

**DATED** \_\_\_\_\_

**(1) << >>**

**(2) << >>**

**TRADE MARK CO-EXISTENCE AGREEMENT**

**THIS AGREEMENT** is made the                      day of

**BETWEEN:**

- (1)     <<Name of Party 1>> a company registered in <<Country of Registration>> under number <<Company Registration Number>> whose registered office is at <<Registered Office>> ("Party 1") and
- (2)     <<Name of Party 2>> a company registered in <<Country of Registration>> under number <<Company Registration Number>> whose registered office is at <<Registered Office>> ("Party 2")

**WHEREAS:**

- (1)     Party 1 is the owner of, and uses the rights in the Prior Trade Mark, as detailed in Schedule 1, for <<goods and/or services>> in the Territory and has developed a reputation in respect of the same.
- (2)     Party 1 owns the prior rights in the Prior Trade Mark in the Territory.
- (3)     Party 2 has adopted, owns and now uses the rights in the New Trade Mark, as detailed in Schedule 2, for <<goods and/or services>> in the Territory and has developed a reputation in respect of the same.
- (4)     Party 2 has applied for the registration of the New Trade Mark in the Territory under application number(s) <<insert application number(s)>> at <<insert name of body/bodies e.g. the UK Intellectual Property Office>>, as detailed in Schedule 2 ("Party 2's Application").
- (5)     Party 1 has opposed Party 2's Application.
- (6)     The Parties wish to enter into this Agreement, which shall have effect throughout the Territory, in order to avoid both current and future conflict and confusion with respect to each Party's use and registration of its respective trade marks.

**IT IS AGREED** as follows:

**1. Definitions and Interpretation**

- 1.1     In this Agreement, unless the context otherwise requires, the following expressions have the following meanings:

**"Business Day"**                      means Monday to Friday inclusive, excluding bank and public holidays;

**"Commencement Date"**     means [the date of this Agreement] **OR** [<<insert date>>];

**“Confidential Information”**

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**“Prior Trade Mark”**

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1.2 Unless the context otherwise

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**2. Assertion and Acknowledgement**

2.1 Party 1 hereby asserts its o  
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2.2 Party 2 hereby acknowledg  
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as set out in the Recitals,

**3. Consideration**

The Parties hereby agree that co  
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4. **Party 1 Undertakings and Trade Mark**

Party 1 shall:

- 4.1 Withdraw its opposition to Party 2's New Trade Mark within <<insert>> of Party 2 to register the New Trade Mark within <<insert>> making the amendments detailed at sub-Clause 5.1.
- 4.2 Consent to Party 2's use of Party 1's Trade Mark in relation to the modified list of <<goods and/or services>>.

5. **Party 2 Undertakings and Trade Mark**

Party 2 shall:

- 5.1 Amend the specification of Party 2's Application in accordance with the specification <<insert>> contained within Party 2's Application in accordance with the specification detailed in Schedule 3.
- 5.2 Not to object to any future registrations made by Party 1 in respect of Party 2's Trade Mark in relation to any <<goods and/or services>>.
- 5.3 Provide formal written consent in any and all classes which Party 1 of any trade mark in Party 1's Trade Mark within <<insert>> of receipt of a written notice from Party 1.

6. **Assistance and Dispute Resolution**

- 6.1 In the event that the Prior Trade Mark form the subject matter of any objections or rejections from the Intellectual Property Office>> or other matters concerning Party 1's trade marks which Party 1 agrees to cooperate with, and provide reasonable assistance in relation to such objections or rejections. Party 2 shall provide notice of consent or any other such documentary evidence in order to counteract such objections or rejections. Party 2 shall incur the costs incurred by Party 2 in order to counteract such objections or rejections. Party 2 shall comply with this sub-Clause by Party 1.
- 6.2 In the event that the New Trade Mark form the subject matter of any objections or rejections from the Intellectual Property Office>> or other matters concerning Party 2's trade marks which Party 2 agrees to cooperate with, and provide reasonable assistance in relation to such objections or rejections. Party 1 shall provide notice of consent or any other such documentary evidence in order to counteract such objections or rejections. Party 1 shall incur the costs incurred by Party 1 in order to counteract such objections or rejections. Party 1 shall comply with this sub-Clause by Party 2.
- 6.3 In the event that the steps set out in sub-Clauses 6.1 and 6.2 do not result in the relevant objections or rejections, the Parties hereby agree to assist each other in the relevant endeavours required to secure the trade mark(s) of the Party relevant to the relevant objections or rejections, where this is not reasonably possible, assist in the protection of that Party's trade mark(s).

using alternative means. Any costs incurred by the Party providing assistance shall be borne by the Party requiring assistance.

proved costs incurred by the Party shall be borne by the Party requiring assistance.

## 7. Mutual Undertakings and Undertakings

7.1 The Parties hereby agree to undertake, due to the differences between the New Trade Mark and/or the differences in the <<goods and/or services>> covered by the trade marks relate, there is no likelihood of confusion or conflict in relation to the New Trade Mark and the Prior Trade Mark.

