

# BREXIT AGREEMENT

By

RT Coopers Solicitors

From **01 January 2021**, the UK and European Union **Trade and Cooperation Agreement** ('Agreement') came into effect. Due to the parties reaching agreement in late December 2020, the European Commission proposes to apply the Agreement on a provisional basis, for a limited period until 28 February 2021.

The UK leaves the **EU Single Market** and **Customs Union**, all EU policies and international agreements will not be applicable to the UK. The free movement of persons, goods, services and capital between the UK and the EU will cease.

In this regard, the EU and the UK will form **two separate markets and distinct regulatory and legal regimes**. This separation creates barriers to trade in goods and services. This article is written by specialist lawyers at **RT Coopers Solicitors**.

We have only discussed the areas in the Agreement that are applicable to our clients in this article:

- i. One of the key areas is the establishment of a partnership for the security of citizens of the UK and EU. There is a new economic and social partnership between the UK and EU
- ii. The Agreement deals with goods and services including, but not limited to, intellectual property, legal services, financial services, fisheries, energy and regulatory affairs, data protection and social security coordination.
- iii. There are specific provisions addressing origin of goods that will have to be complied with. Provided that the rules of origin are adhered to, there will be no tariffs or quotas on the transit of goods between the EU and UK.
- iv. With regard to social security coordination, the Agreement seeks to ensure a number of rights of EU citizens and UK nationals.
- v. The Agreement allows the UK to continue to participate in a number of flagship EU programmes for the period 2021-2027.
- vi. **Under the Agreement, there is a new partnership established for law enforcement and judicial cooperation in criminal and civil law matters.**
- vii. A framework to give legal certainty to businesses, consumers and citizens.
- viii. A Joint Partnership Council will be established to ensure compliance.
- ix. Under the Agreement, there is binding enforcement and dispute settlement mechanisms which will ensure that rights of businesses, consumers and individuals are respected.

The **key provisions** of the Agreement are set out below:

## 1. Freedom of transit.

Under Article GOODS 4A, both the EU and UK have the **freedom to transit** through their respective territories.

Article GOODS.4A: Freedom of transit Each Party shall accord freedom of transit through its territory, via the routes most convenient for international transit, for traffic in transit to or from the territory of the other Party or of any other third country. To this end, Article V of GATT 1994

and its Notes and Supplementary Provisions are incorporated into and made part of this Agreement, mutatis mutandis. The Parties understand that Article V of GATT 1994 includes the movement of energy goods via inter alia pipelines or electricity grids.

## 2. Custom Duties

Under Article GOODS 5, **Custom Duties** are **prohibited on all goods originating** in the UK and EU.

Article GOODS.5: Prohibition of customs duties Except as otherwise provided for in this Agreement, customs duties on all goods originating in the other Party shall be prohibited.

## 3. Export Duties, Taxes or other Charges

Under Article GOODS 6, the UK or EU cannot impose any duty, tax or other charge on exported goods to the respective territory that it would impose on such national goods:

1. A Party may not adopt or maintain any duty, tax or other charge of any kind imposed on, or in connection with, the exportation of a good to the other Party; or any internal tax or other charge on a good exported to the other Party that is in excess of the tax or charge that would be imposed on like goods when destined for domestic consumption.

2. For the purpose of this Article, the term 'other charge of any kind' does not include fees or other charges that are permitted under Article GOODS.7

## 4. Import Licensing Procedures

Under Article GOODS 13, **import licensing procedures** should be fair, equitable, nondiscriminatory and transparent manner:

1. Each Party shall ensure that all import licensing procedures applicable to trade in goods between the Parties are neutral in application, and are administered in a fair, equitable, nondiscriminatory and transparent manner.

2. A Party shall only adopt or maintain licensing procedures as a condition for importation into its territory from the territory of the other Party, if other appropriate procedures to achieve an administrative purpose are not reasonably available.

3. A Party shall not adopt or maintain any non-automatic import licensing procedure, unless it is necessary to implement a measure that is consistent with this Agreement. A Party adopting such nonautomatic import licensing procedure shall indicate clearly the measure being implemented through that procedure.

4. Each Party shall introduce and administer any import licensing procedure in accordance with Articles 1 to 3 of the WTO Agreement on Import Licensing Procedures ('the Import Licensing Agreement'). To this end, Articles 1 to 3 of the Import Licensing Agreement are incorporated into and made part of this Agreement mutatis mutandis.

5. Any Party introducing or modifying any import licensing procedure shall make all relevant information available online on an official website. That information shall be made available, whenever practicable, at least 21 days prior to the date of the application of the new or modified licensing procedure and in any event no later than the date of application. That information shall contain the data required under Article 5 of the Import Licensing Agreement.

6. At the request of the other Party, a Party shall promptly provide any relevant information regarding any import licensing procedures that it intends to adopt or that it maintains, including the information referred to in Articles 1 to 3 of the Import Licensing Agreement. 7. For greater certainty, nothing in this Article requires a Party to grant an import licence, or prevents a Party from implementing its obligations or commitments under United Nations Security Council Resolutions or under multilateral non-proliferation regimes and import control arrangements.

## 5. Export Licensing Procedures

Article GOODS 14, sets out the information that has to be included in an **export licensing procedures** published by the EU or UK:

1. Each Party shall publish any new export licensing procedure, or any modification to an existing export licensing procedure, in such a manner as to enable governments, traders and other interested parties to become acquainted with them. Such publication shall take place, whenever practicable, 45 days before the procedure or modification takes effect, and in any case no later than the date such procedure or modification takes effect and, where appropriate, publication shall take place on any relevant government websites.
2. The publication of export licensing procedures shall include the following information: (a) the texts of its export licensing procedures, or of any modifications it makes to those procedures; (b) the goods subject to each licensing procedure; (c) for each procedure, a description of the process for applying for a licence and any criteria an applicant must meet to be eligible to apply for a licence, such as possessing an activity licence, establishing or maintaining an investment, or operating through a particular form of establishment in a Party's territory; (d) a contact point or points from which interested persons can obtain further information on the conditions for obtaining an export licence; (e) the administrative body or bodies to which an application or other relevant documentation are to be submitted; (f) a description of any measure or measures being implemented through the export licensing procedure; (g) the period during which each export licensing procedure will be in effect, unless the procedure remains in effect until withdrawn or revised in a new publication; (h) if the Party intends to use a licensing procedure to administer an export quota, the overall quantity and, if applicable, the value of the quota and the opening and closing dates of the quota; and (i) any exemptions or exceptions that replace the requirement to obtain an export licence, how to request or use those exemptions or exceptions, and the criteria for granting them.
3. Within 45 days after the date of entry into force of this Agreement, each Party shall notify the other Party of its existing export licensing procedures. Each Party shall notify to the other Party any new export licensing procedures and any modifications to existing export licensing procedures within 60 days of publication. The notification shall include a reference to the sources where the information required pursuant to paragraph 2 is published and shall include, where appropriate, the address of the relevant government websites.
4. For greater certainty, nothing in this Article requires a Party to grant an export licence, or prevents a Party from implementing its commitments under United Nations Security Council Resolutions as well as under multilateral non-proliferation regimes and export control arrangements including the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies, the Australia Group, the Nuclear Suppliers Group, and the Missile Technology Control Regime, or from adopting, maintaining or implementing independent sanctions regimes.

## 6. Statement on Origin

In accordance with Article ORIG 19, an **exporter of a product** is required to produce a statement of origin to demonstrate the **origin of the product**:

Article ORIG.19: Statement on origin 1. A statement on origin shall be made out by an exporter of a product on the basis of information demonstrating that the product is originating, including information on the originating status of materials used in the production of the product. The exporter shall be responsible for the correctness of the statement on origin and the information provided.

