Non-exclusive Distribution Agreement (Pro-Supplier)

This sample agreement is drafted under English law as a starting point for use where a supplier company wants to appoint a distributor to sell the supplier company's products in a particular country or territory. It is drafted so that the distributor buys the products from the supplier company for onward sale (as opposed to an agency arrangement where the agent sells the products to end customers on behalf of the supplier company). Within the EU, distribution agreements can raise competition law issues depending on the supplier company's share of the market in which it supplies products, the distributor's share of the market in which it buys those products, and the terms of the distribution agreement. For distribution agreements within the EU, competition advice should therefore be sought on a case by case basis. Some EU Member States also require the supplier company to pay compensation to a distributor on termination of the distribution agreement, and depending on local law it might not be possible to exclude that right by contract. Again, local law advice should be sought.

*This document is intended only as a starting point for drafting and must be carefully considered in the context of the specific transaction.* *This document is not a substitute for detailed advice on specific transactions and should not be taken as providing legal advice on any of the topics discussed, nor should it be taken as creating a solicitor-client relationship between the reader and Fieldfisher.*

**THIS AGREEMENT** is made the [ • ] day of [ • ] 20[ • ]

**BETWEEN:**

1. [ ● ], a company registered in [ ● ], (company registration no. [ ● ],) whose [registered office] is at [ ● ], (the "**Company**");
2. [ ● ], a company registered in [ ● ], (company registration no. [ ● ],) whose [registered office] is at [ ● ], (the "**Distributor**");

**BACKGROUND:**

1. The Company is a supplier of certain [*insert description of products*] described in Schedule 1.
2. The Company wishes to appoint the Distributor as a non-exclusive distributor, within the territories designated in this Agreement, of the Company's products listed in Schedule 1, and the Distributor wishes to accept such appointment on the terms and conditions of this Agreement.

**IT IS AGREED:**

1. Definitions and interpretation
2. In this Agreement, unless the contrary intention appears:
3. "**Acceptance**" has the meaning given in Clause 5.4;
4. "**Accepted Purchase Order**" means a Purchase Order that has been accepted by the Company in accordance with Clause 5.4;
5. "**Affiliate**" means in relation to a party, any body corporate which is from time to time a holding company of that party, a subsidiary of that party or a subsidiary of a holding company of that party;
6. "**After Sales Support**" means the after sales support services described in Schedule 8;
7. "**Business Day**" means a day other than a [*Saturday*], [*Sunday*] or a public holiday in [*insert country*];
8. "**Business Hours**" means between the hours of [*0900 and 1700*] on any Business Day;
9. "**Change in Law**" means the coming into effect, repeal, issue, amendment or variation of any Law after the Effective Date;
10. "**Change** **of** **Control**" means a change in the identity of the person who has Control;
11. "**Claim**" means any action, claim, demand, proceeding, filing, objection or complaint of any nature or kind;
12. "**Company Personal Data**" has the meaning given in Clause 19.2;
13. "**Company's Terms and Conditions of Sale**" means the most recent version of the Company's standard terms and conditions of sale notified by the Company to the Distributor. The Company's Terms and Conditions of Sale as at the Effective Date are set out in Schedule 3;
14. "**Company Training**" means the training described in Schedule 7;
15. "**Confidential Information**" means:
    * + 1. all information that relates to the provisions of this Agreement, the negotiations relating to this Agreement or the subject matter of this Agreement;
        2. information disclosed to the relevant party (the "**Recipient**") by or on behalf of the other party (the "**Disclosing Party**"), whether before or after the Effective Date, which comprises or relates to know-how, secret processes and/or inventions of the Disclosing Party;
        3. all other information disclosed to the Recipient by or on behalf of the Disclosing Party, whether before or after the Effective Date, which is marked as or has been otherwise indicated to be confidential or which derives value to the Disclosing Party from being confidential or which would be regarded as confidential by a reasonable business person;
16. "**Contract Year**" means a period of twelve (12) months commencing on the Effective Date or on any anniversary of the Effective Date during the Term;
