

Agreement to Lease – Chatham Counterguard

AN AGREEMENT made in duplicate the day of
Two Thousand and **BETWEEN GIBRALTAR COMMERCIAL
PROPERTY COMPANY LIMITED** a company incorporated in Gibraltar
with registered offices situate at No. 6 Convent Place, Gibraltar (hereinafter
called "the Owner") of the one part **AND**
@A.....
.....
a Company incorporated in Gibraltar with registered address at@B.....
..... Gibraltar (hereinafter called "the Licensee") of the
other part.

WHEREAS

In this Agreement where the context so admits the following expressions shall have the following meanings:-

- (a) the "Surveyor" shall mean Land Property Services Limited whose principal place of business is at Suite 6B Lease Place, 50 Town Range, Gibraltar or any other person appointed by the Owner as Surveyor for the purpose of this Agreement;
- (b) the "Unit" shall mean the premises situate at@C..... Chatham Counterguard within the limits shown (for the purpose of identification only) on the plan annexed hereto and thereon edged red on the inner side of the boundaries;
- (c) the "Permitted Scheme" shall mean the fitting out and furnishing of the unit as approved by the Owner as more particularly described and illustrated in the project outline proposal contained in the Second Schedule hereto;
- (d) the "Date of Access" shall be the date of execution of this Agreement;
- (e) the "Date of Completion" shall mean the date by which the Permitted Scheme is completed as provided by Clause 15 hereof.
- (f) "Programme of Works" means the programme of works as set out in the First Schedule hereto.

NOW subject as hereinafter provided **IT IS HEREBY AGREED** by and between the parties as follows:-

1. In consideration of the Licensee during the currency of this Agreement including any extensions thereto paying to the Owner a fee at the rate of Ten Pounds (£10) per month payable in advance the first monthly payment being due at the date of execution of this Agreement the Licensee shall have for the period of (.....) months from the date hereof or subject as herein extended licence and authority to enter and remain in the unit for the purposes hereinafter set out and subject to the terms of this Agreement and for no other purpose whatsoever.

2. The Licensee shall pay all rates, taxes, assessments and outgoings whatsoever in respect of the Unit from the date hereof.

3. From the date hereof and until a lease in substantially the same form as the draft lease annexed in the Third Schedule hereto (hereinafter referred to as "the draft lease") is granted to the Licensee this Agreement shall not operate as a demise nor confer on the Licensee any legal estate nor interest in the Unit or any part thereof but the Licensee shall nevertheless be deemed to be subject to the same exceptions and reservations, covenants, conditions and provisions as are contained in the draft lease so far as they are applicable and not inconsistent with the provisions of this Agreement.

4. The Licensee shall disclose to the Owner who its shareholders are at the time of entering into this Agreement.

5. (a) The Licensee shall obtain within two (2) months from the date hereof a Planning Permit under the Town Planning Act and a Section 48 Notice under the Public Health Act **PROVIDED** that should there be any delay in obtaining the Planning Permit and Section 48 Notice for reasons due solely to matters beyond the control of the Licensee an extension of time will be granted to the Licensee **PROVIDED** also that if the parties hereto cannot agree the length of time of such extension or extensions the same shall be submitted to Arbitration in pursuant to the provisions of Clause 17 hereof.

(b) On the grant of the Planning Permit and Section 48 Notice the Licensee shall at its expense proceed forthwith with its Programme of Works and the fitting out and furnishing of the Unit in a proper and workmanlike manner and in conformity with the Permitted Scheme and shall complete the same to the reasonable satisfaction of the Owner within the time limit provided for in Clause 1 hereof and in accordance with the provisions of the First Schedule hereto. Provided Always that the Owner may if he deems that it is in his interests and expedient to do so allow the Licensee an extension or extensions of time to comply with any of the requirements of this Clause. **PROVIDED FURTHER** that the date by which any stage specified in the First Schedule hereto is to be completed shall be extended if matters are delayed by:-

- (i) fire tempest or earthquake; or
- (ii) civil commotion, legal combination of workmen or strike affecting any of the trades employed upon the development area; or
- (iii) reason of inability of the Licensee or its contractors for reasons beyond their control to secure such labour and materials as may be essential to the execution of the Permitted Scheme for such period as it is agreed in writing between the Licensee's architect and the Surveyor and in default of agreement as may be determined by the Owner. Approval for the said extension or extensions of time shall in respect of paragraphs (a) be by certificate from the Surveyor and in respect of paragraph (b) be by formal agreement;
- (iv) force majeure.

