim relating to Products manufactured, supplied, promoted, distributed, sold and/or put into use by and/or on behalf of the Licensee, including any claim made against the Licensor by a third party for death, personal injury or damage to property arising out of or in connection with any Products, to the extent that the claim is not attributable to the acts or omissions of the Licensor, its employees, agents, sub-licensees or subcontractors;
- 9.2.4. the enforcement of this agreement.
- 9.3. If any third party makes a claim, or notifies an intention to make a claim, against the Licensor which may reasonably be considered likely to give rise to a liability under the indemnity at clause 9.2 ("Claim"), the Licensor shall:
  - 9.3.1. as soon as reasonably practicable, give written notice of the Claim to the Licensee, specifying the nature of the Claim in reasonable detail;
  - 9.3.2. not make any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of the Licensee;
  - 9.3.3. give the Licensee and its professional advisors access at reasonable times to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the Licensor, so as to enable the Licensee and its professional advisers to examine them and to take copies (at the Licensee's expense) for the purpose of assessing the Claim.
- 9.4. If a payment due from the Licensee under this clause 9 is subject to tax (whether by way of direct assessment or withholding at its source), the Licensor shall be entitled to receive from the Licensee such amounts as shall ensure that the net receipt, after tax, to the Licensor in respect of the payment is the same as it would have been were the payment not subject to tax.

#### 10. Insurance

Licensee agrees to carry and maintain insurance with a company acceptable to Licensor, including product, advertising, intellectual property and contractual liability insurance. Licensee's insurance coverage shall provide adequate protection for Licensor as additional insured parties on Licensee's policy against any claims, demands, or causes of action and damages, including reasonable attorney fees, arising out of the circumstances described in this clause. Licensee agrees that such insurance policy or policies shall provide coverage of two million dollars (\$2,000,000) or Licensee's standard policy limits, whichever is greater. Licensee shall furnish Licensor with a certificate of such insurance upon request.

#### 11. Additional Licensee obligations

- 11.1. The Licensee shall:
  - 11.1.1. ensure that all Products are safe for the use for which they were intended;
  - 11.1.2. obtain at its own expense all licences, permits and consents necessary in relation to the Products and their manufacture, storage, promotion, supply, distribution, offer for sale and/or sale;
  - 11.1.3. perform its obligations in connection with the provision of the Products with all due skill, care and diligence including good industry practice;
  - 11.1.4. only make use of the Marks for the purposes authorised in this agreement with the recommended dosage of 180 mg per serving; and



- 11.1.5. comply with all relevant regulations and practices in force or use in the Territory to safeguard the Licensor's rights in the Marks.
- 11.2. The Licensee shall not, nor directly or indirectly assist any other person to use any child labour in the manufacture or distribution of the Products, and where third parties are to manufacture or distribute those Products the Licensee shall procure from those third parties written confirmation that they shall not use any child labour in the manufacture or distribution of the Products.
- 11.3. The Licensee acknowledges and agrees that the exercise of the licence granted to the Licensee under this agreement is subject to all applicable laws, enactments, regulations and other similar instruments in the Territory, and the Licensee understands and agrees that it shall at all times be solely liable and responsible for such due observance and performance.
- 12. Sub-licensing**  
The Licensee shall not grant sub-licences under this agreement.
- 13. Assignment and other dealings**
- 13.1. The Licensee shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights and obligations under this agreement without the prior written consent of the Licensor (such consent not to be unreasonably withheld or delayed).
- 13.2. The Licensor may, at its absolute discretion, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights and obligations under this agreement.
- 13.3. Each party shall on request from the other party execute any agreements or other instruments (including any supplement or amendment to this agreement) which may be required in order to give effect to or perfect any assignment, transfer, mortgage, charge or other dealing permitted as per this clause 13.
- 14. Duration and termination**
- 14.1. Subject to early termination in accordance with clause 14.2 and 14.3 below, the Licensee's right to use the Marks commences on the Effective Date and shall continue for a period of one (1) year, automatically renewable for consecutive one (1) year periods unless in each case terminated with at least three (3) months prior notice.
- 14.2. The Licensor may terminate this agreement with immediate effect by giving written notice to the Licensee if the Licensee breaches clauses 3.3, 3.4, 4, 5[Errore. L'origine riferimento non è stata trovata.], 10, 11 and/or 0 of this agreement
- 14.3. Without prejudice to any rights that have accrued under this agreement or any of its rights or remedies, either party may terminate this agreement with immediate effect by giving written notice to the other party if:
- 14.3.1. the other party commits a material breach of this agreement which breach is irremediable or (if such breach is remediable) the other party fails to remedy that breach within a period of 14 days after being notified in writing to do so;
- 14.3.2. the other party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;
- 14.3.3. the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts

or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;

- 14.3.4. the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its;
- 14.3.5. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company);
- 14.3.6. an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given, or if an administrator is appointed over the other party;
- 14.3.7. the holder of a qualifying floating charge over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- 14.3.8. a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- 14.3.9. a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- 14.3.10. any event occurs, or proceeding is taken, with respect to the Licensee in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 14.3.3 to clause 14.3.9 (inclusive);
- 14.3.11. the Licensee suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
- 14.3.12. there is a change of control of the Licensee;
- 14.3.13. the Licensee challenges the validity or the Licensor's ownership of any the Marks.

## 15. Effect of expiry/termination

- 15.1. On expiry or termination of this agreement for any reason and subject to any express provisions set out elsewhere in this agreement:
  - 15.1.1. subject to clause 15.2, all rights and licences granted to the Licensee pursuant to this agreement shall cease;
  - 15.1.2. subject to clause 15.2, the Licensee shall cease all use of the Marks save as set out in this clause;
  - 15.1.3. the Licensee shall (upon the Licensor's request) assign to the Licensor all goodwill generated by the Licensee in respect of the Licensee's use of any of the Marks/Designs;
  - 15.1.4. the Licensee shall co-operate with the Licensor in the cancellation of any licences registered pursuant to this agreement and shall execute such documents and do all acts and things as may be necessary to effect such cancellation;
- 15.2. On termination of this agreement, the Licensee shall, for a period of 90 days after the date of termination, have the right to dispose of all stocks of Products in its possession and all Products in the course of manufacture at the date of termination[
- 15.3. Termination or expiry of this agreement shall not affect any rights, remedies,

obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.

**16. Further assurance**

Unless stated otherwise elsewhere in this agreement, at its own expense each party shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute such documents and perform such acts as may be required for the purpose of giving full effect to this agreement.

**17. Waiver**

No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

**18. Entire agreement**

18.1. This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

18.2. Each party agrees that, in entering into this agreement, it has not relied on, and shall have no right or remedy in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that its only liability in respect of those representations and warranties that are set out in this agreement (whether made innocently or negligently) shall be for breach of contract.

18.3. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

**19. Variation**

No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

**20. Severance**

20.1. If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.

20.2. If any provision or part-provision of this agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

**21. Counterparts**

21.1. This agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

21.2. No counterpart shall be effective until each party has executed and delivered at

least one counterpart.

**22. Third party rights**

No one other than a party to this agreement shall have any right to enforce any of its terms.

**23. No partnership or agency**

23.1. Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

23.2. Each party confirms it is acting on its own behalf and not for the benefit of any other person.

**24. Force majeure**

Neither party shall be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed. If the period of delay or non-performance continues for two months, the party not affected may terminate this agreement by giving 14 days' written notice to the affected party.

**25. Confidentiality**

Each Party shall, and shall cause its respective affiliates, employees, advisors, agents and representatives (collectively "Representatives") to keep confidential and not disclose to any third Party or use in any manner for any purpose other than for the purpose of performing this Agreement, all information made available to it or its Representatives in the context of the negotiation, preparation, execution and performance of this Agreement ("Confidential Information") and the Licensee more generally undertakes to keep confidential all information concerning Licensor provided to Licensee by Licensor or any of Licensor's Affiliates.

