

# TRADE MARK LICENCE AGREEMENT

This Agreement sets out the terms on which you (“Licensee”) are individually entitled to use the “Licensed by Immigration Advisers Authority” trade mark set out in the Schedule to this Agreement (“Trade Mark”) that is owned by the Her Majesty the Queen acting by and through the Ministry of Business, Innovation, and Employment (“Licensor”).

You may only use the Trade Mark if you have read, understood and agreed to the terms of this Agreement.

## 1. DEFINITIONS AND INTERPRETATION

1.1 **Definitions:** In this Agreement, the following words will have the following meanings:

“**Agreement**” means this agreement including the Schedule;

“**Business**” means the Licensee’s business of immigration advice which the Licensee has been licensed to provide under the Immigration Advisers Licensing Act 2007;

“**Business Day**” means a day, excluding Saturdays, Sundays, statutory public holidays or any day in the period commencing 24 December and ending on 5 January, on which registered banks are open for ordinary over-the-counter business in Wellington, New Zealand;

“**Territory**” means the world; and

“**Trade Mark**” means the trade mark (together with the application for that trade mark) set out in the Schedule.

1.2 **Interpretation:** In this Agreement:

- (a) headings are used for convenience only and will not affect its interpretation;
- (b) references to the singular include the plural and vice versa;
- (c) references to the Licensor or the Licensee include their successors, executors, administrators and permitted assignees (as the case may be);
- (d) references to clauses and the Schedule are to those clauses and the Schedule in this Agreement; and
- (e) where a word or phrase is defined, its other grammatical forms have a corresponding meaning.

## 2. GRANT OF LICENCE

2.1 **Grant:** The Licensor hereby grants to the Licensee the non-exclusive, royalty-free right to use the Trade Mark in the Territory solely in connection with the Business, on the terms and conditions set out in this Agreement.

2.2 **No sub-licensing:** The Licensee may not grant sub-licences of the rights granted to the Licensee under clause 2.1.

2.3 **Ownership:** The Licensee acknowledges and agrees that:

- (a) the ownership of all rights and interests in and to the Trade Mark (including all copyright in the Trade Mark or any other device or stylisation customarily used in association with the Trade Mark, in all forms in which they have been used) is vested in and will accrue to the Licensor only;
- (b) the Licensee will not, by virtue of this Agreement, obtain or claim any right, title or interest in or to the Trade Mark except the rights of use as are specifically set out in this Agreement; and
- (c) the Licensee may not, at any time before or after the termination of this Agreement, directly or indirectly:
  - (i) seek in its own name, or allow any third party to seek in its name, to register or otherwise protect anywhere in the world any trade mark identical or confusingly similar to the Trade Mark;
  - (ii) adopt or use any trade mark, symbol or device that incorporates or is deceptively or confusingly similar to the Trade Mark;
  - (iii) contest or challenge in any legal proceedings or otherwise, the Licensor’s ownership of the Trade Mark in the Territory;
  - (iv) contest or challenge in any legal proceedings or otherwise, any registration or application for registration of any trade mark by the Licensor in the Territory that is either identical or confusingly similar to the Trade Mark; or
  - (v) in any way dispute the validity of the Trade Mark in the Territory.

2.4 **Goodwill:** All reputation and common law rights arising from the use of the Trade Mark by the Licensee will be owned by the Licensor. To the extent that such reputation and common law rights may not be owned by the Licensor, this clause 2.4 will operate as an assignment of such rights to the Licensor.

## 3. TERM

3.1 This Agreement will commence on the date of signing of this Agreement and will continue in full force and effect without limit of period, unless terminated in accordance with clause 7.

#### 4. USE OF THE TRADE MARK

4.1 **Use:** The Licensee will observe all reasonable directions, guidelines, recommendations and requirements given or specified by the Licensor from time to time as to the form and appearance of the Trade Mark, including as to the colours and size of representation of the Trade Mark.

#### 4.2 **Restriction:**

- (a) The Licensee will make use of the Trade Mark only for the purposes authorised in this Agreement and, in particular, will not use the Trade Mark in any way that would tend to allow it to become generic, lose its distinctiveness, become liable to mislead the public, or be materially detrimental to or inconsistent with the good name, goodwill, reputation and image of the Licensor.
- (b) For the avoidance of doubt, the Licensee may not use the Trade Mark other than in connection with the Business.

4.3 **Marking:** Whenever the Licensee uses the Trade Mark, such use must be accompanied by wording and clear marking by use of the <sup>TM</sup> symbol to show that it is a trade mark used by the Licensee with the permission of the Licensor. The terms of such wording and its placing will be as reasonably requested by the Licensor.

4.4 **No use in name:** The Licensee may not at any time without the prior written consent of the Licensor:

- (a) use the Trade Mark as part of any corporate, business or trading name of the Licensee;
- (b) register any company name or domain name that incorporates the Trade Mark or any confusingly similar mark;
- (c) use the Trade Mark in such a manner that suggests that any company or entity associated with the Licensee is licensed to use the Trade Mark. In particular, if the Trade Mark is used in any promotional materials or other documentation (either in written or electronic form) of a company or entity associated with the Licensee, the Trade Mark must be accompanied by clear wording attributing the right to use the Trade Mark to the Licensee or such other individuals associated with such company or entity who are individually licensed under the Immigration Advisers Licensing Act 2007; or
- (d) use the Trade Mark accompanied by other trade marks or words unless the Trade Mark is sufficiently distinguished from the surrounding and adjacent text.

#### 5. REGISTRATION AND INFRINGEMENT

##### 5.1 **Registration:**

- (a) The Licensor will pay all renewal fees for any registration of the Trade Mark in the Territory falling due during the term of this Agreement.

