

Supplementary Royalty Free Licensing Agreement for the use of “Der Grüne Punkt” (“The Green Dot”)

between

the company PACKAGING RECOVERY ORGANISATION EUROPE s.p.r.l., Square Marie-Louise 72, 1000 Bruxelles, Belgium, represented by, in capacity as

- hereinafter referred to as PRO E –

the company DER GRÜNE PUNKT – DUALES SYSTEM DEUTSCHLAND AG, Frankfurter Str. 720-726, 51145 Cologne, Germany, represented by, in capacity as

- hereinafter referred to as DSD –

and

the company XXX ,, represented by, in capacity as

- hereinafter referred to as XXX -

I. Preliminary statements

1. DSD holds the rights to the mark “Der Grüne Punkt” which is applied for registration and/or registered as a device mark and/or as a combined mark in a number of countries world-wide.
2. DSD has granted the rights to license and use the mark “Der Grüne Punkt” to PRO E for the entire area of the European Union (the “EU”) (with the sole exception of the Federal Republic of Germany), accession candidate countries to the EU and the European Economic Area (the “EEA”) via a general licensing agreement.

Currently, PRO E has granted the rights to use the mark “Der Grüne Punkt” via principal licensing agreements to nationally recognised European “Green Dot” schemes in Austria, Belgium, Cyprus, the Czech Republic, France, Greece, Hungary, Ireland, Latvia, Lithuania, Luxembourg, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden and Turkey. Other national self-help organisations are exclusively responsible for the licensing of the mark “Der Grüne Punkt” in Great Britain, Canada, USA and Mexico.

Since PRO E’s area of responsibility for granting licenses is restricted to the EU (with the exception of the Federal Republic of Germany), accession candidate countries to the EU and the EEA, it is DSD’s task to grant the rights to use the mark “Der Grüne Punkt” outside this area.

3. The defence of the mark “Der Grüne Punkt” against infringement by third parties world-wide shall be incumbent on DSD.
4. XXX has concluded with at least one nationally recognised European “Green Dot” scheme a separate trademark contract which grants the rights to use the mark “Der Grüne Punkt” to XXX for the national territory of the country in which the scheme is active.

In consideration thereof, PRO E, DSD and XXX hereby conclude the following Agreement:

II. Agreement

Article 1: Definitions

Unless expressly defined otherwise, the terms below shall have the following meaning:

- “Agreement”: the present limited and non-exclusive licensing agreement to use the mark "Der Grüne Punkt",
- “Mark”: the mark “Der Grüne Punkt” as illustrated in Appendix 1 to the Agreement,
- “nationally recognised European "Green Dot" scheme”: each national packaging recovery organisation that has been set up in accordance with the principles defined in European Directive no. 94/62 and its national law and that use the Mark as a symbol for the financial participation in its packaging recovery system and that is exclusively responsible for the licensing, protection and administration of the Mark in its respective national territory,
- “national "Green Dot" scheme”: each organisation that is exclusively responsible for the licensing, protection and administration of the Mark in one or more national territories.

Article 2: Subject Matter of Agreement and Contractual Territory

1. Subject matter of the Agreement is the granting of the non-exclusive right to use the Mark in all countries as identified in Appendix 2 to the Agreement on sales packaging. In the event of the cancellation or any change of registration or application of the Mark or any significant change of trademark law in one of the countries specified in Appendix 2, PRO E and DSD have the right to remove this country from Appendix 2. The previous Appendix 2 becomes void and the amended Appendix 2 becomes effective one month after the time the amended Appendix 2 is delivered to XXX.
2. The right to use the Mark on sales packaging according to Art.1 Para.1 of the Agreement is hereby granted by PRO E and by DSD.
3. The right to use the Mark on sales packaging shall exclusively be restricted to those kinds of sales packaging for which a financial contribution is made to at least one nationally recognised European “Green Dot” scheme.

4. XXX shall not be entitled to extend the right to use the Mark to third parties without PRO E's and DSD's prior written consent.

