

THIS TRADEMARK LICENCE AGREEMENT is entered into on

BETWEEN

(1) whose principal place of business is at (the *Licensor*)

(2) whose principal place of business is at (the *Licensee*)

WHEREAS

(A) The Licensor is the owner of and the Trademarks (as defined below).

(B) The Licensor has agreed to grant the Licensee a licence to use the Trademarks, on the terms and conditions set out in this agreement.

It is agreed as follows:

1. Interpretation

1.1 In this agreement the following expressions shall have the following meanings:

Brand Guidelines means the guidelines approved in writing by the Licensor prescribing the permitted form and manner in which the Trademarks may be used, as amended from time to time by written notice from the Licensor to the Licensee;

Business Day means a day (other than a Saturday or Sunday) on which banks are generally open in for the transaction of business;

exclusive means the right to use the Trademarks, to the exclusion of all other persons including the Licensor;

Licensed Products means ;

Licensed Services means ;

non-exclusive means the right to use the Trademarks, without precluding the Licensor from granting the same rights to other persons or using the Trademarks itself;

Net Sales means the total amount invoiced by the Licensee for all sales of Licensed under the Trademarks, less all applicable sales taxes, usual trade discounts and allowances for returned goods;

Royalty means % of the Net Sales;

sole means the right to use the Trademarks, to the exclusion of all other persons except the Licensor;

Territory means ;

Term means the term of this agreement, as set out in clause 11;

Trademark Office means the Trademark Office in ;

Trademarks means the trademarks set out in the Schedule attached hereto.

1.2. In this agreement, unless the context otherwise requires:

(a) references to **persons** includes individuals, bodies corporate (wherever incorporated), unincorporated associations and partnerships;

(b) the headings are inserted for convenience only and do not affect the construction of the agreement;

(c) references to one gender includes all genders; and

(d) any reference to an enactment or statutory provision is a reference to it as it may have been, or may from time to time be amended, modified, consolidated or re-enacted.

1.3 The Schedule comprises a schedule to this agreement and forms part of this agreement.

2. Grant of Licence

2.1 In consideration of the payments to be made by the Licensee to the Licenser under clause 4, the Licenser grants to the Licensee a licence during the Term to use the Trademarks on or in relation to the Licensed Products in the Territory, subject to the terms of this agreement.

2.1 In consideration of the payments to be made by the Licensee to the Licenser under clause 4, the Licenser grants to the Licensee a licence during the Term to use the Trademarks in relation to the provision of the Licensed Services in the Territory, subject to the terms of this agreement.

2.2 The Licensee acknowledges that, to the extent the licence granted under clause 2.1 relates to territories in which the Licenser has not registered the Trademarks, the Licenser only licenses the unregistered right, title and interest in the Trademarks which it owns (if any).

2.3 The Licenser shall record the licence granted by it under clause 2.1 with the Trademark Office. The Licenser may require the Licensee to execute at any time during the Term short form recordal licences for each of the registered Trademarks for recordal at the Trademark Office, the terms of which shall be no more onerous than the terms of this agreement. All information which the Licensee proposes to provide to the Trademark Office (including the wording of the short form recordal licence) must be approved in advance by the Licenser. The Licenser may refuse its permission for the Licensee to provide certain information to the Trademark Office if the Licenser is of the opinion that such disclosure is unnecessary.

2.4 On the early termination of this agreement, the Licenser and Licensee shall notify in writing the Trademark Office and any other relevant authorities. The Licensee shall assist the Licenser at the Licenser's cost (save for termination under clause 12.2, where the cost shall be borne by the Licensee) as necessary to achieve cancellation.

3. Maintenance of Trademarks

3.1 The Licensor shall, at its own cost, take all reasonable steps to maintain registrations for the Trademarks in the Territory.

3.2 The Licensee shall, at the Licensor's cost, provide all assistance (including preparing evidence of the Licensee's use of the Trademarks) required by the Licensor to enable the Licensor to prepare, file and prosecute any new trademark applications for any of the Trademarks in any jurisdiction.