17. "**Control**" means the right to control, directly or indirectly, the activities of a person, whether through ownership or the ability to control the voting powers of shares, the ability to control the board or management of such person or otherwise;
18. "**Data Protection Law**" means the Data Protection Act 1998, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to privacy and the processing and/or security of personal data;
19. "**Delivery**" has the meaning given to that word in the Company's Terms and Conditions of Sale [***Drafting note: This should be reviewed against the Company's sales terms and if necessary amended to reflect when "delivery" is deemed to occur under the Company's sales terms.***]
20. "**Distributor Personnel**" means the Distributor’s employees, agents, consultants and individual contractors;
21. "**Documentation**" means the Company's official literature concerning the Products that is made available to the Distributor by the Company for supply to customers;
22. "**Effective Date**" means the date of this Agreement;
23. "**Expiry Date**" means [*insert the date that this Agreement will expire*];
24. "**Force Majeure**" means any cause or event that is beyond the reasonable control of the affected party, and may include:
    1. war, riot, civil commotion or terrorist attack;
    2. fire, flood or storm;
    3. strikes, lockouts or other industrial disputes excluding any relating to or induced by the workforce of the affected party;
25. "**Forecast**" has the meaning given in Clause 4.1;
26. "**Insolvency** **Event**" means where a person ceases or threatens to cease to carry on business, is found unable to pay its debts within the meaning of the Insolvency Act 1986 section 123, has an administrator, receiver, administrative receiver or manager appointed over the whole or any part of its assets, enters into any composition with creditors generally, or has an order made or resolution passed for it to be wound up (otherwise than in furtherance of any scheme for solvent amalgamation or solvent reconstruction) or undergoes any similar or equivalent process in any jurisdiction;
27. "**Intellectual** **Property** **Rights**" means patents, petty patents, utility models, trade marks, design rights, applications for any of the foregoing, copyright, moral rights, database rights, semi-conductor topography rights, trade or business names, whether registrable or otherwise, (including applications for and the right to apply for registration of any such rights), and any similar rights in any country whether currently existing or created in the future, in each case for their full term, together with any renewals or extensions;

"**Law**" means statutes, statutory instruments, regulations, orders, and other legislative provisions in any jurisdiction including any delegated or subordinate legislation, [any enforceable EU right within the meaning of section 2(1) of the European Communities Act 1972,] any judgment of a relevant court of law that is binding precedent, and any decision of a tribunal or competent authority;

1. "**Loss**" means any Claim, costs, damages, demands, expenses, fines, liabilities, losses, penalties and sanctions (including amounts paid in settlement, out-of-pocket expenses and interest);
2. "**Marketing Plan**" means the marketing plan set out in Schedule 4, as updated by agreement between the parties from time to time in accordance with Clause 14.2;
3. "**Marks**" means the Company’s trade mark(s) described in Schedule 5 (which may be amended or updated from time to time by the Company in its absolute discretion);
4. "**Minimum Marketing Contribution**" means the amount specified as such in the Marketing Plan;
5. "**Price**" means the Company's published list price for the relevant Product at the date of Acceptance, or, if the Company increases the Price pursuant to Clause 13.7, the Price as increased in accordance with that Clause;
6. "**Products**" means the Company's products listed in Schedule 1, as that list may be amended or updated from time to time by the Company;
7. "**Purchase Order**" means a request in writing from the Distributor to the Company for the Company to supply Products to the Distributor under this Agreement;
8. "**Quarter**" means a period of three calendar months commencing on [*1 January, 1 April, 1 July and 1 October*] in each Contract Year;
9. "**Revenue Target**" means the amount specified as such in the Marketing Plan;
10. **"Sales Taxes"** means value added tax, consumption tax or other sales tax;
11. "**Term**" has the meaning given to that expression in Clause 2;
12. "**Territory**" means the countries and/or regions specified in Schedule 2;
13. "**Training Fees**" means the amounts specified in Schedule 7; and
14. "**Unfulfilled Orders**" has the meaning given in Clause 22.2(a)(i).