2. A statement on origin shall be made out using one of the language versions set out in ANNEX ORIG-4 [Text of the statement on origin] in an invoice or on any other document that describes the originating product in sufficient detail to enable the identification of that product. The exporter shall be responsible for providing sufficient detail to allow the identification of the originating product. The importing Party shall not require the importer to submit a translation of the statement on origin.

3. A statement on origin shall be valid for 12 months from the date it was made out or for such longer period as provided by the Party of import up to a maximum of 24 months.

4. A statement on origin may apply to: (a) a single shipment of one or more products imported into a Party; or (b) multiple shipments of identical products imported into a Party within the period specified in the statement on origin, which shall not exceed 12 months.

5. If, at the request of the importer, unassembled or disassembled products within the meaning of General Rule 2(a) for the Interpretation of the Harmonised System that fall within Sections XV to XXI of the Harmonised System are imported by instalments, a single statement on origin for such products may be used in accordance with the requirements laid down by the customs authority of the importing Party.

## 7. Sustainable food systems

Article SPS.18: Sustainable food systems Each Party shall encourage its food safety, animal and plant health services to cooperate with their counterparts in the other Party with the aim of promoting sustainable food production methods and food systems.

## 8. Marking and Labelling

Article TBT.8, sets out the conditions for **mandatory labelling of products** by the EU or UK:

Article TBT.8: Marking and labelling 1. The technical regulations of a Party may include or exclusively address mandatory marking or labelling requirements. In such cases, the principles of Article 2.2 of the TBT Agreement apply to these technical regulations.

2. Where a Party requires mandatory marking or labelling of products, all of the following conditions shall apply: (a) it shall only require information which is relevant for consumers or users of the product or information that indicates that the product conforms to the mandatory technical requirements; (b) it shall not require any prior approval, registration or certification of the labels or markings of products, nor any fee disbursement, as a precondition for placing on its market products that otherwise comply with its mandatory technical requirements unless it is necessary in view of legitimate objectives; (c) where the Party requires the use of a unique identification number by economic operators, it shall issue such a number to the economic operators of the other Party without undue delay and on a non-discriminatory basis; (d) unless the information listed in points (i), (ii) or (iii) would be misleading, contradictory or confusing in relation to the information that the importing Party requires with respect to the goods, the importing Party shall permit: (i) information in other languages in addition to the language required in the importing Party of the goods; (ii) internationally-accepted nomenclatures, pictograms, symbols or graphics; and (iii) additional information to that required in the importing Party of the goods; (e) it shall accept that labelling, including supplementary labelling or corrections to labelling, take place in customs warehouses or other designated areas in the country of import as an alternative to labelling in the country of origin, unless such labelling is required to be carried out by approved persons for reasons of public health or safety; and unless it considers that legitimate objectives may be undermined, it shall endeavour to accept the use of non-permanent or detachable labels, or marking or labelling in the accompanying documentation, rather than requiring labels or marking to be physically attached to the product.

## 9. Release of Goods

Under Article CUSTMS.4, the UK and EU have agreed procedures for the **release of goods** from customs:

Article CUSTMS.4: Release of goods 1. Each Party shall adopt or maintain customs procedures that: (a) provide for the prompt release of goods within a period that is no longer than necessary to ensure compliance with its laws and regulations; (b) provide for advance electronic submission and processing of documentation and any other required information prior to the arrival of the goods, to enable the release of goods promptly upon arrival if no risk has been identified through risk analysis or if no random checks or other checks are to be performed; (c) provide for the possibility, where appropriate and if the necessary conditions are satisfied, of releasing goods for free circulation at the first point of arrival; and (d) allow for

the release of goods prior to the final determination of customs duties, taxes, fees and charges, if such a determination is not done prior to, or upon arrival, or as rapidly as possible after arrival and provided that all other regulatory requirements have been met.

2. As a condition for such release, each Party may require a guarantee for any amount not yet determined in the form of a surety, a deposit or another appropriate instrument provided for in its laws and regulations. Such guarantee shall not be greater than the amount the Party requires to ensure payment of customs duties, taxes, fees and charges ultimately due for the goods covered by the guarantee. The guarantee shall be discharged when it is no longer required.
3. The Parties shall ensure that the customs and other authorities responsible for border controls and procedures dealing with importation, exportation and transit of goods cooperate with one another and coordinate their activities in order to facilitate trade and expedite the release of goods.

## 10. Cross-border Trade In Services

Under Article SERVIN.3.1, the EU and UK have put in place measures affecting cross-border trade in services.

Chapter 3: Cross-border trade in services Article SERVIN.3.1: Scope This Chapter applies to measures of a Party affecting the cross-border trade in services by service suppliers of the other Party. Article SERVIN.3.2: Market access A Party shall not adopt or maintain, either on the basis of its entire territory or on the basis of a territorial sub-division, measures that: (a) impose limitations on: (i) the number of services suppliers that may supply a specific service, whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirement of an economic needs test; (ii) the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test; or (iii) the total number of service operations or on the total quantity of service output expressed in the terms of designated numerical units in the form of quotas or the requirement of an economic needs test; or (b) restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service.

## 11. Regulatory Framework

Article SERVIN.5.1, applies to measures by the UK and EU relating to licensing requirements and **procedures, qualification requirements and procedures, formalities and technical standards** that affect: (a) cross-border trade in services; (b) establishment or operation; or (c) the supply of a service through the presence of a natural person

Chapter 5: Regulatory framework Section 1: Domestic regulation Article SERVIN.5.1: Scope and definitions 1. This Section applies to measures by the Parties relating to licensing requirements and procedures, qualification requirements and procedures, formalities and technical standards that affect: (a) cross-border trade in services; (b) establishment or operation; or (c) the supply of a service through the presence of a natural person of a Party in the territory of the other Party as set out in Article SERVIN.4.1 [Scope and definitions]. As far as measures relating to technical standards are concerned, this Section only applies to measures that affect trade in services. For the purposes of this Section, the term 'technical standards' does not include regulatory or implementing technical standards for financial services.

2. This Section does not apply to licensing requirements and procedures, qualification requirements and procedures, formalities and technical standards pursuant to a measure: (a) that does not conform with Article SERVIN.2.2 [Market access] or 2.3 [National treatment] and is referred to in points (a) to (c) of Article SERVIN.2.7(1) [Non-conforming measures and exceptions] or with Article SERVIN.3.2 [Market access], Article SERVIN.3.3 [Local presence] or Article SERVIN.3.4 [National treatment] and is referred to in points (a) to (c) of Article SERVIN.3.6(1) [Non-conforming measures] or with points (b) and (c) of Article SERVIN 4.2(1) [Intra-corporate transferees and business visitors for establishment purposes], or Article SERVIN 4.3(3) [Short-term business visitors]] or with points (b) and (c) of Article SERVIN 4.4(1) [Contractual service suppliers and independent professionals] and is referred to in Article

SERVIN 4.5(1) [Non-conforming measures]; or (b) referred to in Article SERVIN.2.7(2) [Non-conforming measures and exceptions] or Article SERVIN.3.6(2) [Non-conforming measures].

3. For the purposes of this Section: (a) "authorisation" means the permission to carry out any of the activities referred to in points (a) to (c) of paragraph 1 resulting from a procedure a natural or legal person must adhere to in order to demonstrate compliance with licensing requirements, qualification requirements, technical standards or formalities for the purposes of obtaining, maintaining or renewing that permission; and (b) "competent authority" means a central, regional or local government or authority or nongovernmental body in the exercise of powers delegated by central, regional or local governments or authorities, which is entitled to take a decision concerning the authorisation referred to in point (a).

### **11.1 Submission of Applications**

Article SERVIN.5.2, sets out the restrictions on both the EU and UK on applicants making applications for authorisation:

Article SERVIN.5.2: Submission of applications Each Party shall, to the extent practicable, avoid requiring an applicant to approach more than one competent authority for each application for authorisation. If an activity for which authorisation is requested is within the jurisdiction of multiple competent authorities, multiple applications for authorisation may be required.