7.2 The Parties shall use their best efforts to avoid taking any action in relation to the New Trade Mark which may result in a likelihood of confusion or conflict with the Prior Trade Mark.

7.3 In the event that either Party believes that a third party believes that that Party's trade mark is the same as, or similar to, the other Party's trade mark (that is, either the New Trade Mark or the Prior Trade Mark), it shall inform the other Party, and both Parties shall take reasonable action to correct the third party's errors being made by other parties in the future.

due to the differences between the New Trade Mark and/or the differences in the <<goods and/or services>> covered by the trade marks relate, there is no likelihood of confusion or conflict in relation to the New Trade Mark and the Prior Trade Mark.

to avoid taking any action in relation to the New Trade Mark which may result in a likelihood of confusion or conflict with the Prior Trade Mark.

a third party believes that that Party's trade mark is the same as, or similar to, the other Party's trade mark (that is, either the New Trade Mark or the Prior Trade Mark), it shall inform the other Party, and both Parties shall take reasonable action to correct the third party's errors being made by other parties in the future.

## 8. Warranties

Each Party hereby warrants and represents that:

8.1 it has the right to enter into this Agreement;

8.2 it is the sole beneficial and exclusive owner of either the New Trade Mark or the Prior Trade Mark.

exclusive trade mark(s) (that is, the New Trade Mark or the Prior Trade Mark) as appropriate).

## 9. Indemnity

9.1 Party 1 shall indemnify and hold Party 2 harmless against any claim, loss, damage, proceedings, settlements or costs howsoever arising, directly or indirectly, as a result of any of its obligations, under this Agreement.

9.2 Party 2 shall indemnify and hold Party 1 harmless against any claim, loss, damage, proceedings, settlements or costs howsoever arising, directly or indirectly, as a result of any of its obligations, under this Agreement.

9.3 The indemnities set out in sections 9.1 and 9.2 shall apply provided that in all cases the indemnified Party shall:

9.3.1 notify the indemnifying Party as soon as reasonably possible of any claim, loss or damage;

9.3.2 consult the indemnifying Party in dealing with any such claim, loss or damage.

against any claim, loss, damage, proceedings, settlements or costs howsoever arising, directly or indirectly, as a result of any of its obligations, under this Agreement.

against any claim, loss, damage, proceedings, settlements or costs howsoever arising, directly or indirectly, as a result of any of its obligations, under this Agreement.

shall apply provided that in all cases the indemnified Party shall:

reasonably possible of any claim, loss or damage;

consult the indemnifying Party in dealing with any such claim, loss or damage.

9.3.3 make no agreement without the prior agreement of the other Party, such agreement not to be unreasonable

the payment of any sum by the other Party, such agreement

## 10. Confidentiality

10.1 Both Parties undertake that they will not disclose any Confidential Information authorised in writing by the other Party during the continuance of this Agreement and for a period of [ ] years after its termination:

any sub-Clause 10.2 or as required by law, at all times during the period of [ ] years after its

10.1.1 keep confidential all Confidential Information

10.1.2 not disclose any Confidential Information to any other party;

any other party;

10.1.3 not use any Confidential Information for any purpose other than as contemplated by this Agreement

any purpose other than as

10.1.4 not make any copies of Confidential Information or part with possession of any Confidential Information

or part with possession of

10.1.5 ensure that (as applicable) their directors, officers, employees, agents or advisers do not disclose any Confidential Information in breach of the provisions of sub-Clauses 10.1.1 to 10.1.4.

tors, officers, employees, agents or advisers of that Party, would be in breach of the provisions of sub-Clauses 10.1.1 to 10.1.4.

10.2 Subject to sub-Clause 10.3, the disclosing Party shall not disclose any Confidential Information to:

disclose any Confidential Information to:

10.2.1 any of their sub-contractors;

10.2.2 any governmental or regulatory body; or

tory body; or

10.2.3 any of their employees or agents, or any party described in sub-Clauses 10.2.1 or 10.2.2, who is not bound by a written undertaking from the disclosing Party to keep the Confidential Information confidential and to use it only for the purposes for which the disclosure is made.

of any party described in

10.3 Disclosure under sub-Clause 10.2 is permitted only to the extent that is necessary for the purposes of the Agreement, or as required by law. In each case the disclosing Party must inform the recipient that the Confidential Information is disclosed and that the recipient is a body employee or officer of such a body, the disclosing Party must obtain from the recipient a written undertaking from the recipient to keep the Confidential Information confidential and to use it only for the purposes for which the disclosure is made.

only to the extent that is necessary for the purposes of the Agreement, or as required by law, to inform the recipient that the Confidential Information is disclosed and that the recipient is a body employee or officer of such a body, the disclosing Party must obtain from the recipient a written undertaking from the recipient to keep the Confidential Information confidential and to use it only for the purposes for which the disclosure is made.

