**CO-EXISTENCE & CONSENT AGREEMENT**

This co-existence and consent agreement (hereinafter “This Agreement”) is made and entered into among the following parties: ABC, Inc. (hereafter, “ABC”), a \_\_\_\_\_\_\_ corporation, and XYZ Motors, LLC (hereafter, “XYZ”), a \_\_\_\_\_\_ limited liability company. ABC and XYZ are sometimes hereinafter individually referred to as a “Party” and collectively referred as the “Parties.” This Agreement is for the purpose of avoiding conflict between parties for the use of their respective trademarks (referred to collectively as “Trademarks”).

**RECITALS**

This Agreement is entered into with reference to the following facts.

**WHEREAS**, XYZ owns all right, title and interest in United States Trademark Registration 0101010101 for the mark XYZ MARK in International Class \_\_\_, for goods and services identified in its registration as “\_\_\_\_\_;

 **WHEREAS**, ABC has applied for registration of ABC MARK as a word mark, serial number 1010101010, in International Classes \_\_\_ and \_\_\_, in the U.S. Patent and Trademark Office (“USPTO”) (the “Pending Mark”), for goods and services identified in its application as “\_\_\_\_\_;”

 **WHEREAS**, the Parties desire to enter into this Agreement for purposes of avoiding any disputes between them and of allowing the peaceful co-existence of each of them within their respective markets;

 **NOW, THEREFORE**, in consideration of the foregoing premises and the terms, conditions, promises and covenants set forth in this Agreement, and for mutual consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows.

**AGREEMENT**

1. **Consent.** The Parties believe that the differences in their respective target customers, the differences in the respective goods and services, and the disparate channels of commerce for their respective goods and services, provided under their respective Trademarks, are more than sufficient so as to avoid a likelihood of confusion.
2. Subject to the terms and conditions set forth in this Agreement, XYZ hereby consents to the use, application and registration of ABC’s ABC MARK word mark for the services identified in Serial No. 1010101010, and agrees not to file any opposition, cancellation, infringement, unfair competition or other actions which would prevent ABC from such use or registration of its mark.
3. Subject to the terms and conditions set forth in this Agreement, ABC hereby consents to the use by XYZ of its XYZ MARK word mark in connection with the services identified in Registration No. 0101010101, and agrees not to file any cancellation, infringement, unfair competition or other actions which would prevent XYZ from use of its XYZ MARK mark.
4. **Avoidance of Confusion.** The Parties agree to limit their use of their respective marks to the goods and services included in their respective registrations or applications referenced in this Agreement, above. The Parties further agree to take reasonable actions to prevent any confusion due to the co-existence and registration of their respective marks, to notify each other of any instances of actual confusion of which they become aware, and to take prompt and reasonable action to correct such confusion. In particular, each party agrees that promptly upon receipt of any inquiry or other communication which reasonably appears to be intended for the other Party, it will respond by providing the relevant contact information for the other Party, as shown on the other Party’s then-current web site.
5. **No Admission**. Nothing contained in this agreement shall operate as an admission of liability, likelihood of confusion or infringement by either Party. Each Party shall bear its own costs and attorneys’ fees incurred in connection with preparation of this Agreement.
6. **General.**  Each of the Parties hereto agrees to execute and deliver any and all additional papers and documents, and to do any and all acts reasonably necessary in connection with the performance of its obligations hereunder to carry out the spirit and intent of the Parties hereto. In the event that any provision hereof is deemed to be illegal or unenforceable, such a determination shall not affect the validity of the remaining provisions hereof. All of the terms and provisions contained herein shall inure to the benefit of and shall be binding upon each of the Parties hereto and their respective Affiliates, successors and assigns. This Agreement and the documents expressly incorporated herein shall constitute the entire Agreement between the Parties hereto with respect to the subject matter hereof, and shall supersede all prior and contemporaneous agreements and representations of the Parties concerning the subject matter hereof and the terms applicable thereto.
7. **Disputes, Arbitration and Actions.** The Parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiation. Any dispute arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, which dispute cannot be resolved in good faith, shall be determined by arbitration conducted in \_\_\_\_\_\_ by \_\_\_\_\_\_\_\_. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction but it shall be deemed to preclude any remedy sought in a court of law. This Agreement shall be construed and enforced in accordance with and governed by the laws of the State of \_\_\_\_\_\_, without giving effect to conflicts of law principles.
8. **Notices.** All notices under this Agreement shall be sent to the Parties representatives as follows:

|  |  |
| --- | --- |
| **for ABC**  | **for XYZ Motors, LL** |

1. **Assignment.** Both Parties may license or assign their respective rights hereunder, in whole or in part, provided that such license or assignment does not extend beyond the provisions of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as follows:

DATED: \_\_\_\_\_\_\_, 2018 ABC, Inc.

 by\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 title\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 XYZ, LLC

 by\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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