6. (a) All works to complete the Permitted Scheme shall comply with the provisions of the Laws of Gibraltar applicable thereto.

(b) The execution of the Permitted Scheme both in the selection of materials and construction and workmanship and the installation of the furniture, fittings and fixtures in the Unit shall be carried out and completed to the satisfaction of the Owner.

7. (a) The Licensee shall not assign or part with the whole or any part of any of its interest under this Agreement except by way of mortgage or charge to a bank or financial institution **PROVIDED ALWAYS** the said bank or financial institution shall first enter into a binding agreement under seal with the Owner that in the event of the bank or financial institution commencing proceedings for foreclosure in respect of the mortgage or charge or appointing a Receiver therefore or otherwise enforcing its security, any arrears of licence fee or rates owed to the Owner and the Government under this Agreement or relating to the Unit shall be paid and be payable by the bank or financial institution to the Owner within ninety days of commencement of proceedings for foreclosure or of the appointment of a Receiver or of the taking of any other steps to enforce the security and in any of such events such sums outstanding shall become a debt payable to the Owner by the bank or financial institution.

(b) The Licensee shall not permit or grant its consent or approval to the transfer of any shares in the Licensee or register any transfer of shares in the Licensee other than by way of pledge for raising security.

8. (a) The Licensee binds himself to keep the Unit and any fixtures and fittings therein constantly insured against loss or damage by fire, lightning, aircraft or other explosion with an established insurance company of repute in the joint names of the Owner and the Licensee to the full re-instatement value thereof and shall whenever required produce to the Owner the policy or

policies of such insurance and the receipt or receipts for the premium or premiums relating thereto.

(b) In the event of the Unit, or any part thereof or the fixtures and fittings therein, being destroyed or damaged by fire, lightning, aircraft or other explosion the Licensee shall lay out to the reasonable satisfaction of the Owner all the money which shall be received by virtue of any such insurance as soon as practicable after the receipt thereof together with any further sum of money which may be necessary in rebuilding or reinstating the Unit, fixtures and fittings or any part thereof so destroyed or damaged to their former condition.

9. The Licensee shall not use or permit to be used any portion of the Unit or anything connected therewith or erected or being thereon as an advertising station or for the display of boards, bills, posters or notices save and except that suitable notice boards and signs may be erected subject to the prior approval of the Owner and the Development and Planning Commission to advertise the works being undertaken within the Unit and the contractors and subcontractors employed thereon.

10. The Licensee shall if necessary before commencing any works and at all times during the execution of such works set up sufficient hoardings and enclosures for the protection of the public and the owners and occupiers of the adjoining properties and shall repair and maintain the same in good condition.

11. The Licensee shall have at his disposal at the commencement of and during the currency of this Agreement such sums as are necessary to complete the Permitted Scheme in accordance with the terms hereof. The Owner shall be entitled to request the Licensee to produce written evidence in satisfaction of this condition.

12. The Licensee shall not claim compensation against the Crown whether in its right of the Government or in its right of the Government of the United Kingdom and Northern Ireland or against any officer or person in the service or employment of either Government in respect of any damage to the Unit or the fixtures and fittings or any part thereof or in respect of any loss of life or injury or damage to persons or chattels therein or direct or indirect loss arising from or in any way attributable to any of the following acts or occurrences that is to say:-

(a) blasting, excavating, tunnelling, boring or mining by or on orders or instructions of either Government;

(b) flood, landslide or fall of water rocks or stones howsoever caused;

(c) the firing of any gun or the flying of any aircraft owned by either Government;

(d) fire, smoke or fumes or explosion in or originating or arising in any property, pipe or vessel occupied or owned by either Government; or

(e) the operation by either Government of any Wireless Telegraphy Station, installation or apparatus;

whether as a result of accident or by reason of any negligence or other acts of either of the said Governments or any officer or person in their service or employment or acting as agent for them.