Article SERVIN.5.3: Application timeframes If a Party requires authorisation, it shall ensure that its competent authorities, to the extent practicable, permit the submission of an application at any time throughout the year. If a specific time period for applying for authorisation exists, the Party shall ensure that the competent authorities allow a reasonable period of time for the submission of an application.

### **11.2 Electronic Applications and Acceptance of Copies**

Article SERVIN.5.4, deals with electronic applications and acceptance of copies If a Party requires authorisation, it shall ensure that its competent authorities

Article SERVIN.5.4: Electronic applications and acceptance of copies If a Party requires authorisation, it shall ensure that its competent authorities: (a) to the extent possible provide for applications to be completed by electronic means, including from within the territory of the other Party; and (b) accept copies of documents, that are authenticated in accordance with the Party's domestic law, in place of original documents, unless the competent authorities require original documents to protect the integrity of the authorisation process.

### **11.3 Processing of Applications**

Article SERVIN.5.5, deals with processing of applications that requires authorisation:

Article SERVIN.5.5: Processing of applications 1. If a Party requires authorisation, it shall ensure that its competent authorities: (a) process applications throughout the year. Where that is not possible, this information should be made public in advance, to the extent feasible; (b) to the extent practicable, provide an indicative timeframe for the processing of an application. That timeframe shall be reasonable to the extent practicable; (c) at the request of the applicant, provide without undue delay information concerning the status of the application; (d) to the extent practicable, ascertain without undue delay the completeness of an application for processing under the Party's domestic laws and regulations; (e) if they consider an application complete for the purposes of processing under the Party's domestic laws and regulations, within a reasonable period of time after the submission of the application ensure that: (i) the processing of the application is completed; and (ii) the applicant is informed of the decision concerning the application, to the extent possible, in writing; (f) if they consider an application incomplete for the purposes of processing under the Party's domestic laws and regulations, within a reasonable period of time, to the extent practicable: (i) inform the applicant that the application is incomplete; (ii) at the request of the applicant identify the additional information required to complete the application or otherwise provide guidance on why the application is considered incomplete; and (iii) provide the applicant with the opportunity to provide the

additional information that is required to complete the application; however, if none of the above is practicable, and the application is rejected due to incompleteness, competent authorities shall ensure that they inform the applicant within a reasonable period of time; and (g) if an application is rejected, either upon their own initiative or upon request of the applicant, inform the applicant of the reasons for rejection and of the timeframe for an appeal against that decision and, if applicable, the procedures for resubmission of an application; an applicant shall not be prevented from submitting another application solely on the basis of a previously rejected application.

2. The Parties shall ensure that their competent authorities grant an authorisation as soon as it is established, on the basis of an appropriate examination, that the applicant meets the conditions for obtaining it.

3. The Parties shall ensure that, once granted, an authorisation enters into effect without undue delay, subject to the applicable terms and conditions.

#### 11.4 Fees

Under Article SERVIN.5.6, **fees** are charged by its competent authorities are reasonable and transparent:

Article SERVIN.5.6: Fees 1. For all economic activities other than financial services, each Party shall ensure that the authorisation fees charged by its competent authorities are reasonable and transparent and do not in themselves restrict the supply of the relevant service or the pursuit of any other economic activity. Having regard to the cost and administrative burden, each Party is encouraged to accept payment of authorisation fees by electronic means.

2. With regard to financial services, each Party shall ensure that its competent authorities, with respect to authorisation fees that they charge, provide applicants with a schedule of fees or information on how fee amounts are determined, and do not use the fees as a means of avoiding the Party's commitments or obligations.

3. Authorisation fees do not include fees for the use of natural resources, payments for auction, tendering or other non-discriminatory means of awarding concessions or mandated contributions to universal service provision.

## 12. Professional Qualifications

Under Article SERVIN.5.13, the EU and UK can develop in the future on the recognition of professional qualifications

Article SERVIN.5.13: Professional qualifications 1. Nothing in this Article shall prevent a Party from requiring that natural persons possess the necessary professional qualifications specified in the territory where the activity is performed, for the sector of activity concerned.

2. The professional bodies or authorities, which are relevant for the sector of activity concerned in their respective territories, may develop and provide joint recommendations on the recognition of professional qualifications to the Partnership Council. Such joint recommendations shall be supported by an evidence-based assessment of: (a) the economic value of an envisaged arrangement on the recognition of professional qualifications; and (b) the compatibility of the respective regimes, that is, the extent to which the requirements applied by each Party for the authorisation, licensing, operation and certification are compatible.

3. On receipt of a joint recommendation, the Partnership Council shall review its consistency with this Title within a reasonable period of time. The Partnership Council may, following such review, develop and adopt an arrangement on the conditions for the recognition of professional qualifications by decision as an annex to this Agreement, which shall be considered to form an integral part of this Title. An arrangement referred to under paragraph 3 shall provide for the conditions for recognition of professional qualifications acquired in the Union and professional qualifications acquired in the United Kingdom relating to an activity covered by this Title and Title III [Digital Trade] of Heading One. The Guidelines for arrangements on the recognition of professional qualifications set out in Annex SERVIN-6 [Guidelines for arrangements on the

recognition of professional qualifications] shall be taken into account in the development of the joint recommendations referred to in paragraph 2 of this Article and by the Partnership Council when assessing whether to adopt such an Arrangement, as referred to in paragraph 3 of this Article.

### 13. Legal Services

Articles SERVIN.5.48, 5.49 and 5.50 lay down the conditions for the **provision of legal services** in the respective jurisdictions:

A Party shall allow a lawyer of the other Party to supply in its territory designated legal services under that lawyer's home jurisdiction professional title in accordance

Section 7: Legal services This Section applies to measures of a Party affecting the supply of designated legal services in addition to Chapters 1, 2, 3, 4 of this Title and to Sections 1 and 2 of this Chapter. 2. Nothing in this Section shall affect the right of a Party to regulate and supervise the supply of designated legal services in its territory in a non-discriminatory manner.

Article SERVIN.5.48: Definitions For the purposes of this Section: (a) "designated legal services" means legal services in relation to home jurisdiction law and public international law, excluding Union law; (b) "home jurisdiction" means the jurisdiction (or a part of the jurisdiction) of the Member State or of the United Kingdom in which a lawyer acquired their home jurisdiction professional title or, in the case of a lawyer who has acquired a home jurisdiction professional title in more than one jurisdiction, any of those jurisdictions; (c) "home jurisdiction law" means the law of the lawyer's home jurisdiction; (d) "home jurisdiction professional title" means: (i) for a lawyer of the Union, a professional title acquired in a Member State authorising the supply of legal services in that Member State; or (ii) for a lawyer of the United Kingdom, the title of advocate, barrister or solicitor, authorising the supply of legal services in any part of the jurisdiction of the United Kingdom; (e) "lawyer" means: (i) a natural person of the Union who is authorised in a Member State to supply legal services under a home jurisdiction professional title; or (ii) a natural person of the United Kingdom who is authorised in any part of the jurisdiction of the United Kingdom to supply legal services under a home jurisdiction professional title; (f) "lawyer of the other Party" means: (i) where "the other Party" is the Union, a lawyer referred to in point (e) (i); or (ii) where "the other Party" is the United Kingdom, a lawyer referred to in point (e) (ii); and (g) "legal services" means the following services: (i) legal advisory services; and (ii) legal arbitration, conciliation and mediation services (but excluding such services when supplied by natural persons as set out in Article SERVIN 4.1 [Scope and definitions]).

