

DATED

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TRADE MARK LICENCE

THIS AGREEMENT is made the day of

BETWEEN:

- (1) <<Name of Licensor>> [a company registered in <<Country of Registration>> under number <<Company Registration Number>> whose registered office is at] **OR** [of] <<Address>> ("the Licensor") and
- (2) <<Name of Licensee>> [a company registered in <<Country of Registration>> under number <<Company Registration Number>> whose registered office is at] **OR** [of] <<Address>> ("the Licensee")

WHEREAS:

- (1) The Licensor is the [registered] owner of the Trade Mark(s) detailed in Schedule 1.
- (2) The Licensee wishes to use the Trade Mark(s) listed in Schedule 1 for the Stated Purposes detailed in Schedule 2.
- (3) The Licensor wishes to grant a licence to the Licensee to use the Trade Mark(s) listed in Schedule 1 in accordance with the terms and conditions of this Agreement.

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:

"Confidential Information"	means information relating to this Agreement, any business information relating to either Party, and any other information which either Party may designate confidential;
"Effective Date"	means [the date of this Agreement] OR [<<insert date>>];
"Gross Receipts"	means all sums arising from the sale and provision of goods and/or services under the Stated Purposes before any deductions are made;
"Net Receipts"	means the Gross Receipts from the Stated Purposes subject to deductions for value added tax, other sales tax, packaging, transportation, insurance [and any other industry-specific normally deductible costs];
"Quarter"	means a three month period which shall end on 31 st March, 30 th June, 30 th September and 31 st December respectively. The first quarter shall begin on the Effective Date and the final quarter shall end on the date of termination or expiry of this Agreement;
"Stated Purposes"	means the use of the Trade Mark(s) in relation to the Goods and/or Services detailed in Schedule 2;

“Term” means the term of the Agreement as set out in Clause 1.1.

“Territory” means the territory>>.

1.2 Unless the context otherwise requires, the following definitions apply in this Agreement to:

1.2.1 “writing”, and any other form of communication effecting a facsimile transmission or similar means;

1.2.2 a statute or a provision of law, in force at the relevant time; or a provision as amended or replaced;

1.2.3 “this Agreement” is the Agreement and each of the Schedules as amended or replaced at the relevant time;

1.2.4 a Schedule is a schedule;

1.2.5 a Clause or paragraph of this Agreement (other than the Schedules) is a Clause or paragraph of the relevant Schedule; and

1.2.6 a “Party” or the “Parties” are the Parties to this Agreement.

1.3 The headings used in this Agreement have no effect upon the interpretation of the Agreement.

1.4 Words imparting the singular include the plural and vice versa.

2. Grant of Rights

The Licensor hereby grants to the Licensee a non-exclusive licence (the “Licence”) within the Territory and for the Stated Purposes.

3. Scope of Licence

3.1 The Licensee may not:

3.1.1 use the Trade Mark(s) for any purpose other than the Stated Purposes;

3.1.2 use the Trade Mark(s) outside the Territory;

3.1.3 use any part of the Trade Mark(s) or other trade marks belonging to the Licensor that is identical or similar to the Trade Mark(s);

3.1.4 use any other trade mark, whether registered or unregistered and irrespective of ownership, for the Stated Purposes without the express written consent of the Licensor;

3.1.5 use any other trade mark, whether registered or unregistered and otherwise, which are identical or similar to the Trade Mark(s);

3.1.6 claim or make any representation in or to the Trade Mark(s) or otherwise, which are identical or similar to the Trade Mark(s); and

3.1.7 take or permit any action which is detrimental in any way to the Trade Mark(s). Such actions are not limited to, that which