13. Until the Licensee has fitted out and completed the Permitted Scheme and a lease shall have been granted to the Licensee by the Owner in accordance with Clause 15 hereof the Owner shall without prejudice to any of his other lawful rights and remedies by himself, by or through the Surveyor or other authorised officer or servant be entitled at all times on reasonable notice to enter upon the Unit to view the state and progress and to inspect the materials and workmanship and the fixtures and fittings thereon and for any other reasonable purpose including the constructing repairing or cleansing of any sewer, drain, electricity cable or service from any adjoining land.

14. In the event of the Licensee:-

(a) failing to obtain a Section 48 Notice within the prescribed time limit or agreed extension thereof; or

(b) failing to fit out and furnish to the reasonable satisfaction of the Government any stage of the Permitted Scheme within the time limits specified in the First Schedule hereto or agreed extension thereof; or

(c) failing to fit out and furnish the unit to the reasonable satisfaction of the Owner as to render it fit for immediate occupation and use for all purposes for which the same are to be used within (....) months from the date hereof or the final day of any extension period granted by the Owner to the Licensee; or

(d) in any other way failing to perform and observe all or any of the material covenants obligations and conditions on his part under this Agreement and thereafter failing to remedy the same within a reasonable time after being given notice to that effect by the Owner.

The Owner shall be entitled to enter upon and take up possession of the Unit and every part thereof and all fixtures and fittings whatsoever thereon as if this Agreement had not been entered into and without making to the Licensee any compensation or allowance for the same and this Agreement shall thereupon cease and determine but without prejudice to any right of action or other remedy for the recovery of any monies due to the Owner or in respect of any antecedent breach of this Agreement:

15. If and when the Permitted Scheme shall have been completed in accordance with the provisions hereof to the reasonable satisfaction of the Owner in the period as shall be allowed or fixed by the Owner or any agreed extension thereof as provided under this Agreement and the Licensee shall have paid all sums payable by him under this Agreement and shall have performed and observed all the stipulations and conditions on his part contained the Owner shall grant and the Licensee shall accept a lease of the Unit for a period of@D..... (.....) years from the expiration of the said period or extended period at the rent specified in the draft lease set out in the Third Schedule hereto. The Lease shall be in the form and contain the terms covenants conditions reservations stipulations obligations and agreements set forth in the draft lease.

16. All notices consents and approvals to be given hereunder by or on behalf of the Owner shall be in writing and all such notices consents and approvals may be served upon the Licensee by being sent by registered post addressed to the Licensee at its registered office if a company or if an individual at his last known address or addresses if more than one and shall be deemed to have been delivered in the usual course of post. Any notice to be served on the Owner shall be in writing and shall be served by post to the Surveyor at Suite 6B Leanse Place, 50 Town Range, Gibraltar.

17. If any differences shall arise between the parties hereto affecting their respective rights or obligations under this Agreement the matter in dispute shall be determined by a single arbitrator to be appointed by agreement between the parties or failing agreement to be appointed by the Chairman for the time being of the General Council of the Bar in Gibraltar and the provisions of the Arbitration Ordinance of Gibraltar shall apply to any such reference and arbitration.

18. All charges, stamp duty and any other disbursements in connection with the preparation of this Agreement in duplicate and on the subsequent lease in duplicate shall be paid by the Licensee.

19. The parties hereto may by deed, document or letter in writing by agreement amend any of the provisions of this Agreement.

IN WITNESS WHEREOF the Owner and the Licensee have caused their respective Common Seals to be hereunto affixed the day and year first above written.

FIRST SCHEDULE
PROGRAMME OF WORKS

Date of
Commencement Completion

1. Walling
2. Flooring
3. Ceilings
4. Doors
5. Electrics
6. Sanitary works & Fittings
7. Painting
8. Furnishings

SECOND SCHEDULE

Plans to be attached

THIRD SCHEDULE

THIS LEASE made in duplicate the day of Two
Thousand and **BETWEEN GIBRALTAR COMMERCIAL**
PROPERTY COMPANY LIMITED a company incorporated in Gibraltar
with registered offices situate at No. 6 Convent Place, Gibraltar (hereinafter
called "the Lessor" which expression includes his successors in office) of the
one part **AND**
@A.....
a Company incorporated in Gibraltar with registered address at
@A1.....
Gibraltar (hereinafter called "the Lessee") of the other part.