"Legal services" do not include legal representation before administrative agencies, the courts, and other duly constituted official tribunals of a Party, legal advisory and legal authorisation, documentation and certification services supplied by legal professionals entrusted with public functions in the administration of justice such as notaries, "huissiers de justice" or other "officiers publics et ministériels", and services supplied by bailiffs who are appointed by an official act of government.

Article SERVIN.5.49: Obligations 1. A Party shall allow a lawyer of the other Party to supply in its territory designated legal services under that lawyer's home jurisdiction professional title in accordance with Articles SERVIN 2.2 [Market access], SERVIN 2.3 [National treatment], SERVIN 3.2 [Market access], SERVIN 3.4 [National treatment] and SERVIN 4.4. [Contractual service suppliers and independent professionals]. 2. Where a Party (the host jurisdiction) requires registration in its territory as a condition for a lawyer of the other Party to supply designated legal services pursuant to paragraph 1, the requirements and process for such registration shall not: (a) be less favourable than those which apply to a natural person of a third country who is supplying legal services in relation to third country law or public international law under that person's third-country professional title in the territory of the host jurisdiction; and (b) amount to or be equivalent to any requirement to requalify into or be admitted to the legal profession of the host jurisdiction. 3. Paragraph 4 applies to the provision of designated legal services pursuant to paragraph 1 through establishment. 4. A Party shall allow a legal person of the other Party to establish a branch in its territory through which designated legal services are supplied pursuant to paragraph 1, in accordance with and subject to the conditions set out in Chapter 2 [Investment Liberalisation] of this Title. This shall be without prejudice to requirements that a certain percentage of the shareholders, owners,

partners, or directors of a legal person be qualified or practice a certain profession such as lawyers or accountants.

Article SERVIN.5.50: Non-conforming measures 1. Article 5.49 [Obligations] does not apply to: (a) any existing non-conforming measure of a Party at a level of: (i) for the Union: (A) the Union, as set out in the Schedule of the Union in Annex SERVIN-1 [Existing measures]; (B) the central government of a Member State, as set out in the Schedule of the Union in Annex SERVIN-1 [Existing measures]; (C) a regional government of a Member State, as set out in the Schedule of the Union in Annex SERVIN-1 [Existing measures]; or (D) a local government, other than that referred to in point (C); and (ii) for the United Kingdom: (A) the central government, as set out in the Schedule of the United Kingdom in Annex SERVIN-1 [Existing measures]; (B) a regional government, as set out in the Schedule of the United Kingdom in Annex SERVIN-1 [Existing measures]; or (C) a local government; (b) the continuation or prompt renewal of any non-conforming measure referred to in point (a); or (c) a modification to any non-conforming measure referred to in points (a) and (b) to the extent that it does not decrease the conformity of the measure as it existed immediately before the modification with Article SERVIN 5.49 [Obligations].

2. Article SERVIN 5.49 [Obligations] does not apply to any measure of a Party which is consistent with the reservations, conditions or qualifications specified with respect to a sector, subsector or activity listed in Annex SERVIN-2 [Future Measures]. 3. This Section applies without prejudice to Annex SERVIN-4 [Contractual service suppliers and independent professionals].

## 14. Data Flows and Personal Data Protection

Article DIGIT.6, deals with cross-border data flows to facilitate trade between the UKL and EU in relation to the digital economy:

Chapter 2: Data flows and personal data protection Article DIGIT.6 Cross-border data flows

1. The Parties are committed to ensuring cross-border data flows to facilitate trade in the digital economy. To that end, cross-border data flows shall not be restricted between the Parties by a Party: (a) requiring the use of computing facilities or network elements in the Party's territory for processing, including by imposing the use of computing facilities or network elements that are certified or approved in the territory of a Party; (b) requiring the localisation of data in the Party's territory for storage or processing; (c) prohibiting the storage or processing in the territory of the other Party; or (d) making the cross-border transfer of data contingent upon use of computing facilities or network elements in the Parties' territory or upon localisation requirements in the Parties' territory.

2. The Parties shall keep the implementation of this provision under review and assess its functioning within three years of the date of entry into force of this Agreement. A Party may at any time propose to the other Party to review the list of restrictions listed in paragraph 1. Such a request shall be accorded sympathetic consideration.

## 15. Protection of Personal Data and Privacy

Under Article DIGIT.7, the EU and UK can enact measures for the protection of personal data and privacy with some reporting restrictions:

1. Each Party recognises that individuals have a right to the protection of personal data and privacy and that high standards in this regard contribute to trust in the digital economy and to the development of trade.

2. Nothing in this Agreement shall prevent a Party from adopting or maintaining measures on the protection of personal data and privacy, including with respect to cross-border data transfers, provided that the law of the Party provides for instruments enabling transfers under conditions of general application for the protection of the data transferred.

3. Each Party shall inform the other Party about any measure referred to in paragraph 2 that it adopts or maintains.

## 16. Intellectual Property

Article IP.1, sets out the objectives regarding the adequate and effective level of protection and enforcement of intellectual property rights in the UK and EU:

**TITLE V: INTELLECTUAL PROPERTY Chapter 1: General provisions Article IP.1: Objectives**  
The objectives of this Title are to: (a) facilitate the production, provision and commercialisation of innovative and creative products and services between the Parties by reducing distortions and impediments to such trade, thereby contributing to a more sustainable and inclusive economy; and (b) ensure an adequate and effective level of protection and enforcement of intellectual property rights.

### 16.1 TRIPS Agreement

Article IP.2: Scope 1. This Title shall complement and further specify the rights and obligations of each Party under the TRIPS Agreement and other international treaties in the field of intellectual property to which they are parties.

2. This Title does not preclude either Party from introducing more extensive protection and enforcement of intellectual property rights than required under this Title, provided that such protection and enforcement does not contravene this Title.

Article IP.3: Definitions For the purposes of this Title, the following definitions apply:

(a) "Paris Convention" means the Paris Convention for the Protection of Industrial Property of 20 March 1883, as last revised at Stockholm on 14 July 1967;

(b) "Berne Convention" means the Berne Convention for the Protection of Literary and Artistic Works of 9 September 1886 revised at Paris on 24 July 1971 and amended on 28 September 1979;

(c) "Rome Convention" means the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations done at Rome on 26 October 1961;

(d) "WIPO" means the World Intellectual Property Organisation;

(e) "intellectual property rights" means all categories of intellectual property that are covered by Ar 7 of Part II of the TRIPS Agreement. The protection of intellectual property includes protection against unfair competition as referred to in Article 10bis of the Paris Convention;

(f) "national" means, in respect of the relevant intellectual property right, a person of a Party that would meet the criteria for eligibility for protection provided for in the TRIPS Agreement and multilateral agreements concluded and administered under the auspices of WIPO, to which a Party is a contracting party.

### 16.2 International agreements

Article IP.4: International agreements 1. The Parties affirm their commitment to comply with the international agreements to which they are party: (a) the TRIPS Agreement; (b) the Rome Convention; (c) the Berne Convention; (d) the WIPO Copyright Treaty, adopted at Geneva on 20 December 1996; (e) the WIPO Performances and Phonograms Treaty, adopted at Geneva on 20 December 1996; (f) the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, adopted at Madrid on 27 June 1989, as last amended on 12 November 2007; (g) the Trademark Law Treaty, adopted at Geneva on 27 October 1994; (h) the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled, adopted at Marrakesh on 27 June 2013; (i) the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial

Designs, adopted at Geneva on 2 July 1999. 2. Each Party shall make all reasonable efforts to ratify or accede to the following international agreements: (a) the Beijing Treaty on Audiovisual Performances, adopted at Beijing on 24 June 2012; (b) the Singapore Treaty on the Law of Trademarks adopted at Singapore on 27 March 2006. Article IP.5: Exhaustion This Title does not affect the freedom of the parties to determine whether and under what conditions the exhaustion of intellectual property rights applies. Article IP.6: National treatment 1. In respect of all categories of intellectual property covered by this Title, each Party shall accord to the nationals of the other Party treatment no less favourable than the treatment it accords to its own nationals with regard to the protection of intellectual property subject where applicable to the exceptions already provided for in, respectively, the Paris Convention, the Berne Convention, the Rome Convention and the Treaty on Intellectual Property in Respect of Integrated Circuits, done at Washington on 26 May 1989. In respect of performers, producers of phonograms and broadcasting organisations, this obligation only applies in respect of the rights provided for under this Agreement.