- may impair, damage or otherwise harm the goodwill, validity, value or reputation of the Trade Mark(s).
- 3.2 Notwithstanding the provisions of this Clause, the Licensee may accept and execute orders for the Trade Mark(s) for under the Stated Purposes from outside the Territory.
- 3.3 The Licensee shall [not] be permitted to assign, sub-licence, sub-contract or otherwise transfer the benefit of the Licence or part of it to a third party without the prior written consent of the Licensor, such consent not to be unreasonably withheld].
- 3.4 The Licensee hereby acknowledges that the Trade Mark(s) are the sole property of the Licensor and that no use of the Trade Mark(s) by the Licensee shall create any right, title or interest in or to the Trade Mark(s) by this Agreement.
- 3.5 The Licensee hereby acknowledges that all goodwill arising from its use of the Trade Mark(s) in connection with the Licence purposes or otherwise, shall accrue for the sole benefit of the Licensor.
- 4. Licensor's Rights and Obligations**
- 4.1 During the Term and within the scope of the Licence, the Licensor shall remain the owner of the Trade Mark(s). [Where the Licence is an exclusive licence, the Licensor shall use its reasonable endeavours to ensure that no additional licences granted by the Licensor shall conflict with the Licence.]
- 4.2 Nothing in this Agreement shall restrict the Licensor's freedom to use the Trade Mark(s) itself.
- 4.3 The Licensor shall pay any and all costs to ensure the registration (where applicable) and renewal of the Trade Mark(s) and shall submit a copy of the receipt of a written request to the Licensee.
- 4.4 [Notwithstanding the provisions of this Clause, the Licensor shall not be obliged to comply with that request if, in the sole opinion, the costs or benefits of taking such action are not justified. The Licensor shall inform the Licensee of its decision in writing <<insert period>> prior to the date on which it is required to take such action. The Licensee shall have the option of an assignment of the Trade Mark(s) to the Licensee to be agreed between the Parties at the time. In the event the Licensee declines the offer or does not reply within <<insert period>> of the date of the same, the registration(s) shall lapse and the Licensor shall have no obligation to the Licensee under this Clause 4.]
- 5. Licensee's Rights and Obligations**
- 5.1 The Licensee shall be fully responsible for the use of the Trade Mark(s) and for any and all activities carried out in connection with the Stated Purposes.
- 5.2 The Licensee shall, subject to the provisions of this Clause, be the sole owner of the Trade Mark(s) which it has entered with third parties, including any intellectual property rights arising from the Stated Purposes.
- 5.3 The Licensee shall be responsible for the maintenance required, at its sole

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- 6.3 Within <<insert period>> of the time that the Licensee provides to the Licensor a written statement that the Licensee is carrying out the Stated Purposes carried out therefor.
- 6.4 The royalties payable for each Quarter shall be paid by the Licensee to the Licensor by the end of that Quarter.
- 6.5 The Licensee shall be required to provide all information required for the License Agreement.
- 6.6 The Licensor shall have the right, during its normal working hours, to inspect and audit the Licensee under sub-Clause 6.4. Any such inspection shall be conducted at the expense of the Licensee. In the event of underpayment of royalties identified by such inspection in which the Licensee is found to be in default, the Licensee shall pay to the Licensor any such amount.
- 6.7 In the event that a shortfall is identified by the Licensor under sub-Clause 6.4, the Licensee shall pay to the Licensor any such amount.

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notice, and during normal books of account kept by the Licensor to verify royalties paid. Any portion of the Licensor's net income from the exploitation of the Work shall be borne by the Licensor unless an amount or percentage is identified in the preceding sentence.

by an inspection carried out
licensee shall immediately

7. Licensors' Warranties

- 7.1 The Licensor hereby warrants
- 7.1.1 it has the right to enter into this License;
- 7.1.2 the Trade Mark(s) is/are owned by the Licensor and the Licensee;
- 7.1.3 no third party has asserted or claimed the same at the time of the execution of this License;
- 7.1.4 to the best of its current knowledge [after due and diligent enquiry], the Trade Mark(s) is/are not (or will not be so) by any third party;
- 7.1.5 to the best of its current knowledge [after due and diligent enquiry], no third party has threatened to bring an action [within a period of <= 12 months] against the Licensor or the Licensee;
- 7.1.6 to the best of its current knowledge [after due and diligent enquiry], no third party has threatened to bring an action against the Licensor or the Licensee to the Trade Mark(s) in opposition, cancellation or revocation proceedings;

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7.1.7 nothing in the Trade Mark(s) is dishonest, untruthful or misleading, and nothing in the Trade Mark(s) will infringe the rights of any third party.

indecent, obscene, illegal, defamatory, and nothing in the Trade Mark(s) will infringe the rights of any third party.