WHEREBY IT IS AGREED AS FOLLOWS:-

1. In this lease unless there is something in the subject or context inconsistent therewith:-

1.1 (a) words importing the masculine include the feminine and words importing the neuter include the masculine and feminine;

(b) words importing the singular include the plural and vice-versa;

(c) words importing persons include corporations and vice- versa;

(d) any reference to an Act includes any modifications extension or re-enactment thereof for the time being in force and all instruments orders regulations permissions and directions for the time being made or given thereunder or deriving validity therefrom;

(e) where the context so admits the expression "the Lessor" includes the reversioner for the time being immediately expectant on the term hereby created and the term "the Lessee" includes its successors in title and persons deriving title under it and if and for so long as the Lessee shall include two or more persons the covenants on the part of the Lessee herein contained shall take effect jointly and severally.

2. In consideration of the expense incurred by the Lessee in fitting out and furnishing the premises hereby demised and of the rent and covenants on the part of the Lessee hereinafter reserved and contained the Lessor hereby demises unto the Lessee **ALL THAT** the premises situate at @B....., Gibraltar (hereinafter called “the demised premises”) and being part of Crown Property No.C..... as shown delineated red on the plan annexed hereto **TO HOLD** the same unto the Lessee from the@D..... day of Two Thousand and for the term of five years **PAYING** therefore the rent of £.....@F..... per month for the first three years and thereafter a rent to be reviewed at the end of the third year and every third year thereafter by reference to the provisions of the schedule hereto which rent shall be payable on the first day of each month without any written demand.

3. THE LESSEE AGREES WITH THE LESSOR AS FOLLOWS:-

- {1} To pay the said rent on the days and in the manner aforesaid.
- {2} To pay all rates taxes duties charges assessments whatsoever which are due at any time during the currency of this lease.
- {3} To establish manage and control a first class business from the demised premises and to maintain such standards of service furniture and fittings as are associated therewith and to the satisfaction of the Lessor.
- {4} To repair maintain and keep the interior of the demised premises including the external doors and windows in good clean and tenantable repair and condition to the Lessor’s reasonable satisfaction.
- {5} Not to make or permit to be made any alterations or additions to the demised premises and not to cut alter or injure any walls thereof without the written consent of the Lessor such consent not to be unreasonably withheld or delayed.
- {6} To permit the Lessor and his agents with or without workmen and others at all reasonable times to enter upon and to examine the condition of the demised premises and the standard of service and cleanliness and thereupon the Lessor may serve upon the Lessee notice in writing specifying any repairs or redecoration necessary to be done and require the Lessee forthwith to execute the same and if the Lessee shall not within three months after service of such notice proceed diligently with the execution of such repairs or redecoration then to permit the Lessor to enter upon the demised premises and execute such repairs and the cost thereof shall be a debt due from the Lessee to the Lessor and be forthwith recoverable by action.
- {7} Not to leave any refuse in any open part or outside the demised premises except in a suitable receptacle in an area of the property designated by the Lessor for the collection of refuse

{8} Not to do or suffer to be done upon the demised premises anything whereby the insurance of the said premises or building may be rendered void or voidable.

{9} (a) Not to use the demised premises or any part thereof other than as ...@G.....

(b) To maintain such standards of service furniture furnishings crockery and cleanliness as are usually associated therewith and to the reasonable satisfaction of the Lessor. (This clause will only be included in the case of catering businesses).

(c) To open for business during such hours and on such days as the Lessor may reasonably require having regard to the nature of the business and to the Lessee's requirements in this respect.

(d) The Lessor shall be entitled to immediate possession of the demised premises under the provisions of Clause 5 if the demised premises remain closed for business without the consent of the Lessor for any period exceeding 30 days.

{10} Not to do or permit to be done upon the demised premises anything which in the opinion of the Lessor may be or become a nuisance or in any way interfere with or cause damage to the Lessor or his tenants or the occupiers of neighbouring premises or to the public.

{11} Not to keep or permit or suffer to be kept on the demised premises any materials of a dangerous combustible or explosive nature and not to carry on or to permit or suffer to be carried on upon the demised premises any trade or business of a noxious noisy or offensive nature.

{12} Not to share assign underlet or part with the possession of the demised premises or any part thereof.

