Deed of indemnity under the Trade Marks Act 2002, the Trade Marks Regulation 2003, the COPYRIGHT ACT 1994, AND THE Copyright (Border Protection) Regulations 1994

This Deed is made on **[**date**]**.

BY **[***Delete one***]**

**[***IF A COMPANY*: insert company name, company number and address**]**, a duly incorporated company, including its successors and assignees (**Indemnifying Party**)

**[***IF AN INDIVIDUAL*: Insert full name, occupation, and address (**Indemnifying Party**)

#### BACKGROUND

1. The Indemnifying Party submitted Notices under section 137 of the Trade Marks Act 2002 and regulation 156 of the Trade Marks Regulations 2003, and section 136(1) of the Copyright Act 1994 and regulation 3 of the Copyright (Border Protection) Regulations 1994, dated [date OR on or about the date of this Deed] (the Notices).
2. In the Notices the Indemnifying Party claimed that [it/he/she/they] owns the notified registered trade mark(s) and that the notified item(s) were works in which the Indemnifying Party owns the copyright. The Indemnifying Party requested the Chief Executive of the New Zealand Customs Service (Chief Executive) to detain any goods on, or in physical relation to, which an infringing sign is used, and to detain any pirated copies of the notified item(s), that are in, or at any time come into, the control of Customs in accordance with the Chief Executive’s powers set out in Part 4 of the Trade Marks Act 2002 and Part 7 of the Copyright Act 1994.
3. Pursuant to regulation 159 of the Trade Marks Regulations 2003 and regulation 6 of the Copyright (Border Protection) Regulations 1994, the Chief Executive requires that the Indemnifying Party provide a written indemnity effective from the dates that the Notices are accepted under section 139 of the Trade Marks Act 2002 and section 136(3) of the Copyright Act 1994, or from any other date the Chief Executive may direct.

#### OPERATIVE PROVISIONS

1. Indemnity
   1. As required by the Chief Executive pursuant to regulation 159 of the Trade Marks Regulations 2003 and regulation 6 of the Copyright (Border Protection) Regulations 1994, the Indemnifying Party indemnifies the Chief Executive from all loss, damages, costs and liability suffered or incurred by the Chief Executive (including administrative costs, storage costs and legal costs on a full indemnity basis where incurred in good faith by the Chief Executive in carrying out his or her duties and exercising his or her powers under Part 4 of the Trade Marks Act 2002 and Part 7 of the Copyright Act 1994 in connection with or as a result of:
      1. the examination, detention or determination of any goods or items following upon the information contained in or provided within the Notice; and
      2. any proceedings, actions, claims, or demands consequent upon the examination, determination, and/or detention of such goods during the period of the Notice.
2. Novation and assignment
   * 1. The Indemnifying Party must not assign or novate this deed or otherwise deal with the benefit of it or a right under it, or purport to do so, without the prior written consent of the Chief Executive or their delegate which consent may be withheld at their absolute discretion.
     2. The Indemnifying Party acknowledges their obligations under regulation 158 of the Trade Marks Regulations 2003 and regulation 5 of the Copyright (Border Protection) Regulations 1994 to notify the Chief Executive of:
     3. any assignment or transmission of the trade mark(s) and copyright in the work or works to which the Notices relate:
     4. any change in the particulars contained in the Notices or in any evidence or other information given to the Chief Executive in support of the request made in the Notices or the claim that an item is a work, or items are works, as the case may be, in which the indemnifying party owns the copyright.
3. Governing law
   1. This Deed is governed by New Zealand law. The parties submit to the exclusive jurisdiction of the New Zealand courts in respect of all matters relating to this Deed.
   2. A reference in this Deed to a provision of the Act and the Regulations shall be read as a reference to that provision as in force as amended at the date of execution of this Deed, and to any provision re-enacting or replacing the same.
4. Execution and Delivery
   * 1. This Deed may be executed in two or more counterparts (including scanned copies) each of which together shall be deemed to constitute the one original document.
     2. Without limiting any other mode of delivery, this Deed will be delivered by the parties to this Deed on the earlier of:
     3. physical delivery of an original of this Deed, executed by the Indemnifying Party, into the custody of the New Zealand Customs Service; or
     4. transmission by the Indemnifying Party, its solicitors, or any other person authorised in writing by the Indemnifying Party to deliver this Deed on their behalf, of a photocopied or scanned copy of an original of this Deed, executed by the Indemnifying Party, to the New Zealand Customs Service.

Executed as a Deed

[*Delete the non-applicable signature blocks*]

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| --- | --- | --- |
| **[***For individuals, sole directors and/or authorised persons*:**]**  Signed **[**by **[***full name of individual***]** **[***OR* for and on behalf of **[***Company***]** by its director **/** Authorised Signatory**]** in the presence of: |  |  |
|  |  | Full name of individual/director/ authorised signatory |
|  |  |  |
|  |  |  |
| Signature of Witness |  |  |
| Name of Witness |  |  |
| Occupation |  |  |
| City/Town/Locality |  |  |

**[***OR***]**

|  |  |  |
| --- | --- | --- |
| **[***For Attorney appointed under s 181 of the Companies Act 1993:***]**  Signed for and on behalf of **[***Company***]** by its Attorney: |  |  |
|  |  | Full name of Attorney |

|  |  |  |
| --- | --- | --- |
| Signature of Witness |  |  |
| Name of Witness |  |  |
| Occupation |  |  |
| City/Town/Locality |  |  |

**[***OR***]**

|  |  |  |
| --- | --- | --- |
| Signed for and on behalf of **[***Company***]** by two of its directors: |  |  |
|  |  |  |
|  |  |  |
| Director’s signature |  | Director’s signature |
| Director’s full name |  | Director’s full name |