7.2 The Licensors give neither express nor implied warranty with respect to the validity, utility or enforceability of the Trade Mark(s).

any representation with respect to the validity, utility or enforceability of the Trade Mark(s).

8. Licensee's Warranties

The Licensee hereby warrants and represents that:

- 8.1 it has the right to enter into this Agreement;
- 8.2 it shall pay all sums due under this Agreement in accordance with Clause 6; and
- 8.3 it shall not exceed the rights granted by the Licensors.

in accordance with Clause 6;

ent.

9. Indemnity

9.1 The Licensee shall indemnify the Licensors against any claim, loss, damage, proceedings or expenses howsoever arising, directly or indirectly, from the Licensee of any of its obligations under this Agreement.

the Licensors against any claim, loss, damage, proceedings or expenses howsoever arising, directly or indirectly, from the Licensee of any of its obligations under this Agreement.

9.2 The Licensors shall indemnify the Licensee against any claim, loss, damage, proceedings or expenses howsoever arising, directly or indirectly, from the Licensors of any of its obligations under this Agreement.

the Licensee against any claim, loss, damage, proceedings or expenses howsoever arising, directly or indirectly, from the Licensors of any of its obligations under this Agreement.

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

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;

reasonably possible of any claim, loss or damage;

9.3.2 consult the indemnifying Party in connection with any such matter;

in connection with any such matter;

9.3.3 make no agreement to settle or compromise any claim, loss or damage without the prior agreement of the indemnifying Party, such agreement not to be unreasonable.

the payment of any sum in settlement of any claim, loss or damage, such agreement not to be unreasonable.

10. Limitation of Liability

10.1 Without prejudice to the provisions of Clause 10.3, the Licensors shall not be liable to the Licensee with respect to any loss of revenue, anticipated savings, goodwill, business, opportunity, consequential loss or damage (whether or not foreseeable, known or otherwise) which may arise from any other contractual [or non-contractual] matters arising out of or in connection with this Agreement.

and subject to sub-Clause 10.3, the Licensors shall not be liable to the Licensee with respect to any loss of revenue, anticipated savings, goodwill, business, opportunity, consequential loss or damage (whether or not foreseeable, known or otherwise) which may arise from any other contractual [or non-contractual] matters arising out of or in connection with this Agreement.

- 10.2 The provisions of this Clause shall not exclude the Licensors' liability for death or personal injury and all liability whether arising in contract, tort (including negligence) or otherwise.
- 10.3 Nothing in this Clause 10 shall exclude the Licensors' liability for death or personal injury, nor shall it exclude the Licensors' liability for negligence, nor shall it exclude the Licensors' liability for any other matters for which the Licensors may not exclude liability under applicable law.

11. Proceedings

- 11.1 The Licensee shall inform the Licensors if it becomes aware of any:
- 11.1.1 Infringement, actual or potential, of the Trade Mark(s);
 - 11.1.2 Challenge, claim or dispute, including, but not limited to, opposition, cancellation, revocation or invalidation, of the Trade Mark(s) or of the rights of any third party.
- 11.2 In the event of any infringement or dispute under sub-Clause 11.1:
- 11.2.1 the Licensors shall decide whether any action shall be taken;
 - 11.2.2 the Licensors shall be entitled to direct the conduct of any claims or proceedings;
 - 11.2.3 the Licensee shall provide the Licensors with the assistance that may be reasonably required to conduct any claims or proceedings;
 - 11.2.4 the Licensors shall reimburse the Licensee for any reasonable costs or expenses (including legal fees) incurred by the Licensee in rendering assistance under sub-Clause 11.2.3;
 - 11.2.5 the Licensors shall be entitled to bring any claims or proceedings and shall be solely entitled to recover any costs or expenses incurred from a third party in connection with such claims or proceedings.