4. Payment of Royalties

4.1 The Licensee shall pay the Royalty to the Licensor. The Royalty shall be calculated and paid within days of the end of each successive quarter, commencing 1 January, 1 April, 1 July and 1 October in each calendar year.

4.1 The Licensee shall pay the Royalty to the Licensor. The Royalty shall be calculated and paid within days of the end of each successive calendar year ending on 31 December.

4.2 At the time of the payment of Royalty, the Licensee shall deliver to the Licensor a written statement detailing the calculation of the Royalty payable, in particular: the quantity of Licensed sold during the relevant period; the price charged and any discount or allowances allowed; Net Sales for the relevant period; and the amount of Royalty due. After receiving Licensee's written statement of calculation of Royalty, the Licensor shall issue an invoice or notice of payment to Licensee as may be required to process payment.

4.3 The Licensee shall keep separate and accurate records of all sales. The Licensor shall be permitted on reasonable prior notice during normal business hours (either itself or through an authorised representative) to inspect or audit these records and to take copies of them. In the event that this inspection or audit reveals any shortfall in the Royalties paid by the Licensee in any period from those payable under this agreement of greater than 5%, the Licensee shall immediately pay to the Licensor the shortfall and reimburse the Licensor in respect of any professional charges incurred. Licensor's issuance of any invoice or notice of payment to Licensee under clause 4.2 shall not be deemed to constitute any waiver of Licensor's rights under this clause 4.3.

4. Payment of Licence Fee

4.1 The payment of by the Licensee to the Licensor.

4.2 The payment under 4.1 is one-off and the licence shall be royalty free during the Term.

4.3 The Licensee is required to make payment within of this Agreement. Licence will not commence until the receipt of the payment under Clause 4.1 above by the Licensor.

4.4 All customs, value-added tax and other taxes and duties arising in connection with the performance of this agreement inside the shall be paid by the Licensee. In the event that sums payable to the Licensor under this agreement are subject to tax in the Territory, the Licensee may withhold from such sums the amount of income tax due and required to be withheld, taking

into account any applicable tax treaties. In such case, the Licensee shall furnish the Licensor with the original tax invoice and the certificate of tax payment made issued by the relevant tax office certifying that such tax has been paid.

4.5 Interest shall be payable by the Licensee on any amounts which are not paid by the due date for payment. All interest shall accrue and be calculated on a daily basis (both before and after any judgment) at the rate of 2 per cent per annum above the base rate of 's banks from time to time, for the period from the due date for payment until the date of actual payment. All interest shall be payable on demand.

5. Conditions of Use

5. The Licensee shall:

- (a) ensure that the Licensed comply with quality standards required by local law and by any other quality standards which the Licensor may from time to time reasonably require;
- (b) use the Trademarks only in a manner which conforms to the Brand Guidelines;
- (c) use the Trademarks (including as respects colour, printing style, typeface and size) only in the form set out in the Brand Guidelines;
- (d) not use the Trademarks in combination with any other mark, name, word, device, symbol or logo, other than those specified in the Brand Guidelines;
- (b) use the Trademarks only in a manner which conforms to the reasonable directions and standards notified to it by the Licensor from time to time;
- (c) use the Trademarks (including as respects colour, printing style, typeface and size) only in the form set out in the Schedule;
- (d) not use the Trademarks in combination with any other mark, name, word, device, symbol or logo, other than those specified in the Schedule;
- (e) include on all materials on which any of the Trademarks appear, the name of the Licensee and the place of origin of the goods on which the registered Trademark is used;
- (f) when using a registered Trademark in always mark the Trademark with the symbol ® ;
- (g) keep the Trademark Office and the Licensor informed of any changes in the name and address of the Licensee;
- (h) include on all materials on which any of the Trademarks appear a statement that the Trademarks are owned by the Licensor and, if applicable, are registered trademarks of the Licensor, and a statement that the Licensed are under licence by the Licensee, both statements to be in a form approved in writing by the Licensor;
- (i) not do anything which could, in the Licensor's reasonable opinion, bring the Trademarks or the Licensor into disrepute or which could otherwise damage the goodwill attaching to the Trademarks or any other trademarks or trade names of the Licensor;

(j) not use the Trademarks in a manner which could, in the Licensor's reasonable opinion, result in any of them becoming generic or in the Licensor's rights in them becoming diluted, or which could otherwise prejudice or invalidate a registration or application for registration of any of the Trademarks;

(k) at the costs of the Licensee, prepare, process or obtain all necessary documents, approvals, and permits and take compliance measures (including, if necessary, any registration of the Licensed for selling, distributing and delivering Licensed to consumers in the Territory;

(l) The Licensee shall provide such assistance as the Licensor reasonably may require for the Licensee to be listed as a licensee, as required, pertaining to any trademark registration or pending trade mark application, and to have any such listing removed upon termination of this license.