    1. In this Agreement, unless the context otherwise requires or the contrary intention appears:
       * 1. a reference to a provision of law is a reference to that provision as extended, applied, amended or enacted from time to time and includes any subordinate legislation;
         2. the singular includes the plural and vice versa;
         3. "**subsidiary**" and "**holding company**" have the meanings given in Section 1159 of the Companies Act 2006, (and Clause 1.2(a) shall not apply in relation to this Clause 1.2(c));
         4. words denoting persons include bodies corporate and unincorporated associations of persons;
         5. references to this Agreement or any other agreement or document are to this Agreement or such other agreement or document as it may be validly varied, amended, supplemented, restated, renewed, novated or replaced from time to time;
         6. references to a party to this Agreement include a reference to its successors and permitted assigns under this Agreement;
         7. the word "including" is by way of illustration and emphasis only and does not operate to limit the generality or extent of any other words or expressions;
         8. references to Clauses and Schedules refer to clauses of and schedules to this Agreement; and
         9. the headings in this Agreement do not affect its interpretation.
15. Term
16. This Agreement shall begin on the Effective Date and shall end on the Expiry Date or, if sooner, on termination by either party in accordance with this Agreement or at common law (the "**Term**").
17. Appointment of Distributor
    1. The Company hereby appoints the Distributor as its non-exclusive distributor in the Territory during the Term to:
       * 1. promote and market the Products in the Territory; and
         2. sell the Products in the Territory.
    2. The Distributor understands that this arrangement is non-exclusive and that therefore the Company might at any time appoint other distributors or agents to sell Products in the Territory or itself sell the Products in the Territory.
18. Forecasts
    1. On or before the first day of each Quarter, the Distributor shall provide the Company with a statement of:
       * 1. the number of units of Products that the Distributor estimates it will sell in the Territory for that Quarter;
         2. the number of units of Products that the Distributor estimates it will purchase from the Company each month during that Quarter and in the following three Quarters;
         3. [***Drafting note: insert any other forecast information that the Company requires***],
    2. (a "**Forecast**").
    3. The Distributor shall ensure that its Forecasts give as accurate a prediction as [is reasonably] possible [(on the basis of information known to the Distributor and/or publicly available at the relevant time)] of the Distributor's requirements for Products over the relevant Quarters.
    4. If the Company anticipates or becomes aware that it will be unable to meet the Distributor's forecasted requirements, the Company shall inform the Distributor as soon as reasonably practicable in writing.
    5. The Distributor shall promptly notify the Company if the Distributor becomes aware of any change in circumstances which might affect the accuracy of any Forecast.
19. Purchase Orders
    1. At any time during the Term, the Distributor may from time to time submit to the Company Purchase Orders in respect of Products. All Purchase Orders must include the information specified in Clause 5.2 and must be sent to the Company's representative named in Schedule 1 at the address specified for in Schedule 1.
    2. The Distributor shall ensure that all Purchase Orders include the following information:
       * 1. any contract reference number notified by the Company to the Distributor for the purpose of this Agreement;
         2. the Distributor's contact information including name, telephone number and email address of a representative of the Distributor authorised by the Distributor to deal with the Company in relation to that Purchase Order;
         3. the number of units of each Product that the Distributor wishes to buy; and
         4. the Distributor's preferred delivery date.
    3. The Distributor shall:
       * 1. ensure that all information in each Purchase Order is accurate;
         2. at the Company's request, promptly provide the Company with all information that the Company reasonably requires to enable the Company to fulfil the Purchase Order (or to assess whether it is able to fulfil the Purchase Order).
    4. The Company shall not be under any obligation to sell to the Distributor all or any of the Products requested by the Distributor in a Purchase Order unless and until the Company has notified the Distributor in writing that the corresponding Purchase Order is accepted by the Company ("**Acceptance**"). The Company shall use reasonable endeavours to notify the Distributor in writing within [*insert number*] Business Days after receipt of a Purchase Order whether the Company accepts or does not accept the Purchase Order.
    5. The Distributor may cancel a Purchase Order at any time before Acceptance.
    6. The Company's Terms and Conditions of Sale shall apply to all sales of Products by the Company to the Distributor in connection with this Agreement. [***Drafting note: This template agreement assumes that the Company's Terms and Conditions of Sale address issues such as delivery, the passing of title, the passing of risk, the Company's liability for delay and defects in the Products, and any post-delivery warranties given by the Company in respect of the Products. The Company's Terms and Conditions of Sale should be reviewed against this template Agreement to avoid duplication and to remove inconsistencies.***]
    7. Each Accepted Purchase Order for the Products shall constitute a separate contract. Any default by the Company in relation to any single Accepted Purchase Order shall not entitle the Distributor to terminate this Agreement.