- (b) Nothing in this Agreement will imply any obligation on the part of the Licensor to register or otherwise maintain in force any registration of the Trade Mark in the Territory.

5.2 **Notification of infringement:** If the Licensee learns of any:

- (a) infringement or threatened infringement or passing off of the Trade Mark;
- (b) action detrimental to the Trade Mark; or
- (c) third party claim or threatened claim that any registration of the Trade Mark is invalid or use of the Trade Mark is liable to cause deception or confusion to the public,

the Licensee will immediately notify the Licensor giving full particulars of such circumstances and the Licensee will make no comment or admission to any third party in respect of such circumstances.

5.3 **Conduct of proceedings:**

- (a) The Licensor will have full control over all proceedings relating to the Trade Mark and will in its sole discretion decide what action (including litigation, arbitration or settlement) if any to take in respect of any matter specified in clauses 5.2(a) to (c).
- (b) The Licensor will not be obliged to bring or defend any proceedings for infringement or otherwise in relation to the Trade Mark if it decides in its sole discretion not to do so, and the Licensee will not be entitled to bring or defend any such proceedings regardless of any such decisions.

5.4 **Licensee to co-operate:** The Licensee will at the request and expense of the Licensor give full co-operation to the Licensor (including the provision of documentation and making relevant people available) in any action, claim or proceedings brought or threatened in respect of the Trade Mark.

5.5 **Licensor entitled to retain damages:** In any infringement proceedings relating to the Trade Mark that are brought by the Licensor, the Licensor will be entitled to retain any damages awarded in respect of such matter.

#### 6. INDEMNITY AND WARRANTIES

6.1 **Indemnity:** The Licensee will indemnify the Licensor from and against any and all liabilities, losses, damages, costs and expenses awarded against, incurred or suffered by the Licensor arising out of or resulting from the non-performance or breach by the Licensee of any of its obligations under this Agreement.

6.2 **Warranties:** The Licensor makes no warranty, representation or undertaking in respect of the Trade Mark. In particular, the Licensee acknowledges that the Licensor gives no warranties in relation to the subject matter of this Agreement, either express or implied, including but not limited to any implied warranties relating to quality, fitness for any particular purpose or ability to achieve a particular result.

## 7. TERMINATION

- 7.1 **Termination on breach:** Without prejudice to any other right or remedy it may have, the Licensor may immediately terminate this Agreement at any time by giving to the Licensee notice in writing if:
- (a) the Licensee is in material breach of this Agreement and, in the case of a material breach capable of remedy within 20 Business Days, the material breach is not remedied within 20 Business Days of the Licensee receiving notice specifying the material breach and requiring its remedy;
  - (b) the Licensee challenges the validity, enforceability or ownership of the Trade Mark, whether or not by legal proceedings;
  - (c) the Licensee ceases or threatens to cease to carry on all or substantially all of its business or operations, is declared or becomes bankrupt or insolvent, is unable to pay its debts as they fall due, enters into a general assignment of its indebtedness or a scheme of arrangement or composition with its creditors, or takes or suffers any similar or analogous action in consequence of debt;
  - (d) a trustee, manager, administrator, administrative receiver, receiver, inspector under any legislation or similar officer is appointed in respect of the whole or any part of the Licensee's assets or business;
  - (e) an order is made or a resolution is passed for the liquidation of the Licensee (other than voluntarily for the purpose of a solvent amalgamation or reconstruction); or
  - (f) the Licensee ceases to be an immigration adviser licensed under the Immigration Advisers Licensing Act 2007.
- 7.2 **Consequences of termination:** In the event of termination or expiry of this Agreement for any reason the Licensee will immediately cease using the Trade Mark in any way, shape or form and will no longer be licensed to use or otherwise exploit the Trade Mark in any way, either directly or indirectly. In particular, the

Licensee will not later than one week from the date of termination remove or obliterate the Trade Mark from all and any materials used in connection with the Business that are in the possession or control of the Licensee.

- 7.3 **Survival of provisions:** Upon termination of this Agreement for any reason, the provisions of clauses 2.3, 2.4, 6.1, 6.2, 7.2 to 7.4 and 8.1 to 8.6 will remain in full force and effect.

- 7.4 **Accrued rights:** Termination of this Agreement will be without prejudice to the rights and remedies of the Licensor and the Licensee that have accrued prior to termination, including for any prior breach of this Agreement.

## 8. GENERAL

- 8.1 **Variations:** No amendment, variation or modification to this Agreement will be effective unless it is in writing and has been signed by duly authorised representatives of both the Licensor and the Licensee.

- 8.2 **Assignment:** The Licensee may not sell, assign, transfer, novate, sub-license, sub-contract, charge, pledge or otherwise encumber this Agreement, or any of its rights or obligations under this Agreement.

- 8.3 **Waiver:** No failure or delay by either the Licensor or the Licensee to exercise any right or remedy under this Agreement will be treated as a waiver of such right or remedy. No single or partial exercise of any right or remedy will prevent the further exercise of such right or remedy.

- 8.4 **Entire agreement:** This Agreement contains the whole of the contract and understanding between the Licensor and the Licensee relating to the matters covered by it. This Agreement supersedes all prior representations, agreements, statements and understandings between the Licensor and the Licensee relating to those matters, whether verbal or in writing.

- 8.5 **Governing law:** New Zealand law governs the formation, validity, construction and performance of this Agreement. This Agreement is subject to the non-exclusive jurisdiction of the New Zealand courts, and the Licensor and the Licensee submit to that jurisdiction.

**SCHEDULE**  
**TRADE MARK**



Country	Number	Mark	Classes	Date Filed
New Zealand	790098		45	27 May 2008