10.4 Either Party may use any Confidential Information for any purpose, or disclose it to any other party, where the Confidential Information is or becomes public knowledge through no fault of the disclosing Party.

for any purpose, or disclose it to any other party, where the Confidential Information is or becomes public knowledge through no fault of the disclosing Party.

10.5 When using or disclosing Confidential Information under sub-Clause 10.4, the disclosing Party must ensure that the Confidential Information is not disclosed to any other party.

under sub-Clause 10.4, the disclosing Party must ensure that the Confidential Information is not disclosed to any other party.

10.6 The provisions of this Clause shall survive the termination or expiry of the Agreement, and shall continue in force in accordance with the terms of the Agreement for any reason.

force in accordance with the terms of the Agreement for any reason.

## 11. Term and Termination

11.1 This Agreement shall come into force on the Agreement Commencement Date and shall continue in force for a period of [ ] years (the "Initial Term") unless

Agreement Commencement Date and shall continue in force for a period of [ ] years (the "Initial Term") unless

11.

- and conditions as set out in [redacted] (each a "Renewal Agreement" and together, the "Renewal Agreements") within <<insert [redacted]>> after the Party abandons or ceases performance of the Agreement.
- The Agreement shall terminate at the end of either [redacted] or any reason provided that [redacted] before the end of the then-current term of the Agreement.
- Each Party has the right to terminate the Agreement if the other:
- (a) breaches the Agreement, unless such Party has the right to terminate the Agreement if the other Party has failed to remedy the breach within [redacted] written notice to do so;
  - (b) (being a company) has a winding-up order made against it or is in liquidation (or for the purposes of such a manner that the Party agrees to be bound by or subject to under this Agreement);
  - (c) becomes subject to an order under the Insolvency Act 1986);
- [redacted] business.
- [redacted] anything analogous to any law of any jurisdiction.
- [redacted] expressly or by their nature the termination of this Agreement

[illegible]

- and be deemed duly given to the authorised officer thereof, or to any other messenger (including the messenger of the recipient; or by e-mail and a successful delivery; or

12.2.3 on the fifth business day after the date of receipt, if mailed by national ordinary mail, postage paid.

12.2.4 on the tenth business day after the date of receipt, if mailed by airmail, postage prepaid.

12.3 All notices under this Agreement shall be sent to the most recent address, e-mail address, or telephone number furnished to the other Party.

## 13. Force Majeure

Neither Party to this Agreement shall be liable for any failure or delay in performing its obligations where such failure or delay is caused by a cause that is beyond the reasonable control of that Party. Such causes are not limited to: power outages, natural disasters, civil unrest, fire, flood, government action or any other event that is beyond the reasonable control of the Party in question.

## 14. No Waiver

The Parties agree that no failure to enforce any provision in this Agreement shall constitute a waiver of any breach and shall not constitute a continuing waiver.

## 15. Severance

The Parties agree that, in the event any provision of the provisions of this Agreement is found to be unlawful or unenforceable, that / those provisions shall be deemed severed and the remainder of this Agreement shall be enforceable.

## 16. Entire Agreement

16.1 This Agreement sets out the entire agreement between the Parties with respect to the subject matter of this Agreement and supersedes all prior oral or written agreements, understandings or arrangements relating to the subject matter of this Agreement.

16.2 Neither Party shall be entitled to rely on any agreement, understanding or arrangement, express or implied, which is not expressly set out in this Agreement.

16.3 Notwithstanding the provisions of this Agreement, nothing in this Agreement shall restrict or limit either Party's right to seek redress which may arise out of any misrepresentation which is not made in good faith or out of any other act of bad faith.

16.4 This Agreement shall not be amended or modified by any provisions waived unless such amendment or waiver is in writing and is signed by both Parties.



17. **Law and Jurisdiction**

- 17.1 This Agreement (including all terms and obligations arising therefrom or associated therewith) shall be governed by, and construed in accordance with, the laws of [Country].
- 17.2 Any dispute, controversy, or claim arising between the Parties relating to this Agreement (including all terms and obligations arising therefrom or associated therewith) shall be referred to the jurisdiction of the courts of England and Wales.

**IN WITNESS WHEREOF** this Agreement was made the day and year first before written

SIGNED by  
<<Name and Title of person signing for Party 1>>  
for and on behalf of <<Party 1's Name>>

In the presence of  
<<Name & Address of Witness>>

SIGNED by  
<<Name and Title of person signing for Party 2>>  
for and on behalf of <<Party 2's Name>>

In the presence of  
<<Name & Address of Witness>>

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**Party 1's Prior Trade Mark**

<<Insert a complete specification of the  
and/or services for which it is registered and

ing the classes of goods  
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**Party 2's New Trade Mark**

<<Insert a complete specification of the  
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applications>>

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**Required Modifications to Party 2's Trade Mark**  
<<Insert details of the changes to the class of goods in Party 2's Trade Mark Application>>

in Party 2's Trade Mark

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