Third parties for the purposes of this provision are not:

- related enterprises within the meaning of Articles 15 et seq. of the German Stock Corporation Act ("Aktiengesetz"), vis-à-vis one another and vis-à-vis a parent company;
 - licensees of XXX which market a licensed product in the same packaging as XXX, vis-à-vis XXX.
5. The right of use shall include the right to use pictures of packaging labelled with the Mark for advertising purposes.
 6. DSD/PRO E shall annually be entitled to require information on the use of the Mark from XXX, in particular, in which countries and on what kind of packaging the mark is used, if this is likely to support DSD's/PRO EUROPE's efforts to protect the Mark world-wide.

Article 3: License fees

The use of the Mark according to the Agreement shall be free of charge. In countries where a national "Green Dot" scheme is or will be established, license fees are to be paid in accordance with the respective trademark contract separate from the Agreement.

Article 4: Termination/ Partial termination of the contract

1. The Parties shall be entitled to terminate the Agreement extraordinarily at any time without observing a deadline or a specific date if it is no longer possible for them to satisfy the Agreement on a permanent basis or if they can no longer reasonably be expected to adhere to the Agreement for special reasons.
2. The Agreement shall be terminated automatically in the event of termination of the last trademark contract between XXX and a nationally recognised European "Green Dot" scheme.
3. The Agreement shall be terminated automatically for selected countries in the event of a national "Green Dot" scheme being set up in any such country or in the event of the extension of the geographical competence of an existing national "Green Dot" scheme on any such country. XXX shall have the right to continue to use the Mark until a new license is available by the national "Green Dot" scheme in that country.
4. The Agreement shall be terminated automatically for selected countries in the event of any such country becoming a member state of the EU or the EEA or an accession candidate country to the EU.
5. XXX shall have the right to terminate the Agreement extraordinarily with one month's notice after the receipt of an amended version of Appendices 2 or 3 according to Art. 2 para. 1 or Art. 5 para. 4.

Article 5: Representations (“Gewährleistung”)

1. PRO E and DSD represent that, (1) at the time of entering into this contract, the Mark is registered or applied for registration in all countries as identified in Appendix 2 for the classes of goods and services therein specified and (2) DSD is the owner of the Mark and the applications and registrations therefore in all countries as identified in Appendix 2.
2. PRO E and DSD do not accept any representation for the legal validity of this registrations and applications, in particular not for previous non-use of the Mark in all countries as identified in Appendix 2.
3. PRO E and DSD are not aware of any third party rights which would bar the registration and/or use of the Mark in the countries identified in Appendix 2 beside the ones specified in Appendix 3 to the Agreement. However, DSD/PRO EUROPE do not accept any representation for the non-existence of such rights.
4. PRO E and DSD shall provide annual updates to Appendices 2 and 3, which shall replace the former Appendices 2 and 3.

Article 6: Liability (“Haftung”)

Unless the damage was caused by DSD/PRO EUROPE intentionally or grossly negligent, any liability of DSD/PRO E whatsoever is limited to a maximum amount of € 10.000,00.

Article 7: Infringement

XXX will inform DSD/PRO EUROPE of any infringement of the Mark that is brought to its notice.

Article 8: Non-Aggression Clause

1. XXX undertakes neither to derive any rights from the use of the Mark against DSD/PRO E nor to attack the Mark itself nor to support attacks by third parties. XXX shall also tolerate new registrations of the Mark by DSD or variants thereof.
2. XXX undertakes not to apply for or use any marks for identical or similar goods or services that are identical or similar to the Mark. XXX furthermore undertakes not to apply for any registrations with the Mark as an integrated part.

Article 9: Law and legal venue

1. The Agreement shall be governed by and interpreted in accordance with the laws of the Federal Republic of Germany.
2. The legal venue or place of jurisdiction for any disputes arising out of the Agreement shall be the corporate seat of DSD.

Article 10: Form and language of the contract

1. The language of the Agreement is English. The Agreement exists in 3 (three) original copies.
2. Terminations, alterations and additions of/to the Agreement must be made in writing. This shall also apply to any alteration of this provision.

Article 11: Commencement and term of the contract

The Agreement shall take effect on xx.xx.20xx and shall run until the end of the following year. Each year the Agreement shall be automatically renewed for another year unless notice is given at least two months prior to expiry. This provision shall apply regardless of Article 3.

PRO E

DSD

XXX

Enclosure