20. Distributor's Undertakings
    1. The Distributor shall:
       * 1. use [all] reasonable endeavours to achieve the Revenue Target; [***Drafting note: Consider whether the Company requires a right to terminate the Agreement altogether if the Distributor doesn't meet the Revenue Target.***]
         2. provide the After-Sales Support for the Distributor's customers in the Territory in respect of the Products;
         3. act promptly and courteously with any person enquiring about the Products;
         4. keep and maintain an up-to-date list of the Distributor's customers and potential customers for Products in the Territory and at the Company’s request supply the Company with a copy of the most recent version of that list;
         5. keep all stocks of the Products in its possession or control in excellent condition and in the environmental conditions notified by the Company to the Distributor;
         6. not represent itself as an agent of the Company for any purpose;
         7. not pledge the Company's credit;
         8. not give any undertaking or warranty or make any representation on the Company's behalf;
         9. not commit the Company to any contracts or otherwise incur any liability on behalf of the Company;
         10. take all reasonable steps to publicise the fact that it an independent distributor of the Company and is in no other way connected with Company;
         11. not make any promises or guarantees concerning the Products except for those set out in the Documentation;
         12. not alter any Product;
         13. provide written notice to the Company of any complaints or notice of defects received by the Distributor in relation to the Products;
         14. provide written notice to the Company of all inquiries or orders for Products received from outside the Territory, so that the Company can in its sole discretion determine whether to meet such inquiries or orders for Products directly itself or via its distributors in the relevant territory.
21. Product Recall
    1. The Distributor shall notify the Company in writing as soon as reasonably practicable if the Distributor becomes aware of any serious or recurring defect in any Product.
    2. The Company may initiate a recall of any or all Products at any time. The Company shall notify the Distributor as soon as reasonably practicable if the Company becomes aware that a recall will be initiated or is likely to be initiated.
    3. The Distributor shall co-operate with the Company and follow and comply with all instructions of the Company in connection with any Product recall.
    4. The Company shall reimburse all direct costs and expenses reasonably incurred by the Distributor in connection with a Product recall, except where the recall is necessary as a result of the Distributor's breach of this Agreement or the Distributor's negligence, breach of statutory duty or failure to comply with any Law.
    5. The Distributor shall indemnify the Company and keep the Company indemnified from and against all Loss suffered or incurred by the Company arising from a recall of any Product where the recall is necessary as a result of the Distributor's breach of this Agreement or the Distributor's negligence, breach of statutory duty or failure to comply with any Law.
22. Compliance with Law
    1. The Distributor:
       * 1. shall perform its obligations under this Agreement in a manner that complies with all Laws in force during the Term and shall not cause the Company to breach any Laws in force during the Term;
         2. warrants to the Company that, as at the Effective Date, it has provided the Company with complete and accurate information as to all Laws in the Territory that affect the sale or supply of Products to the Distributor in the Territory, advertising of the Products in the Territory and packaging or labelling of the Products in the Territory;
         3. shall notify the Company in writing promptly if the Distributor becomes aware of any proposed or actual Change in Law that will or might affect the sale or supply of Products to the Distributor in the Territory, advertising of the Products in the Territory or packaging or labelling of the Products in the Territory.
23. Training
    1. At the Distributor's request and in consideration of the Distributor paying the Training Fees, the Company shall provide the Company Training for Distributor Personnel.
    2. The Distributor shall bear all travel and subsistence costs and expenses associated with Distributor Personnel's attendance at or participation in Company Training.
24. Records
    1. The Distributor shall keep throughout the Term and for a period of [*insert period*] after termination or expiry of this Agreement full and proper records of:
       * 1. all sales of Products by the Distributor in the Territory[, including full details of customers to whom the Distributor has sold Products] and gross and net revenue from such sales;
         2. all advertising and promotional activities undertaken by the Distributor in connection with the Products and the corresponding advertising spend;
         3. [*insert any other information that the Company wants or requires from the Distributor*]
    2. Within [*insert number*] Business Days after the end of each Contract Year during the Term (and if the Agreement is terminated or expires during any Contract Year, within [*insert number*] Business Days after termination or expiry of this Agreement), the Distributor shall deliver to the Company a report detailing the information referred to in Clause 10.1 in respect of that Contract Year (or part Contract Year).