{13} To keep the demised premises insured against loss or damage by fire to the full value thereof in the joint names of the Lessor and the Lessee with a reputable insurance company previously approved by the Lessor and to apply all moneys received under such policy within six months of the date of receipt of such moneys in reinstating the demised premises damaged or destroyed and to make good any deficiency out of its own moneys. If the Lessee fails to reinstate the demised premises within the stated period it shall be the option of the Lessor to serve a formal notice on the Lessee to terminate this lease as at the date of receipt of the said formal notice. To produce to the Lessor the policy and current year's premium receipt whenever requested to do so by the Lessor or his agents.

{14} To insure and keep insured in the joint names of the Lessor and Lessee the external glass to the doors and windows of the demised premises to the

full value thereof and to produce to the Lessor the premium and current year's receipt for same whenever required by the Lessor.

{15} Not to claim compensation against the Crown whether in its right of the Government of Gibraltar or in its right of the Government of the United Kingdom and Northern Ireland or against any officer or person in the service or employment of either Government in respect of any damage to the demised premises whether developed or otherwise or any part thereof or in respect of any loss of life or injury or damage to persons or chattels therein or direct or indirect loss arising from or in any way attributable to any of the following acts or occurrences that is to say:-

{i} blasting, excavating, tunnelling, boring or mining by or on orders or instructions of either of the said Governments;

{ii} flood, landslide or fall of water rocks or stones howsoever caused;

{iii} the firing of any gun or the flying of any aircraft owned by either Government;

{iv} fire, smoke or fumes or explosion in or originating or arising in any property, pipe or vessel occupied or owned by either Government; or

{v} the operation by either Government of any Wireless Telegraphy Station, installation or apparatus;

whether as a result of accident or by reason of any negligence or other acts of either of the said Governments or any officer or person in their service or employment or acting as agent for them.

{16} Not to affix or display anything outside the demised premises except the Lessee's name and business and in accordance with a design previously approved by the Lessor.

{17} Not to leave or deposit anything outside the demised premises.

{18} Quietly to yield up the demised premises at the determination of the tenancy in good and substantial repair and condition and make good any damage caused by the removal of any erections fixtures fittings plant and machinery in the nature of tenant's or trades' fixtures and fittings fixed thereto or belonging to the Lessee.

{19} To pay all costs and charges including stamp duty in connection with the preparation of this lease.

4. THE LESSOR AGREES WITH THE LESSEE AS FOLLOWS:-

That the Lessee paying the reserved rent and observing the covenants on its part herein contained shall peaceably enjoy the demised premises without any interruption by the Lessor or any person lawfully claiming through under or in trust for him.

5. PROVIDED ALWAYS AND IT IS HEREBY AGREED AS FOLLOWS:-

{1} If the rent hereby reserved or any part thereof shall at any time be in arrear for twenty one days (whether formally demanded or not) or if the Lessee shall become bankrupt or enter into any composition with its creditors or suffer any distress or execution to be levied against its goods or in the case of a company if the Lessee shall enter into liquidation whether compulsory or voluntary (save for the purpose of reconstruction or amalgamation) or if the Lessee shall neglect to observe any covenant on its part herein contained the Lessor shall at any time thereafter be entitled to terminate this lease or shall re-enter upon the demised premises or any part thereof in the name of the whole and thereupon this demise shall absolutely determine but without prejudice to the right of action or remedy of the Lessor for any antecedent breach of the Lessee's covenants herein contained and such right of re-entry shall not be waived or prejudiced by the receipt by the Lessor (even after the service of notice on any ground or cause for the exercise of such right) of any rent accruing due after such right shall have arisen.

{2} Any notice to the Lessee under this lease shall be deemed to be sufficiently served if it is left at the last known place of abode/business in Gibraltar of the Lessee or affixed on the land or any house or building comprised in this lease or sent by post in a registered letter addressed to the Lessee by name at the aforesaid place of abode/business.

{3} The Lessor shall not be liable for any damage or loss suffered by or occasioned to the demised premises or anything therein through fire flood tempest water or effluence accident or other cause howsoever and wheresoever arising.

{4} Except as required by sub-section (2) of Section 58 of the Landlord and Tenant Act the Lessee shall not be entitled to any compensation under Part IV of that Act on the determination of the tenancy hereby created.

IN WITNESS WHEREOF etc

SCHEDULE

1. In this lease "review date" means the @H day of in the year 20.... and in every third year thereafter and "review period" means the

period starting with any review date up to the next review date or starting with the last review date up to the end of the term hereof.