12. Confidentiality

- 12.1 Both the Licensors and the Licensee shall keep confidential all Confidential Information that they shall, except as provided by sub-Clause 12.1.5, not disclose in writing by the other, at all times during the continuance of this Licence and [for <<insert period>> years] after its termination:
- 12.1.1 keep confidential all Confidential Information;
 - 12.1.2 not disclose any Confidential Information to any other party;
 - 12.1.3 not use any Confidential Information for any purpose other than as contemplated by this Licence;
 - 12.1.4 not make any copies of or part with possession of any Confidential Information;
 - 12.1.5 ensure that (as applicable) its directors, officers, employees, agents or advisers do not disclose Confidential Information by that Party, would be subject to the provisions of sub-Clauses 12.1.1 to 12.1.4.

- 12.2 Subject to sub-Clause 12.2.1, the disclosing Party must not disclose any Confidential Information to:
- 12.2.1 any of their sub-contractors;
 - 12.2.2 any governmental or statutory body; or
 - 12.2.3 any of their employees or officers or any party described in sub-Clauses 12.2.1 or 12.2.2.
- 12.3 Disclosure under sub-Clause 12.2 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 described in sub-Clause 12.2. If the recipient is an employee or officer of such a body, the disclosing Party must also submit to the other Party a written undertaking from that employee or officer not to disclose the Confidential Information or to use it for any purpose other than for which the disclosure is made.
- 12.4 Either Party may use any Confidential Information for any purpose, or disclose it to any other party, where the disclosure is or becomes public knowledge through no fault of the disclosing Party.
- 12.5 When using or disclosing Confidential Information under sub-Clause 12.4, the disclosing Party must ensure that it does not disclose any part of that Confidential Information which is subject to the obligations in Clause 12.2.
- 12.6 The provisions of this Clause shall have no force in accordance with the terms of the Agreement for any reason.

13. Term and Termination

- 13.1 This Agreement shall come into force on the Effective Date and shall continue in force for a period of five (5) years (the "Term") unless otherwise terminated in accordance with Clause 13.3.
- 13.2 The Term may be renewed for further periods of five (5) years upon the agreement of both Parties.
- 13.3 Either Party has the right to terminate the Agreement immediately by written notice if the other:
- 13.3.1 has committed a material breach of the Agreement, unless such breach is capable of being remedied and the Party has failed to remedy the breach within <<30 days>> of written notice to do so;
 - 13.3.2 has an encumbrance or charge on its assets (being a company) has a receiver appointed over its assets;
 - 13.3.3 holds a meeting of creditors or enters into any arrangement, moratorium or similar arrangement for the benefit of the same (including any arrangement under the Insolvency Act 1986 or any corresponding legislation), or becomes subject to an administration order or similar order made under the Insolvency Act 1986);
 - 13.3.4 has (being an individual) been made bankrupt or (being a company) has been wound up, amalgamated or restructured in such a manner that the disclosing Party has lost control of the business.

- company resulting from the termination of this Agreement (including any liability under this Agreement); or
- 13.3.5 ceases, or threatens to cease, to carry on the business.
- 13.4 Sub-Clause 13.3 shall also apply to any act or omission of the Licensee or anything analogous to any of the provisions of that sub-Clause under the law of any jurisdiction.
- 13.5 Any and all obligations of the Licensee shall survive termination and expiration of this Agreement expressly or by their nature.
- 14. Post Termination**
- 14.1 Upon the termination of this Agreement, the Licensee shall:
- 14.1.1 subject to the provisions of sub-Clause 14.1.2, cease any and all use of the Trade Mark(s) (save for any use which remains in force) and any other mark which is used by any other agreement;
- 14.1.2 subject to the provisions of sub-Clause 14.1.2, cease any and all use of any trade marks which are similar to the Trade Mark(s) (save for any use which remains in force);
- 14.1.3 return any and all material owned by the Licensor under this Agreement including any confidential information by the Licensee;
- 14.1.4 provide to the Licensor, within <<insert period>>, a statement of royalties due from the Licensee which have occurred since the end of the preceding period, and any other outstanding statements as under sub-Clause 6.3);
- 14.1.5 pay any and all outstanding royalties or other sums due under this Agreement (including those set out in any statement provided under sub-Clause 14.1.4) which, on termination, shall be due within <<insert period>>.
- 14.2 Subject to the provisions of sub-Clause 14.1.2, the Licensee shall be free to sell any remaining stocks of goods (including any goods previously associated with the Trade Mark(s) and/or continuing to use the Trade Mark(s) (where the goods were entered into prior to the termination of this Agreement) for a period of <<insert period>> or until the stocks are sold (whichever is earlier).
- 14.3 In the event that any stock of goods (including any goods previously associated with the Trade Mark(s) remaining in the Licensee's possession at the end of Clause 14.2, the Licensee shall, at the Licensor's option, either destroy such goods or deliver the same up to the Licensor. [The Licensee shall have the right to request the Licensor to complete the sale of such goods, the granting and destruction of which shall be at the Licensor's sole discretion.]
- 14.4 The Licensee shall continue to comply with the provisions of Clause 6 for any goods sold or used during the periods provided for under this Clause.