2. For the purposes of paragraph 1 of this Article, "protection" shall include matters affecting the availability, acquisition, scope, maintenance, and enforcement of intellectual property rights as well as matters affecting the use of intellectual property rights specifically addressed in this Title, including measures to prevent the circumvention of effective technological measures as referred to in Article IP.16 [Protection of technological measures] and measures concerning rights management information as referred to in Article IP.17 [Obligations concerning rights management information]. 3. A Party may avail itself of the exceptions permitted pursuant to paragraph 1 in relation to its judicial and administrative procedures, including requiring a national of the other Party to designate an address for service in its territory, or to appoint an agent in its territory, if such exceptions are: (a) necessary to secure compliance with the Party's laws or regulations which are not inconsistent with this Title; or (b) not applied in a manner which would constitute a disguised restriction on trade. 4. Paragraph 1 does not apply to procedures provided in multilateral agreements concluded under the auspices of WIPO relating to the acquisition or maintenance of intellectual property rights. Chapter 2: Standards concerning intellectual property rights Section 1: Copyright and related rights Article IP.7: Authors Each Party shall provide authors with the exclusive right to authorise or prohibit: (a) direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part, of their works; (b) any form of distribution to the public by sale or otherwise of the original of their works or of copies thereof; (c) any communication to the public of their works by wire or wireless means, including the making available to the public of their works in such a way that members of the public may access them from a place and at a time individually chosen by them; (d) the commercial rental to the public of originals or copies of their works; each Party may provide that this point does not apply to buildings or works of applied art.

### **16.3 Performers**

Article IP.8: Performers Each Party shall provide performers with the exclusive right to authorise or prohibit: (a) the fixation of their performances; (b) the direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part, of fixations of their performances; (c) the distribution to the public, by sale or otherwise, of the fixations of their performances; (d) the making available to the public of fixations of their performances, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them; (e) the broadcasting by wireless means and the communication to the public of their performances, except where the performance is itself already a broadcast performance or is made from a fixation; (f) the commercial rental to the public of the fixation of their performances. Article IP.9: Producers of phonograms Each Party shall provide phonogram producers with the exclusive right to authorise or prohibit: (a) the direct or indirect, temporary or permanent, reproduction by any means and in any form, in whole or in part, of their phonograms; (b) the distribution to the public, by sale or otherwise, of their phonograms, including copies thereof; (c) the making available to the public of their phonograms, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them; (d) the commercial rental of their phonograms to the public.

### **16.4 Broadcasting organisations**

Article IP.10: Broadcasting organisations Each Party shall provide broadcasting organisations with the exclusive right to authorise or prohibit: (a) the fixation of their broadcasts, whether these broadcasts are transmitted by wire or over the air, including by cable or satellite; (b) the direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part, of fixations of their broadcasts, whether those broadcasts are transmitted by wire or over the air, including by cable or satellite; (c) the making available to the public, by wire or wireless means, of fixations of their broadcasts, whether those broadcasts are transmitted by wire or over the air, including by cable or satellite, in such a way that members of the public may access them from a place and at a time individually chosen by them; (d) the distribution to the public, by sale or otherwise, of fixations, including copies thereof, of their broadcasts, whether these broadcasts are transmitted by wire or over the air, including by cable or satellite; (e) the rebroadcasting of their broadcasts by wireless means, as well as the communication to the public of their broadcasts if such communication is made in places accessible to the public against payment of an entrance fee.

### **16.5 Broadcasting and communication to the public of phonograms published for commercial purposes**

Article IP.11: Broadcasting and communication to the public of phonograms published for commercial purposes 1. Each Party shall provide a right in order to ensure that a single equitable remuneration is paid by the user to the performers and producers of phonograms, if a phonogram published for commercial purposes, or a reproduction of such phonogram, is used for broadcasting or any communication to the public. 2. Each Party shall ensure that the single equitable remuneration is shared between the relevant performers and phonogram producers. Each Party may enact legislation that, in the absence of an agreement between performers and producers of phonograms, sets the terms according to which performers and producers of phonograms shall share the single equitable remuneration. 3. Each Party may grant more extensive rights, as regards the broadcasting and communication to the public of phonograms published for commercial purposes, to performers and producers of phonograms.

### **16.6 Term of protection**

Article IP.12: Term of protection 1. The rights of an author of a work shall run for the life of the author and for 70 years after the author's death, irrespective of the date when the work is lawfully made available to the public.

2. For the purpose of implementing paragraph 1, each Party may provide for specific rules on the calculation of the term of protection of musical composition with words, works of joint authorship as well as cinematographic or audiovisual works. Each Party may provide for specific rules on the calculation of the term of protection of anonymous or pseudonymous works.

3. The rights of broadcasting organisations shall expire 50 years after the first transmission of a broadcast, whether this broadcast is transmitted by wire or over the air, including by cable or satellite.

4. The rights of performers for their performances otherwise than in phonograms shall expire 50 years after the date of the fixation of the performance or, if lawfully published or lawfully communicated to the public during this time, 50 years from the first such publication or communication to the public, whichever is the earlier.

5. The rights of performers for their performances fixed in phonograms shall expire 50 years after the date of fixation of the performance or, if lawfully published or lawfully communicated to the public during this time, 70 years from such act, whichever is the earlier.

6. The rights of producers of phonograms shall expire 50 years after the fixation is made or, if lawfully published to the public during this time, 70 years from such publication. In the absence of a lawful publication, if the phonogram has been lawfully communicated to the public during this time, the term of protection shall be 70 years from such act of communication. Each Party may provide for effective measures in order to ensure that the profit generated during the 20 years of protection beyond 50 years is shared fairly between the performers and the producers of phonograms.

7. The terms laid down in this Article shall be counted from the first of January of the year following the year of the event which gives rise to them.

8. Each Party may provide for longer terms of protection than those provided for in this Article

## **16.7 Resale right**

Article IP.13: Resale right 1. Each Party shall provide, for the benefit of the author of an original work of graphic or plastic art, a resale right, to be defined as an inalienable right, which cannot be waived, even in advance, to receive a royalty based on the sale price obtained for any resale of the work, subsequent to the first transfer of the work by the author.

2. The right referred to in paragraph 1 shall apply to all acts of resale involving as sellers, buyers or intermediaries art market professionals, such as salesrooms, art galleries and, in general, any dealers in works of art.

3. Each Party may provide that the right referred to in paragraph 1 shall not apply to acts of resale, where the seller has acquired the work directly from the author less than three years before that resale and where the resale price does not exceed a certain minimum amount.

4. The procedure for collection of the remuneration and their amounts shall be determined by the law of each Party.

## **16.8 Collective management of rights**

Article IP.14: Collective management of rights 1. The Parties shall promote cooperation between their respective collective management organisations for the purpose of fostering the availability of works and other protected subject matter in their respective territories and the transfer of rights revenue between the respective collective management organisations for the use of such works or other protected subject matter.

2. The Parties shall promote the transparency of collective management organisations, in particular regarding the rights revenue they collect, the deductions they apply to the rights revenue they collect, the use of the rights revenue collected, the distribution policy and their repertoire.

3. The Parties shall endeavour to facilitate arrangements between their respective collective management organisations on non-discriminatory treatment of right holders whose rights these organisations manage under representation agreements.