(m) furnish the Licensor, at the Licensor's cost, FOB, at Licensor's selection, for its review and approval, with a reasonable number of samples of the Licensed Products. In addition, the Licensor shall have the right at any reasonable time or times during the term of this agreement to inspect all such items in stock at the Licensee's premises or elsewhere as well as all facilities and equipment used by the Licensee in the production or processing of or otherwise in connection with such Licensed Products; and

(n) not export the Licensed Products to, or provide them for sale in, any country outside the Territory without the Licensor's prior consent (which shall not be unreasonably withheld).

6. Approval and Inspection

6.1 The Licensee shall:

(a) provide the Licensor with samples of all products and materials (including any advertising, marketing or promotional materials) on or in relation to which the Trademarks are used for written approval by the Licensor prior to them being used;

(b) on reasonable prior notice from the Licensor, permit the Licensor (or its nominated representative) to enter the Licensee's premises to check that the Licensee is complying with its obligations under this agreement; and

(c) provide to the Licensor details of all complaints made in relation to the Licensed together with reports on the manner in which they are being or have been dealt with, and comply with all directions of the Licensor in relation to the complaints.

6.2 If the Licensor believes, on reasonable grounds, that the Licensee is failing to comply with any of its obligations under clause 5:

(a) the Licensee shall take any steps (at the Licensee's expense) which the Licensor determines are necessary to ensure compliance; and

(b) the Licensee shall not sell, distribute or otherwise dispose of any materials or products which the Licensor determines do not comply with the Licensee's obligations under clause 5 without the prior written consent of the Licensor.

7. Ownership

7. The Licensee acknowledges and agrees that:

- (a) all intellectual property and other rights in the Trademarks are the exclusive property of the Licensors;
- (b) it shall not acquire, nor claim, any right, title or interest in or to any of the Trademarks or the goodwill attaching to them by virtue of this agreement or its use of the Trademarks, other than the rights specifically granted to it under clause 2.1;
- (c) all goodwill arising from use of the Trademarks by the Licensee before, during or after the Term shall accrue and belong to the Licensors, and the Licensee shall, at the Licensors' request and cost, promptly execute all documents required by the Licensors to confirm this; and
- (d) all use of the Trademarks by the Licensee shall be deemed to be use by the Licensors.

8. Infringement

8.1 Each party shall immediately notify the other in writing of any of the following matters which comes to its attention (giving full particulars):

- (a) any actual, suspected or threatened infringement of the Trademarks;
- (b) any allegation or complaint made by any third party that any of the Trademarks is invalid, that use of the Trademarks infringes any third party rights, or that use of the Trademarks may cause deception or confusion to the public; and
- (c) any other form of attack or claim to which any of the Trademarks may be subject.

8.3 The Licensee shall, at the Licensors' cost, provide any assistance which the Licensors requires (including bringing proceedings or lending its name to any proceedings brought by the Licensors) in connection with any of the matters in clause 8.1. Any award of costs or damages or other compensation payment recovered in connection with any of those matters shall be split after deduction of cost between the Licensors and the Licensee.

9. Confidential information

9.1 Each of the parties shall:

- (a) keep confidential the terms of this agreement and all information, whether in written or any other form, which has been disclosed to it by or on behalf of the other party in confidence or which by its nature ought to be regarded as confidential (including, without limitation, any business information in respect of the other party which is not directly applicable or relevant to the arrangement contemplated by this agreement); and
- (b) procure that its officers, employees and representatives keep secret and treat as confidential all such documentation and information.