25. Audit
    1. The Distributor shall permit the Company and/or its representatives or agents, no more than [*insert* number] times in any Contract Year (and after termination of expiry of this Agreement, no more than [*insert number*] in any calendar year), during Business Hours and on reasonable notice to enter and access any premises, facilities and systems:
       * 1. used by the Distributor to transport or store Products; and/or
         2. where the Distributor keeps any or all of the records referred to in Clause 10.1
    2. so that the Company and/or its representatives or agents may:
       * 1. inspect the Products and the conditions in which the Products are being transported or stored;
         2. conduct an inventory audit of the Products; and/or
         3. inspect the records referred to in Clause 10.1.
26. Changes to Products
    1. The Company may at any time in its absolute discretion make changes to all or any of the Products and/or to the specifications for all or any of the Products. The Company shall give the Distributor not less than [*insert time period*] notice in writing of such changes.
27. Price, Invoices and Payments
28. [***Drafting note: This clause should be reviewed against the Company's terms and conditions of sale for consistency and to avoid duplication.***]
    1. The Company shall be entitled to invoice the Distributor for and the Distributor shall pay the Price for Products under an Accepted Purchase Order in accordance with the Company's Standard Terms and Conditions of Sale.
    2. The Company shall be entitled to invoice the Distributor for the Training Fee not more than [*insert number*] Business Days in advance of the start date of the relevant Company Training.
    3. The Distributor shall pay all Company invoices within [*insert number*] Business Days after receipt of a correct invoice. Payment shall be made in [*insert currency*] by [*specify means of payment*].
    4. Except as provided in Clause 13.7, the Company shall give the Distributor not less than [*insert number*] days' notice in writing of any change to the Prices.
    5. [All Prices and] the Training Fee [are]/[is] stated exclusive of Sales Taxes. The Distributor shall pay the Company all Sales Taxes properly chargeable in respect of Products and Company Training supplied by or on behalf of the Company pursuant to this Agreement, provided the Company has delivered a correct VAT invoice.
    6. The Distributor shall be responsible for and shall pay all taxes, charges, levies and all other fees imposed on the purchase or import of the Products under this Agreement and/or any Accepted Purchase Order.
    7. If at any time after Acceptance and before Delivery of a Product, any of the circumstances described in Clause 13.8 apply, the Company may, by written notice to the Distributor, increase the Price for such Product by an amount that reflects the increased cost to the Company of producing or supplying that Product.
    8. The circumstances referred to in Clause 13.7 are that, after the date of the Company's Acceptance of the relevant Purchase Order and before Delivery of the relevant Product, the Company's costs in connection with the production and/or supply of that Product have increased as a result of:
       * 1. any change in currency exchange rates;
         2. any increase in the cost of materials or labour; and/or
         3. any factor beyond the reasonable control of the Company.
    9. If the Company increases the Price for a Product pursuant to Clause 13.7, then the Distributor may cancel its order for the relevant Product by giving the Company written notice of cancellation, such notice to be given no later than [*insert number*] Business Days after the Distributor's receipt of the Company's notice under Clause 13.8.
    10. The Distributor shall not withhold payment of any amount due to the Company, whether by reason of any set-off, counterclaim or other similar deduction.
    11. If the Distributor fails to pay any sum due for payment under this Agreement [or any Accepted Purchase Order] on or before the due date, the Distributor shall pay interest on such sum from the due date until the date of actual payment (whether before or after judgment) at the rate of [*insert number*]% per month above the base rate of [*insert bank*] from time to time. Interest shall accrue daily be compounded [*monthly*]/[*quarterly*]. The parties acknowledge that this amounts to a substantial remedy for late payment.
    12. Any and all expenses, costs and charges incurred by the Distributor in the performance of its obligations under this Agreement shall be paid by the Distributor.
29. Advertising and promotion
    1. The Distributor shall:
       * 1. diligently advertise and promote the Products in the Territory in accordance with the Marketing Plan using only promotional literature and other materials that have been approved by the Company in writing;
         2. spend at least the Minimum Marketing Contribution on promoting and advertising the Products in the Territory in respect of each Contract Year;
         3. ensure that Distributor Personnel complete the Company Training Programme before engaging in the marketing, demonstration, sale, distribution and/or first line support of Products;
         4. maintain on its staff at all times at least [*insert number*] Distributor Personnel trained to use[ and provide first line support of] the Products in order to respond to the need of the Distributor's customers and potential customers in the Territory;
         5. at the Company's request, provide the Company with copies of all marketing materials used or distributed by the Distributor in connection with the promotion, marketing or sale of Products;
         6. from time to time consult with the Company for the purpose of assessing the state of the market for the Products in the Territory;
         7. at the Company's request, provide the Company with copies of the Distributor's up-to-date price lists in respect of the Products;
         8. at the Company's request, withdraw any advertising or promotional materials that the Company in its absolute discretion deems unsuitable for use in connection with the Products.