4. The Parties shall cooperate to support the collective management organisations established in their territory and representing another collective management organisation established in the territory of the other Party by way of a representation agreement with a view to ensuring that they accurately, regularly and diligently pay amounts owed to the represented collective management organisations and provide the represented collective management organisation with the information on the amount of rights revenue collected on its behalf and any deductions made to that rights revenue.

## **16.9 Exceptions and limitations**

Article IP.15 Exceptions and limitations Each Party shall confine limitations or exceptions to the rights set out in Articles IP.7 [Authors] to IP.11 Article [Broadcasting and communication to the public of phonograms published for commercial purposes] to certain special cases which do not conflict with a normal exploitation of the work or other subject-matter and do not unreasonably prejudice the legitimate interests of the right holders.

## **16.10 Protection of technological measures**

Article IP.16: Protection of technological measures 1. Each Party shall provide adequate legal protection against the circumvention of any effective technological measures, which the person concerned carries out in the knowledge, or with reasonable grounds to know, that he or she is

pursuing that objective. Each Party may provide for a specific regime for legal protection of technological measures used to protect computer programs.

2. Each Party shall provide adequate legal protection against the manufacture, import, distribution, sale, rental, advertisement for sale or rental, or possession for commercial purposes of devices, products or components or the provision of services which: (a) are promoted, advertised or marketed for the purpose of circumvention of; (b) have only a limited commercially significant purpose or use other than to circumvent; or (c) are primarily designed, produced, adapted or performed for the purpose of enabling or facilitating the circumvention of, any effective technological measures.

3. For the purposes of this Section, the expression "technological measures" means any technology, device or component that, in the normal course of its operation, is designed to prevent or restrict acts, in respect of works or other subject-matter, which are not authorised by the right holder of any copyright or related right covered by this Section. Technological measures shall be deemed "effective" where the use of a protected work or other subject matter is controlled by the right holders through application of an access control or protection process, such as encryption, scrambling or other transformation of the work or other subject-matter or a copy control mechanism, which achieves the protection objective.

4. Notwithstanding the legal protection provided for in paragraph 1 of this Article, each Party may take appropriate measures, as necessary, to ensure that the adequate legal protection against the circumvention of effective technological measures provided for in accordance with this Article does not prevent beneficiaries of exceptions or limitations provided for in accordance with Article IP.15 [Exceptions and limitations] from enjoying such exceptions or limitations.

### **16.11 Obligations concerning rights management information**

Article IP.17: Obligations concerning rights management information 1. Each Party shall provide adequate legal protection against any person knowingly performing without authority any of the following acts: (a) the removal or alteration of any electronic rights-management information; (b) the distribution, importation for distribution, broadcasting, communication or making available to the public of works or other subject-matter protected pursuant to this Section from which electronic rights-management information has been removed or altered without authority; if such person knows, or has reasonable grounds to know, that by so doing he or she is inducing, enabling, facilitating or concealing an infringement of any copyright or any related rights as provided by the law of a Party.

. For the purposes of this Article, "rights-management information" means any information provided by right holders which identifies the work or other subject-matter referred to in this Article, the author or any other right holder, or information about the terms and conditions of use of the work or other subject-matter, and any numbers or codes that represent such information. 3. Paragraph 2 applies if any of these items of information is associated with a copy of, or appears in connection with the communication to the public of, a work or other subject-matter referred to in this Article.

### **16.12 Trade marks**

Section 2: Trade marks Article IP.18: Trade mark classification Each Party shall maintain a trade mark classification system that is consistent with the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957, as amended and revised.

Article IP.19: Signs of which a trade mark may consist A trade mark may consist of any signs, in particular words, including personal names, or designs, letters, numerals, colours, the shape of goods or of the packaging of goods, or sounds, provided that such signs are capable of: (a) distinguishing the goods or services of one undertaking from those of other undertakings; and (b) being represented on the respective trade mark register of each Party, in a manner which enables the competent authorities and the public to determine the clear and precise subject matter of the protection afforded to its proprietor.

Article IP.20: Rights conferred by a trade mark 1. Each Party shall provide that the registration of a trade mark confers on the proprietor exclusive rights therein. The proprietor shall be

entitled to prevent all third parties not having the proprietor's consent from using in the course of trade: (a) any sign which is identical with the registered trade mark in relation to goods or services which are identical with those for which the trade mark is registered; (b) any sign where, because of its identity with, or similarity to, the registered trade mark and the identity or similarity of the goods or services covered by this trade mark and the sign, there exists a likelihood of confusion on the part of the public, including the likelihood of association between the sign and the registered trade mark. 2. The proprietor of a registered trade mark shall be entitled to prevent all third parties from bringing goods, in the course of trade, into the Party where the trade mark is registered without being released for free circulation there, where such goods, including packaging, come from other countries or the other Party and bear without authorisation a trade mark which is identical to the trade mark registered in respect of such goods, or which cannot be distinguished in its essential aspects from that trade mark. 3. The entitlement of the proprietor of a trade mark pursuant to paragraph 2 shall lapse if during the proceedings to determine whether the registered trade mark has been infringed, evidence is provided by the declarant or the holder of the goods that the proprietor of the registered trade mark is not entitled to prohibit the placing of the goods on the market in the country of final destination. Article IP.21: Registration procedure 1. Each Party shall provide for a system for the registration of trade marks in which each final negative decision taken by the relevant trade mark administration, including partial refusals of registration, shall be communicated in writing to the relevant party, duly reasoned and subject to appeal.

2. Each Party shall provide for the possibility for third parties to oppose trade mark applications or, where appropriate, trade mark registrations. Such opposition proceedings shall be adversarial. 3. Each Party shall provide a publicly available electronic database of trade mark applications and trade mark registrations. 4. Each Party shall make best efforts to provide a system for the electronic application for and processing, registration and maintenance of trade marks.

### **16.12.1 Well-known trade marks**

Article IP.22: Well-known trade marks For the purpose of giving effect to protection of well-known trade marks, as referred to in Article 6bis of the Paris Convention and Article 16(2) and (3) of the TRIPS Agreement, each Party shall apply the Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks, adopted by the Assembly of the Paris Union for the Protection of Industrial Property and the General Assembly of the WIPO at the Thirty-Fourth Series of Meetings of the Assemblies of the Member States of WIPO on 20 to 29 September 1999.

### **16.12.2 Exceptions to the rights conferred by a trade mark**

Article IP.23: Exceptions to the rights conferred by a trade mark 1. Each Party shall provide for limited exceptions to the rights conferred by a trade mark such as the fair use of descriptive terms including geographical indications, and may provide other limited exceptions, provided such exceptions take account of the legitimate interests of the proprietor of the trade mark and of third parties. 2. The trade mark shall not entitle the proprietor to prohibit a third party from using, in the course of trade: (a) the name or address of the third party, where the third party is a natural person; (b) signs or indications concerning the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of goods or of rendering of the service, or other characteristics of goods or services; or (c) the trade mark for the purpose of identifying or referring to goods or services as those of the proprietor of that trade mark, in particular where the use of that trade mark is necessary to indicate the intended purpose of a product or service, in particular as accessories or spare parts, provided the third party uses them in accordance with honest practices in industrial or commercial matters. 3. The trade mark shall not entitle the proprietor to prohibit a third party from using, in the course of trade, an earlier right which only applies in a particular locality if that right is recognised by the laws of the Party in question and is used within the limits of the territory in which it is recognised.

### **16.12.3 Grounds for revocation**

Article IP.24: Grounds for revocation 1. Each Party shall provide that a trade mark shall be liable to revocation if, within a continuous period of five years it has not been put to genuine use in the relevant territory of a Party by the proprietor or with the proprietor's consent in relation to the goods or services for which it is registered, and there are no proper reasons for non-use. 2.