15. **Non-Assignment of Agreement**

Neither Party shall assign, transfer or otherwise make over to any third party the benefit and/or the obligations of this Agreement without the prior written consent of the other, such consent

in any other manner make over to any third party the benefit and/or the obligations of this Agreement without the prior written consent of the other, such consent withheld.

16. **Notices**

16.1 All notices under this Agreement shall be deemed duly given if signed by the Party giving notice or by an authorised officer thereof, as appropriate.

and be deemed duly given if signed by the Party giving notice or by an authorised officer thereof,

16.2 Notices shall be deemed to be given by the following methods:

16.2.1 when delivered, if delivered by hand or by registered mail) during business hours;

by hand or by registered mail) during business hours of the recipient; or

16.2.2 when sent, if transmitted by e-mail and a successful transmission report is received;

by e-mail and a successful transmission report is received; or

16.2.3 on the fifth business day after the date of posting, if mailed by national ordinary mail, postage paid;

by registered mail, if mailed by national ordinary mail, postage paid;

16.2.4 on the tenth business day after the date of posting, if mailed by airmail, postage paid.

by airmail, if mailed by airmail, postage paid.

16.3 All notices under this Agreement shall be deemed to be given to the most recent address, e-mail address, or other contact information of the other Party.

to the most recent address, e-mail address, or other contact information of the other Party.

17. **Force Majeure**

Neither Party to this Agreement shall be liable for its 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 outage, Internet Service Provider failure, Internet Service Provider outage, storms, earthquakes, acts of terrorism, war, civil unrest, fire, flood, or any other event that is beyond the control of the Party.

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 outage, Internet Service Provider failure, Internet Service Provider outage, storms, earthquakes, acts of terrorism, war, civil unrest, fire, flood, or any other event that is beyond the control of the Party.

18. **No Waiver**

The Parties agree that no failure to perform any provision in this Agreement shall constitute a waiver of any other provision of this Agreement. Such failure shall not be deemed to be a waiver of any other provision of this Agreement and shall not constitute a continuing waiver.

the performance of any provision in this Agreement shall constitute a waiver of any other provision of this Agreement. Such failure shall not be deemed to be a waiver of any other provision of this Agreement and shall not constitute a continuing waiver.

19. **Severance**

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

of the provisions of this Agreement is found to be unlawful or unenforceable, that / those provisions shall be deemed severed from the Agreement and the remainder of this Agreement shall be enforceable. The

20. **Law and Jurisdiction**

- 20.1 This Agreement (including all terms and conditions, notices and obligations arising therefrom or associated therewith) shall be governed by, and construed in accordance with, the laws of England and Wales.
- 20.2 Any dispute, controversy, claim or action arising out of or in connection with this Agreement (including all terms and conditions, notices and obligations arising therefrom or associated therewith) shall be referred to the exclusive jurisdiction of the courts of England and Wales.

IN WITNESS WHEREOF this Agreement has been made the day and year first before written

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

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

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

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

SC

The Trade Mark(s)

<<insert a complete specification of the Trade Mark(s) used under this Agreement
including (where relevant) details of registration

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The Stated Purposes

<insert a detailed description of the purposes for which the mark(s) will be used>>

[Goods

<<insert details of any goods for which the mark(s) will be used>>]

[Services

<<insert details of any services for which the mark(s) will be used>>]

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