    2. The Company and the Distributor shall review the Marketing Plan in good time before the end of each Contract Year with a view to agreeing any changes to the Marketing Plan to take effect from the beginning of the next Contract Year. [***Drafting note: Consider internal escalation/dispute resolution if the Company and Distributor cannot agree on the Marketing Plan for the next Contract Year***].
30. Withdrawal of Products
    1. The Company may discontinue the manufacture of any Product (a "**Discontinued Product**") at any time. The Company shall give the Distributor not less than [*insert period*] notice in advance in writing if a Product is being discontinued. If the Company gives notice under this Clause, the Discontinued Product shall be removed from Schedule 1 from the date of discontinuation.
    2. If the Company discontinues the manufacture of all or any of the Products, then the Company and the Distributor shall endeavour to agree a new Revenue Target to reflect the fact that certain Products will no longer be available for purchase and distribution by the Distributor. If the Company and the Distributor fail to agree a new Revenue Target within [*insert number*] Business Days after the date of discontinuation, then either party may terminate this Agreement immediately by giving the other party written notice of termination.
31. Intellectual Property Rights
    1. All Intellectual Property Rights in the Products, Documentation, the Marks and all marketing materials provided or made available by or on behalf of the Company to the Distributor in connection with this Agreement are the property of the Company and its licensors. Nothing in this Agreement shall operate to transfer or assign such Intellectual Property Rights to the Distributor.
    2. The Distributor shall notify the Company in writing of:
       * 1. any actual, threatened or suspected infringement in the Territory of any Intellectual Property Rights of the Company referred to in Clause 16.1;
         2. any claim by any third party that the import of any Product into the Territory, or the sale of any Product in the Territory infringes any rights of any other person,
       1. such notification to be given as soon as reasonably practicable after the relevant matter comes to the Distributor's notice.
32. Use of Marks
    1. The Company hereby grants to the Distributor a non-exclusive licence in the Territory to use the Marks solely for the purpose of the Distributor performing its obligations under this Agreement during the Term and, after termination or expiry of this Agreement, solely for the purpose of the Distributor exercising its rights under Clause 22.2(b)) in accordance with the Company's brand policy, as notified by the Company to the Distributor from time to time. No other licence or authorisation is granted to the Distributor under this Agreement to use the Marks.
    2. The Distributor shall:
       * 1. not do anything to prejudice or damage the Company’s goodwill in the Marks or which is likely to bring the Marks into disrepute;
         2. not do or authorise any third party to do anything which would or might invalidate the Company's rights in the Marks;
         3. not use in relation to any of the Products any trade marks or trade names other than the Marks without the Company's prior written consent;
         4. except as expressly permitted in this Agreement, not use or adopt any trade mark or domain name, symbol or device that incorporates or is confusingly similar to, or is a simulation or colourable imitation of, any of the Marks;
         5. apply anywhere in the world to register any trade mark(s) or domain name(s) identical to or so nearly resembling the Trade Marks as to be likely to deceive or cause confusion;
         6. except as expressly permitted under this Agreement, not use the Marks or any mark colourably similar to any of the Marks as a trade name, product name or corporate name without the Company’s prior written consent, whether during or after termination or expiry of this Agreement;
         7. not apply for registration of any trade or service mark in respect of any of the Marks or any mark colourably similar to any of the Marks;
         8. not sub-license the Distributor's rights to use Marks under this Agreement except with the Company's prior written consent;
    3. No warranty either express or implied is given by the Company with respect to the validity or enforceability of the Marks.
    4. Within [*insert number*] Business Days after the Company's written request, the Distributor shall execute such further documents as may be necessary and join with the Company in making an application or applications to record this and/or other trade mark licences at such trade mark registry as the Company requires.