2. The yearly rent shall be:

(a) until the first review date the rent of £.....@L..... per annum and

(b) during the review period a rent equal to the rent previously payable hereunder or such revised rent as may be ascertained as herein provided whichever be the greater.

3. Such revised rent for the review period may be agreed at any time between the Lessor and the Lessee or (in the absence of agreement) determined not earlier than the review date by an arbitrator such arbitrator to be nominated in absence of agreement by or on behalf of the President for the time being of the Royal Institution of Chartered Surveyors on the application of the Lessor or the Lessee made not earlier than six months before the review date but not later than the end of the review period and so that in the case of such arbitration the revised rent to be awarded by the arbitrator shall be such as he shall decide is the yearly rent at which the demised premises might reasonably be expected to be let at the review date.

(A) On the following assumptions at that date:

(i) that the demised premises:

(a) are available to let on the open market without a fine or premium with vacant possession by a willing lessor to a willing lessee for a term equal to the term

(b) are to be let as a whole subject to the terms of this lease (other than the amount of the rent hereby reserved but including the provisions for review of that rent)

(c) are fit and available for immediate occupation

(d) may be used for any of the purposes permitted by this lease as varied or extended by any licence granted pursuant thereto

(ii) That the covenants herein contained on the part of the Lessor and the Lessee have been fully performed and observed

(iii) That no work has been carried out to the demised premises which has diminished the rental value and that in case the demised premises have been destroyed or damaged they have been fully restored

(B) But disregarding:

(i) any effect on rent of the fact that the Lessee or its predecessors in title have been in occupation of the demised premises.

(ii) any goodwill attached to the demised premises by reason of the carrying on thereof of the business of the Lessee or its predecessors in title in their respective businesses and

(iii) any increase in rental value of the demised premises attributable to the existence at the review date of any improvements to the demised premises or any part thereof carried out with consent where required otherwise than in pursuance of an obligation to the Lessor or in compliance with statutes or directions of Local Authorities or other bodies exercising powers under statute or Royal Charter either (a) by the Lessee or their predecessors in title during the said term or during any period of occupation prior thereto arising out of an agreement to grant such term or (b) by any Lessee of the demised premises before the commencement of the term hereby granted so long as the Lessor or its predecessors in title have not since the improvement was carried out had vacant possession of the relevant part of the demised premises.

4. IT IS HEREBY FURTHER PROVIDED in relation to the ascertainment and payment of revised rent as follows:

(A) The arbitration shall be conducted in accordance with the Arbitration Act 1895 or any statutory modification or re-enactment thereof for the time being in force with the further provision that if the arbitrator nominated pursuant to Clause 3 hereof shall die or decline to act the President for the time being of the Royal Institution of Chartered Surveyors or the person acting on his behalf may on the application of either of the Lessor or the Lessee by writing discharge the arbitrator and appoint another in his place

(B) When the amount of any rent to be ascertained as hereinbefore provided shall have been so ascertained memoranda thereof shall thereupon be signed

by or on behalf of the Lessor and the Lessee and annexed to this lease and the counterpart thereof and the Lessor and Lessee shall bear their own costs in respect thereof

(C) (i) if the revised rent payable on and from the review date has not been agreed by the review date rent shall continue to be payable at the rate previously payable and forthwith upon the revised rent being ascertained the Lessee shall pay to the Lessor any short fall between the rent and the revised rent payable up to and on the preceding rent day together with interest on any shortfall at the rate of Three per cent above the base rate of BARCLAYS BANK such interest to be calculated on a day-to-day basis from the review date on which it would have been payable if the revised rent had then been ascertained to the date of actual payment of any shortfall and the interest so payable shall be recoverable in the same manner as rent in arrear

(ii) for the purposes of this proviso the revised rent shall be deemed to have been ascertained on the date when the same has been agreed between the Lessor and the Lessee or as the case may be the date of the award of the arbitrator

(D) If either the Lessor or the Lessee shall fail to pay any costs awarded against it in an arbitration under the provisions hereof within twenty-one days of the same being demanded by the arbitrator the other shall be entitled to pay the same and the amount so paid shall be repaid by the party chargeable on demand.

The Common Seal of the within-named Owner was hereunto affixed in the presence of:-

The Common Seal of the within-named Licensee was hereunto affixed in the presence of:-