9.2 Clause 9.1 does not apply to information:

(a) to the extent required to be disclosed by any applicable law or by any recognised stock exchange or governmental or other regulatory or supervisory body or authority of competent jurisdiction to whose rules the party making the disclosure is subject, whether or not having the force of law, provided that the party disclosing the information shall notify the other party of the information to be disclosed (and of the circumstances in which the disclosure is alleged to be required) as early as reasonably possible before such disclosure must be made and shall take all reasonable action to avoid and limit such disclosure;

(b) which the recipient party can prove has been independently developed other than in the course of the exercise of that party's rights under this agreement or the implementation of this agreement;

(c) which, in order to perform its obligations under or pursuant to this agreement, either party is required to disclose to a third party;

(d) disclosed to any applicable tax authority to the extent required by a legal obligation; or

(e) which the recipient party can prove was already known to it before its receipt from, or which was developed independently of, the disclosing party.

9.3 The provisions of this clause 9 shall survive any expiry or termination of this agreement.

10. Warranties and Indemnity

10.1 Each party warrants that it has full authority, power and capacity to enter into and carry out its obligations under this agreement.

10.2 The Licensor warrants that:

(a) it owns all of the rights and interests in, and has title to, the Trade Marks, and is entitled to grant the rights granted to the Licensee under clause 2.1;

(b) each of the Trade Marks is valid and subsisting;

(c) it has not given a third party permission to use any of the Trade Marks in the Territory, nor is it under an obligation to do so;

(d) all application, filing, registration, renewal and other fees in respect of registrations (or applications for registration) of the Trade Marks have been paid;

(e) it has not acquiesced in the unauthorised use of the Trade Marks, nor is any party infringing, or likely to infringe, any of the Trade Marks; and

(f) no claim has been made by a third party which disputes the right of the Licensor to use any Trade Mark, nor is the Licensor aware of any circumstances likely to give rise to a claim.

10.3 Each party (the first party) shall indemnify the other party against each loss, liability and cost (including reasonable legal expenses) which the other party suffers or incurs as a result of or in connection with any claim against it which results from a breach by the first party of its obligations under this agreement.

11. Duration of Agreement

11.1 This Agreement commences on and, subject to earlier termination in accordance with clause 12, terminates automatically without notice on .

11.1 This Agreement commences on <? echo \$COMMENCEMENT_DATE; ?> and continues until terminated in accordance with clause 12.

11.1 This Agreement commences on and continues up to and including (the **Initial Term**), unless terminated earlier in accordance with clause 12. At the end of the Initial Term, or any subsequent term following a renewal under this clause (a **Renewed Term**), this agreement may be renewed for a period of one year by either party serving notice to that effect on the other no later than 30 days before the expiry of the Initial Term or the Renewed Term, as the case may be.

11.2 The licence granted herein in relation to each registered Trademark shall remain in force for the term of validity of the relevant registered Trademark unless and until any expiry or termination of this agreement. Upon the extension of the term of validity of any registered Trademarks during the Term, the licence of that registered Trademark under this agreement shall be correspondingly extended automatically. A short form recordal licence referred to in clause 2.3 may accordingly have a shorter term than this agreement, but it will be re-executed and re-filed, in accordance with clause 2.3, by the parties in respect of each registered Trademark on the expiry of the term of validity of that registered Trademark.

12. Termination

12.1 Notwithstanding the provisions of clause 11, on the occurrence of any of the following events, either party may (without prejudice to any other right or remedy) by written notice to the other party terminate this agreement with immediate effect:

(a) if the Licensee fails to pay within 90 days of it becoming due any sum payable under this agreement; or

(b) if the other party commits a breach of any material obligation under this agreement, and in the case of a breach which is capable of remedy fails to remedy it within 30 days of receipt of notice from the first party of such breach and of its intention to exercise its rights under this clause; or

(c) a petition is presented, an application is made to relevant government authorities, or a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up of the other party or a winding up order is made against or a provisional liquidator or a liquidation committee is appointed with respect to the other party; or

(d) a creditor or the holder of a security interest takes possession of, or a liquidation committee, trustee or administrative receiver or similar officer is appointed in respect of, all or any part of the business or assets of the other party, or distress or any form of execution is levied or enforced upon or sued out against any such assets and is not discharged within 7 days of being levied, enforced or sued out; or