33. Anti-bribery and anti-corruption
    1. The Distributor undertakes to the Company that it will fully comply with, and will procure that all Distributor Personnel and its sub-contractors fully comply with:
       * 1. the Bribery Act 2010 ; and
         2. the Company's anti-bribery policy as updated from time to time and notified by the Company to the Distributor. The current version of the Company's Anti-bribery policy is annexed to this agreement at Schedule 6.
       1. (together, the "**Anti-Bribery Requirements**");
    2. The Distributor will not do, or omit to do, any act that will cause the Company to be in breach of the Anti-Bribery Requirements.
    3. The Distributor warrants and undertakes that:
       * 1. it has in place, and shall maintain in place throughout the Term, policies and procedures to ensure compliance with the Anti-Bribery Requirements and will enforce them where appropriate. At the Company’s request, the Distributor will disclose such policies and procedures to the Company;
         2. it will make it clear to Distributor Personnel that the Distributor does not accept or condone the payment of bribes on the Distributor’s behalf;
         3. promptly report to the Company any request or demand for any undue financial or other advantage of any kind received by the Distributor in connection with the performance of this Agreement; and
         4. notify the Company immediately if it considers that it or any Distributor Personnel has made any corrupt or otherwise improper payment for the benefit of the Company;
    4. The Distributor shall indemnify and keep indemnified the Company from and against all Loss suffered by the Company and arising from or incurred by reason of the Distributor’s or any Distributor Personnel’s or any of the Distributor's subcontractors' breach of the Bribery Act 2010.
34. Data Protection
    1. In this Clause 18, "process", "data processor", "data subject" and "personal data" shall have the meaning given in the Data Protection Act 1998.
    2. The Company hereby appoints the Distributor as data processor in relation to personal data:
       * 1. which the Distributor receives under or in connection with the performance of this Agreement; and
         2. in respect of which the Company is a data controller,
    3. ("**Company Personal Data**").
    4. In processing Company Personal Data pursuant to this Agreement, the Distributor shall:
       * 1. act only on instructions from the Company;
         2. unless otherwise requested by the Company, process Company Personal Data only to the extent, and in such manner, as is necessary for the performance of the Distributor's obligations under this Agreement;
         3. take and ensure that Distributor Personnel take appropriate technical and organisational measures against unauthorised or unlawful processing of Company Personal Data and against accidental loss or destruction of, or damage to, Company Personal Data;
         4. from time to time, comply with any reasonable request made by the Company to ensure compliance with the measures mentioned in Clause 19.3(c);
         5. take the measures mentioned in Clause 19.3(c) having regard to the state of technological development and the cost of implementing the measures, so as to ensure a level of security appropriate to:
            1. the harm that may result from unauthorised or unlawful processing of Company Personal Data and against accidental loss or destruction of, or damage to, Company Personal Data; and
            2. the nature of Company Personal Data to be protected;
         6. take reasonable steps to ensure the reliability and integrity of any Distributor Personnel who have access to Company Personal Data;
         7. ensure that all Distributor Personnel involved in the processing of Company Personal Data have undergone adequate training in the care, protection and handling of Company Personal Data;
         8. not disclose or transfer Company Personal Data to any subcontractors other than where strictly necessary for the performance of the Distributor's obligations under this Agreement and in such event the Distributor shall obtain the Company’s prior written consent to such transfer or disclosure;
         9. not cause or permit Company Personal Data to be transferred outside the European Economic Area without the Company's prior consent;
         10. provide at no charge such assistance as the Company may reasonably require in order for the Company to deal with any request for subject access under the Data Protection Law; and
         11. permit the Company or its authorised representatives to inspect and audit the Distributor’s data processing activities in relation to this Agreement and shall comply with all reasonable requests or directions by the Company to enable it to verify and/or procure that the Distributor is in full compliance with its obligations under this Agreement;
         12. comply with all relevant provisions of Data Protection Law and shall not do anything so as to cause the Company to breach any of its obligations under Data Protection Law.
35. Liability
    1. Nothing in this Agreement shall exclude or limit the liability of a party for:
       * 1. death or personal injury caused by its negligence;
         2. fraud or fraudulent misrepresentation; or
         3. any other liability that cannot by law be excluded or limited.