Confidential Information shall not include any information which: (i) was already known to the receiving Party prior to the time of disclosure by the disclosing Party; (ii) is generally available or becomes generally available to the public other than through a breach of this by the receiving Party; (iii) is acquired or received rightfully by the receiving Party from a third Party not in breach of confidentiality obligation; (iv) is independently developed by the receiving Party without breach of this Agreement; or (v) is required by applicable law or court order.

The Parties agree not to make any public announcement in relation to this Agreement, other than an announcement approved by Licensor in writing or required by law.

**26. Notices**

26.1. Any notice given to a party under or in connection with this agreement shall be in writing, in English and shall be:

26.1.1. delivered by hand at its address as per sub-clause 26.3/26.4 (as relevant) below; or



- 26.1.2. sent by fax to its fax number as per sub-clause 26.3/26.4 (as relevant) below.
- 26.2. Any notice shall be deemed to have been received:
- 26.2.1. if delivered by hand, on signature of a delivery receipt;
- 26.2.2. If sent by fax, at 9.00 am on the next Business Day after transmission, provided the sender has proof of transmission.
- 26.3. The Parties' addresses, fax numbers and contacts are as set out in this table:

Party	Contact	Address	Fax number
Licensor	STEPHANIE PRETESACQUE <a href="mailto:spretesacque@diana-food.com">spretesacque@diana-food.com</a> Copy : <a href="mailto:legal@diana-group.com">legal@diana-group.com</a>	ZAC Atalante Champeaux 7, allée Ermengarde d'Anjou 35.000 Rennes FRANCE	+33 299292118
Licensee	BUSINESS MANAGER <a href="mailto:Daniele.d@tsunaminutrition.com">Daniele.d@tsunaminutrition.com</a> Copy: <a href="mailto:info@tsunaminutrition.it">info@tsunaminutrition.it</a>	VIA MARCANDREOLA 5 00043 CIAMPINO ROME	NO FAX

- 26.4. A party may change its details given in the table in 26.3 by giving notice, the change taking effect for the party notified of the change at 9.00 am UK time on the later of:
- 26.4.1. the date, if any, specified in the notice as the effective date for the change; or
- 26.4.2. the date five Business Days after deemed receipt of the notice.
- 26.5. This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution. For the purposes of this clause, "writing" shall not include e-mail.
27. **Inadequacy of damages**

Without prejudice to any other rights or remedies that the Licensor may have, the Licensee acknowledges and agrees that damages alone may not be an adequate remedy for any breach of the terms of this agreement by the Licensee. Accordingly, the Licensor shall be entitled to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of the terms of this agreement.

28. **Language**

This agreement is drafted in the English language. If this agreement is translated into any other language, the English language text shall prevail.



29. **Governing law**


This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of France.

30. **Jurisdiction**

Each party irrevocably agrees that the courts of Rennes shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

This agreement has been entered into on the date stated at the beginning of it.

<p>For the LICENSOR</p> <p>Signature : <u></u></p> <p>Name : <u>U. DANI</u></p> <p>Title : <u>PRESIDENT</u></p> <p>Date : <u>27/10/19</u></p>	<p>FOR the LICENSEE</p> <p>Signature : <u></u></p> <p>Name : <u>DANIELE DEANGELI</u></p> <p>Title : <u>BUSINESS MANAGER</u></p> <p>Date : <u>20/09/2019</u></p>
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PRETESACQUE. STEPHANIE  
Global Category Director  
October 7<sup>th</sup> 2019

**SCHEDULE 1 - MARKS**

Mark	Country	Application or registration n°	Date of application or registration	Classes of goods/services	Specification of goods/services

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**SCHEDULE 2 - GRAPHIC GUIDE**

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