(e) the other party is unable to pay or becomes unable to pay its debts as they fall due or suspends or threatens to suspend making payments with respect to all or any class of its debts or the value of the Licensee's assets is less than the amount of its liabilities, taking into account its contingent and prospective liabilities, or a moratorium is declared in respect of the other party's debts; or

(f) any step, including a proposal, application, petition or order, the convening of a meeting or a resolution, is taken by the other party or any person with a view to a composition or arrangement or composition with, or any assignment for the benefit of, its creditors; or

(g) anything analogous to any of the events described in paragraphs (c) - (f), inclusive, occurs under the laws of any applicable jurisdiction; or

(h) the other party ceases or threatens to cease to carry on the whole or any material part of its business and that cessation, in the reasonable opinion of the first party, would be likely to adversely affect the other party's ability to observe and perform properly and punctually any of its obligations under this agreement; or

(i) if the Trademarks Office refuses to record this Licence for whatever reason;

(j) If there is a change of control of the Licensee.

For the purposes of clause 12.1(b), a breach shall be considered capable of remedy if the party in breach can comply with the provision in question in all respects other than as to time of performance.

12.2 Either party may terminate this agreement by giving to the other party not less than 3 months' prior written notice to that effect, such notice not to be served so as to take effect before 12 months from the date of this Agreement.

13. Consequences of Termination

13.1 On expiry or termination of this agreement for any reason, the licence granted under clause 2.1 shall immediately cease and the Licensee shall (subject to clause 13.2) immediately:

(a) cease all use of the Trademarks (including cancelling, or at the option of the Licensor, transferring to the Licensor, any registrations in its name for any corporate, business, trade or domain names incorporating any of the Trademarks, or any aspect of them, with any relevant registry and any telephone listings); and

(b) immediately (and at its own expense) deliver to the Licensor or to any person nominated by the Licensor all products and materials, in electronic or hard copy form, (including signs, advertising materials, technical data, stationery, designs and drawings) under its or its agent's control on or in relation to which any of the Trademarks are being or have been used by the Licensee; or, if requested by the Licensor, destroy them and certify in writing to the Licensor that this has been done and the cost of such delivery or destruction, as the case may be, shall be borne by the Licensee.

13.2 In relation to:

(a) promotional and other printed materials, the Licensee shall delete or remove the Trade Marks as soon as reasonably practicable and in any event within 3 months' from the date of expiry or termination; and

(b) Licensed Products which are either in stock or under the control of the Licensee at the time of termination or expiry, the Licensee may continue to sell those products for a maximum period of 3 months from the date of expiry or termination or such longer period as the Licensor may reasonably approve, provided that the Licensee continues to comply with the terms of this agreement.

13.2 In relation to promotional and other printed materials, the Licensee shall delete or remove the Trade Marks as soon as reasonably practicable and in any event within 3 months' from the date of expiry or termination.

13.3 Termination or expiry of this agreement shall not release either of the parties from any liability which at the time of termination or expiry has already accrued to the other party, nor affect in any way the survival of any other right, duty or obligation of the parties which is expressly stated elsewhere in this agreement to survive such termination or expiry.

14. Assignment and Other Dealings

14.1 Neither party shall nor shall it purport to assign, transfer or charge any of its rights and/or obligations under this agreement nor grant, declare, create or dispose of any right or interest in it, or sub-contract the performance of any of its obligations under this agreement without the prior written consent of the other party, such approval not to be unreasonably withheld or delayed.

15. Resolving Disputes

15.1 If there is a disagreement between the Licensor and the Licensee on the interpretation of this agreement or any aspect of the performance by either party of its obligations under this agreement, representatives of the parties will, within 10 days of receipt of a written request from either party to the other, meet in good faith and try to resolve the disagreement without recourse to legal proceedings.

15.2 If resolution does not occur within 7 days after meeting, the matter will be escalated for determination by the Chief Executive Officers of the parties who may resolve the matter themselves or jointly appoint a mediator or independent expert to do so.