Each Party shall also provide that a trade mark shall be liable to revocation if within the period of five years following the date of completion of the registration procedure it has not been put to genuine use in the relevant territory by the proprietor or with the proprietor's consent, in relation to the goods or services for which it is registered, and there are no proper reasons for non-use.

3. However, no person may claim that the proprietor's rights in a trade mark should be revoked where, during the interval between expiry of the five-year period and filing of the application for revocation, genuine use of the trade mark has been started or resumed. The commencement or resumption of use within a period of three months preceding the filing of the application for revocation which began at the earliest on expiry of the continuous period of five years of non-use, shall, however, be disregarded where preparations for the commencement or resumption occur only after the proprietor becomes aware that the application for revocation may be filed.

4. A trade mark shall also be liable to revocation if, after the date on which it was registered: (a) as a consequence of acts or inactivity of the proprietor, it has become the common name in the trade for a good or service in respect of which it is registered; (b) as a consequence of the use made of the trade mark by the proprietor of the trade mark or with the proprietor's consent in respect of the goods or services for which it is registered, it is liable to mislead the public, particularly as to the nature, quality or geographical origin of those goods or services.

#### **16.12.4 The right to prohibit preparatory acts in relation to the use of packaging or other means**

Article IP.25: The right to prohibit preparatory acts in relation to the use of packaging or other means Where the risk exists that the packaging, labels, tags, security or authenticity features or devices, or any other means to which the trade mark is affixed could be used in relation to goods or services and that use would constitute an infringement of the rights of the proprietor of the trade mark, the proprietor of that trade mark shall have the right to prohibit the following acts if carried out in the course of trade: (a) affixing a sign identical with, or similar to, the trade mark on packaging, labels, tags, security or authenticity features or devices, or any other means to which the mark may be affixed; or (b) offering or placing on the market, or stocking for those purposes, or importing or exporting, packaging, labels, tags, security or authenticity features or devices, or any other means to which the mark is affixed.

#### **16.12.5 Bad faith applications**

Article IP.26: Bad faith applications A trade mark shall be liable to be declared invalid where the application for registration of the trade mark was made in bad faith by the applicant. Each Party may provide that such a trade mark shall not be registered.

### **16.13 Protection of registered designs**

Article IP.27, deals with the protection of registered designs in the UK and EU that are new and original:

Section 3: Design Article IP.27: Protection of registered designs 1. Each Party shall provide for the protection of independently created designs that are new and original. This protection shall be provided by registration and shall confer exclusive rights upon their holders in accordance with this Section.

For the purposes of this Article, a Party may consider that a design having individual character is original.

2. The holder of a registered design shall have the right to prevent third parties not having the holder's consent at least from making, offering for sale, selling, importing, exporting, stocking the product bearing and embodying the protected design or using articles bearing or embodying the protected design where such acts are undertaken for commercial purposes.

3. A design applied to or incorporated in a product which constitutes a component part of a complex product shall only be considered to be new and original: (a) if the component part, once it has been incorporated into the complex product, remains visible during normal use of the latter; and (b) to the extent that those visible features of the component part fulfil in themselves the requirements as to novelty and originality. 4. For the purposes of point (a) of

paragraph 3, "normal use" means use by the end user, excluding maintenance, servicing or repair work.

### 16.13.1 Duration of protection

Article IP.28: Duration of protection The duration of protection available for registered designs, including renewals of registered designs, shall amount to a total term of 25 years from the date on which the application was filed.

### 16.14 Protection of unregistered designs

Article IP.29: Protection of unregistered designs 1. Each Party shall confer on holders of an unregistered design the right to prevent the use of the unregistered design by any third party not having the holder's consent only if the contested use results from copying the unregistered design in their respective territory. Such use shall at least cover the offering for sale, putting on the market, importing or exporting the product. 2. The duration of protection available for the unregistered design shall amount to at least three years as from the date on which the design was first made available to the public in the territory of the respective Party.

Article IP.30: Exceptions and exclusions 1. Each Party may provide limited exceptions to the protection of designs, including unregistered designs, provided that such exceptions do not unreasonably conflict with the normal exploitation of designs, and do not unreasonably prejudice the legitimate interests of the holder of the design, taking account of the legitimate interests of third parties.

2. Protection shall not extend to designs solely dictated by technical or functional considerations. A design shall not subsist in features of appearance of a product which must necessarily be reproduced in their exact form and dimensions in order to permit the product in which the design is incorporated or to which it is applied to be mechanically connected to or placed in, around or against another product so that either product may perform its function.

3. By way of derogation from paragraph 2, a design shall, in accordance with the conditions set out in Article IP.27(1) [Protection of registered designs], subsist in a design, which has the purpose of allowing the multiple assembly or connection of mutually interchangeable products within a modular system. Article IP.31: Relationship to copyright Each Party shall ensure that designs, including unregistered designs, shall also be eligible for protection under the copyright law of that Party as from the date on which the design was created or fixed in any form. The extent to which, and the conditions under which, such a protection is conferred, including the level of originality required, shall be determined by each Party.

### 16.15 Patents

Section 4: Patents Article IP.32: Patents and public health 1. The Parties recognise the importance of the Declaration on the TRIPS Agreement and Public Health, adopted on 14 November 2001 by the Ministerial Conference of the WTO at Doha (the "Doha Declaration"). In interpreting and implementing the rights and obligations under this Section, each Party shall ensure consistency with the Doha Declaration. 2. Each Party shall implement Article 31bis of the TRIPS Agreement, as well as the Annex to the TRIPS Agreement and the Appendix to the Annex to the TRIPS Agreement. Article IP.33: Extension of the period of protection conferred by a patent on medicinal products and on plant protection products 1. The Parties recognise that medicinal products and plant protection products protected by a patent in their respective territory may be subject to an administrative authorisation procedure before being put on their respective markets. The Parties recognise that the period that elapses between the filing of the application for a patent and the first authorisation to place the product on the market, as defined for that purpose by the relevant legislation, may shorten the period of effective protection under the patent. 2. Each Party shall provide for further protection, in accordance with its laws and regulations, for a product which is protected by a patent and which has been subject to an administrative authorisation procedure referred to in paragraph 1 to compensate the holder of a patent for the reduction of effective patent protection. The terms and conditions for the

provision of such further protection, including its length, shall be determined in accordance with the laws and regulations of the Parties. 3. For the purposes of this Title, "medicinal product" means:

(a) any substance or combination of substances presented as having properties for treating or preventing disease in human beings or animals; or (b) any substance or combination of substances which may be used in or administered to human beings or animals either with a view to restoring, correcting or modifying physiological functions by exerting a pharmacological, immunological or metabolic action, or to making a medical diagnosis. Section 5: Protection of undisclosed information

## 16.16 Protection of trade secrets

Article IP.34: Protection of trade secrets 1. Each Party shall provide for appropriate civil judicial procedures and remedies for any trade secret holder to prevent, and obtain redress for, the acquisition, use or disclosure of a trade secret whenever carried out in a manner contrary to honest commercial practices.

2. For the purposes of this Section: (a) "trade secret" means information which meets all of the following requirements: (i) it is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question; (ii) it has commercial value because it is secret; and (iii) it has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret; (b) "trade secret holder" means any natural or legal person lawfully controlling a trade secret.

3. For the purposes of this Section, at least the following conduct shall be considered contrary to honest commercial practices: (a) the acquisition of a trade secret without the consent of the trade secret holder, whenever obtained by unauthorised access to, or by appropriation or copying of, any documents, objects, materials, substances or electronic files that are lawfully under the control of the trade secret holder, and that contain the trade secret or from which the trade secret can be deduced; (b) the use or disclosure of a trade secret whenever it is carried out, without the consent of the trade secret holder, by a person who is found to meet any of the following conditions: (i) having acquired the trade secret in a manner referred to in point (a); (ii) being in breach of a confidentiality agreement or any other duty not to disclose the trade secret; or (iii) being in breach of a contractual or any other duty to limit the use of the trade secret; (c) the acquisition, use or disclosure of a trade secret whenever carried out by a person who, at the time of the acquisition, use or disclosure, knew, or ought to have known, under the circumstances that the trade secret had been obtained directly or indirectly from another person who was using or disclosing the trade secret unlawfully within the meaning of point (b).

4. Nothing in this Section shall be understood as requiring either Party to consider any of the following conducts as contrary to honest commercial practices: (a) independent discovery or creation; (b) the reverse engineering of a product that has been made available to the public or that is lawfully in the possession of the acquirer of the information, where the acquirer of the information is free from any legally valid duty to limit the acquisition of the trade secret; (c) the acquisition, use or disclosure of a trade secret required or allowed by the law of each Party; (d) the exercise of the right of workers or workers' representatives to information and consultation in accordance with the laws and regulations of that Party. 5. Nothing in this Section shall be understood as affecting the exercise of freedom of expression and information, including the freedom and pluralism of the media, as protected in each Party, restricting the mobility of employees, or as affecting the autonomy of social partners and their right to enter into collective agreements, in accordance with the laws and regulations of the Parties.

## 16.17 Medicinal product

Article IP.35: Protection of data submitted to obtain an authorisation to put a medicinal product on the market 1. Each Party shall protect commercially confidential information submitted to obtain an authorisation to place medicinal products on the market ("marketing authorisation") against disclosure to third parties, unless steps are taken to ensure that the data are protected against unfair commercial use or except where the disclosure is necessary for an overriding public interest.

2. Each Party shall ensure that for a limited period of time to be determined by its domestic law and in accordance with any conditions set out in its domestic law, the authority responsible for the granting of a marketing authorisation does not accept any subsequent application for a marketing authorisation that relies on the results of pre-clinical tests or clinical trials submitted in the application to that authority for the first marketing authorisation, without the explicit consent of the holder of the first marketing authorisation, unless international agreements to which the Parties are both party provide otherwise.
3. Each Party shall also ensure that, for a limited period of time to be determined by its domestic law and in accordance with any conditions set out in its domestic law, a medicinal product subsequently authorised by that authority on the basis of the results of the pre-clinical tests and clinical trials referred to in paragraph 2 is not placed on the market without the explicit consent of the holder of the first marketing authorisation, unless international agreements to which the Parties are both party provide otherwise. 4. This Article is without prejudice to additional periods of protection which each Party may provide in that Party's law.

## 16.18 Plant protection

Article IP.36: Protection of data submitted to obtain marketing authorisation for plant protection products or biocidal products 1. Each Party shall recognise a temporary right of the owner of a test or study report submitted for the first time to obtain a marketing authorisation concerning safety and efficacy of an active substance, plant protection product or biocidal product. During such period, the test or study report shall not be used for the benefit of any other person who seeks to obtain a marketing authorisation for an active substance, plant protection product or biocidal product, unless the explicit consent of the first owner has been proved. For the purposes of this Article, that right is referred to as data protection.

2. The test or study report submitted for marketing authorisation of an active substance or plant protection product should fulfil the following conditions: (a) be necessary for the authorisation or for an amendment of an authorisation in order to allow the use on other crops; and (b) be certified as compliant with the principles of good laboratory practice or of good experimental practice.

3. The period of data protection shall be at least 10 years from the grant of the first authorisation by a relevant authority in the territory of the Party.

4. Each Party shall ensure that the public bodies responsible for the granting of a marketing authorisation will not use the information referred to in paragraphs 1 and 2 for the benefit of a subsequent applicant for any successive marketing authorisation, regardless whether or not it has been made available to the public.

5. Each Party shall establish rules to avoid duplicative testing on vertebrate animals. Section

6: Plant varieties Article IP.37: Protection of plant varieties rights Each Party shall protect plant varieties rights in accordance with the International Convention for the Protection of New Varieties of Plants (UPOV) as lastly revised in Geneva on 19 March 1991. The Parties shall cooperate to promote and enforce these rights. Chapter 3: Enforcement of intellectual property rights Section 1: General

provisions Article IP.38: General obligations 1. Each Party shall provide under its respective law the measures, procedures and remedies necessary to ensure the enforcement of intellectual property rights. For the purposes of Sections 1, 2 and 4 of this Chapter, the term "intellectual property rights" does not include rights covered by Section 5 of Chapter 2 [Protection of undisclosed information]. 2. The measures, procedures and remedies referred to in paragraph 1 shall:

(a) be fair and equitable; (b) not be unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays; (c) be effective, proportionate and dissuasive; (d) be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse.

Article IP.39: Persons entitled to apply for the application of the measures, procedures and remedies Each Party shall recognise as persons entitled to seek application of the measures, procedures and remedies referred to in Sections 2 and 4 of this Chapter: (a) the holders of intellectual property rights in accordance with the law of a Party; (b) all other persons authorised to use those rights, in particular licensees, in so far as permitted by and in accordance with the law of a Party; and (c) federations and associations, in so far as permitted by and in accordance with the law of a Party.

## 17. Cyber Security

Articles CYB.1m 2 and 3 states that the EU and UK shall establish a regular dialogue in order to exchange information about relevant policy developments, including in relation to international security, security of emerging technologies, internet governance, cybersecurity, cyber defence and cybercrime:

**TITLE II: CYBER SECURITY** Article CYB.1: Dialogue on cyber issues The Parties shall endeavour to establish a regular dialogue in order to exchange information about relevant policy developments, including in relation to international security, security of emerging technologies, internet governance, cybersecurity, cyber defence and cybercrime.

Article CYB.2: Cooperation on cyber issues 1. Where in their mutual interest, the Parties shall cooperate in the field of cyber issues by sharing best practices and through cooperative practical actions aimed at promoting and protecting an open, free, stable, peaceful and secure cyberspace based on the application of existing international law and norms for responsible State behaviour and regional cyber confidence-building measures. 2. The Parties shall also endeavour to cooperate in relevant international bodies and forums, and endeavour to strengthen global cyber resilience and enhance the ability of third countries to fight cybercrime effectively.

Article CYB.3: Cooperation with the Computer Emergency Response Team – European Union Subject to prior approval by the Steering Board of the Computer Emergency Response Team – European Union (CERT-EU), CERT-EU and the national UK computer emergency response team shall cooperate on a voluntary, timely and reciprocal basis to exchange information on tools and methods, such as techniques, tactics, procedures and best practices, and on general threats and vulnerabilities. Article CYB.4: Participation in specific activities of the Cooperation Group established pursuant to Directive (EU) 2016/1148 1. With a view to promoting cooperation on cyber security while ensuring the autonomy of the Union decision-making process, the relevant national authorities of the United Kingdom may participate at the invitation, which the United Kingdom may also request, of the Chair of the Cooperation Group in consultation with the Commission, in the following activities of the Cooperation Group:

(a) exchanging best practices in building capacity to ensure the security of network and information systems; (b) exchanging information with regard to exercises relating to the security of network and information systems; (c) exchanging information, experiences and best practices on risks and incidents; (d) exchanging information and best practices on awareness-raising, education programmes and training; and (e) exchanging information and best practices on research and development relating to the security of network and information systems.

2. Any exchange of information, experiences or best practices between the Cooperation Group and the relevant national authorities of the United Kingdom shall be voluntary and, where appropriate, reciprocal.

© RT Coopers Solicitors, 2021

Please contact RT Coopers on 0207 488 9947 or at [enquiries@rtcooperssolicitors.com](mailto:enquiries@rtcooperssolicitors.com). Website [www.rtcoopers.com](http://www.rtcoopers.com)