15.3 Nothing in this clause restricts either party's freedom to seek urgent relief to preserve a legal right or remedy, or to protect a proprietary or trade secret right.

16. Notices and Service

16.1 Any notice so served by hand, e-mail or post shall be deemed to have been duly given:

- in the case of delivery by hand, when delivered;
- in the case of fax or electronic mail on a Business Day prior to 5.00 pm, at the time of receipt;

- in the case of prepaid recorded delivery, special delivery or registered post, at 10am on the second Business Day following the date of posting

provided that in each case where delivery by hand or by e-mail occurs after 5pm on a Business Day or on a day which is not a Business Day, service shall be deemed to occur at 9am on the next following Business Day. References to time in this clause are to local time in the country of the addressee.

16.2 The addresses of the parties for the purpose of clause 16.1 are as follows:

Licensor

Address:

E-mail:

For the attention of:

Licensee

Address:

E-mail:

For the attention of:

17. Waivers

17. No failure or delay by either party in exercising any right or remedy provided by law under or pursuant to this agreement shall impair such right or remedy or operate or be construed as a waiver or variation of it or preclude its exercise at any subsequent time and no single or partial exercise of any such right or remedy shall preclude any other or further exercise of it or the exercise of any other right or remedy.

18. Remedies Cumulative

18. The rights and remedies of each of the parties under or pursuant to this agreement are cumulative, may be exercised as often as such party considers appropriate and are in addition to its rights and remedies under general law.

19. Amendment

19.1 No variation of this agreement shall be valid unless it is in writing and signed by or on behalf of both parties.

19.2 Unless expressly agreed, no variation shall constitute a general waiver of any provisions of this agreement, nor shall it affect any rights, obligations or liabilities under or pursuant to this agreement which have already accrued up to the date of variation, and the rights and obligations of the parties under or pursuant to this agreement shall remain in full force and effect, except and only to the extent that they are so varied.

20. Severability

20. If and to the extent any provision of this agreement is held to be illegal, void or unenforceable, such provision shall be given no effect and shall be deemed not to be included in the agreement but without invalidating any of the remaining provisions of this agreement.

21. Force Majeure

21. Neither party shall be liable for any failure or delay in performing any of its obligations under or pursuant to this agreement if such failure or delay is due to any cause whatsoever outside its reasonable control, and it shall be entitled to a reasonable extension of the time for performing such obligations as a result of such cause.

22. Entire Agreement

22. This agreement sets out the entire agreement and understanding between the parties in respect of the subject matter of this agreement. It is agreed that:

(a) neither party has entered into this agreement in reliance upon any representation, warranty or undertaking of the other party which is not expressly set out or referred to in this agreement;

(b) neither party shall have any remedy in respect of misrepresentation or untrue statement made by the other party nor for any breach of warranty which is not contained in this agreement;

(c) this clause shall not exclude any liability for, or remedy in respect of, fraudulent misrepresentation.

23. Legal Relationship

23. Nothing in this agreement is deemed to constitute a partnership between the parties nor constitute any party the agent of the other party for any purpose

24. No Rights under Contracts for Third Parties

24. A person who is not a party to the Agreement shall have no right under the Contracts (Rights of Third Parties) Ordinance to enforce any of its terms.

25. Governing Law and Jurisdiction

25.1 The parties shall use all reasonable endeavours to resolve any dispute amicably and in good faith.

25.2 This Assignment and the relationship between the parties shall be governed by, and interpreted in accordance with, laws of Hong Kong Special Administrative Region.

25.3 Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of Hong Kong Special Administrative Region (and any court of appeal) and waives any right to object to an action being brought in those courts, including on the basis of an inconvenient forum or those courts not having jurisdiction.

26. Counterparts

26. This agreement may be executed in any number of counterparts and by the parties to it on separate counterparts, each of which is an original but all of which together constitute one and the same instrument.

As Witness this Agreement has been signed on behalf of the parties the day and year first above written.

SCHEDULE

Trademarks

1. Registered Trademarks

Registration No. Class Date of Regn. Renewal Date Goods/Services

2. Applications

Application No. Class Date of Application Goods/Services

[3. Unregistered Trademarks

Mark]