    2. The Company's liability to the Distributor in respect of claims (including third party claims) relating directly or indirectly to:
       * 1. the supply, failure to supply or delay in supplying Products; and/or
         2. defects in Products;
    3. shall be governed by Company's Terms and Conditions of Sale. [***Drafting note: This Clause should be reviewed against the Terms and Conditions of Sale to make sure that between this Agreement and those Terms and Conditions, the Company's liability is appropriately excluded/limited***]
    4. Subject to Clause 20.1 and Clause 20.2, the Company shall not be liable to the Distributor for any indirect loss arising out of or in connection with this Agreement, including for any breach or non-performance of this Agreement, no matter how fundamental, in tort (including negligence), breach of statutory duty or otherwise and whether or not the Company had been informed of or was aware that there was a serious possibility of such loss.
    5. Subject to Clause 20.1 and Clause 20.2 , the Company shall not be liable to the Distributor for loss of profits or loss of contracts, loss of anticipated savings, loss of goodwill, wasted management time or [*insert any other excluded heads of liability*], arising out of or in connection with this Agreement, including any breach or non-performance of this Agreement, no matter how fundamental, in tort (including negligence), breach of statutory duty or otherwise.
    6. Subject to Clause 20.1 and Clause 20.2, the total and aggregate liability of the Company for loss of or damage to property or other tangible assets arising out of or in connection with this Agreement, including any breach or non-performance of this Agreement no matter how fundamental, in tort (including negligence), breach of statutory duty or otherwise, shall not exceed [*insert sum*].
    7. Subject to Clause 20.1 and Clause 20.2, the total and aggregate liability of the Company for all other loss and/or damage arising out of or in connection with this Agreement, including any breach or non-performance of this Agreement no matter how fundamental, in tort (including negligence), breach of statutory duty or otherwise, shall not exceed [*insert sum*].
    8. The express terms of this Agreement are in lieu of all warranties, terms, conditions, undertakings, representations and obligations implied by statute, common law, trade usage, course of dealing or otherwise, all of which are hereby excluded to the fullest extent permitted by law.
36. Termination
    1. Either party may terminate this Agreement at any time on written notice, either immediately or following such notice period as it shall see fit:
       * 1. if the other party is in material breach of this Agreement, and such breach is irremediable;
         2. if the other party commits any remediable material breach of this Agreement and fails to remedy such breach within a period of [*insert number*] Business Days from the service on it of a notice specifying the material breach and requiring it to be remedied;
         3. if the other party undergoes an Insolvency Event; or
         4. in accordance with Clause 24 (Force Majeure).
    2. The Company may terminate this Agreement at any time on written notice, either immediately or following such notice period as it shall see fit if:
       * 1. the Distributor fails to pay the Company undisputed sums under this Agreement or any Accepted Purchase Order when due, and further fails to make such payment within [*insert number*] Business Days after receipt of the Company's notice specifying the amount of such unpaid sums and requiring the Distributor to make payment;
         2. a breach of this Agreement by the Distributor causes significant damage to the Company's reputation;
         3. the Distributor, any Distributor Personnel or any of the Distributor’s sub-contractors is in breach of the Bribery Act 2010; or
         4. the Distributor undergoes a Change of Control provided that the right to terminate under this Clause 21.2(d) should be exercised at any time up to the expiry of three (3) months from the date of the Company's receipt of the Distributor's written notice informing the Company of the Change of Control.
    3. [The Company may terminate this Agreement at any time by giving the Distributor not less than [*insert number*] months' notice in writing of termination.]
    4. The rights set out in this Clause 21 are in addition to rather than in substitution for any rights the parties may have to terminate this Agreement at law.
37. Consequences of Termination
    1. Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry.
    2. On termination or expiry of this Agreement:
       * 1. the Distributor shall provide the Company, within [*insert number*] Business Days after termination or expiry, with full written details of:
            1. in respect of each Product, all of the Distributor's unfulfilled customer orders in the Territory as at the date of termination ("**Unfulfilled Orders**"); and
            2. the Distributor's inventory of Products as at the date of termination or expiry.
         2. the Distributor shall be entitled to sell Products in its inventory as at the date of termination or expiry for the purpose of fulfilling Unfulfilled Orders;
         3. the Company shall be entitled to require the Distributor to sell back to the Company any or all Products in the Distributor's inventory as at the date of termination or expiry that are not required by the Distributor for the purpose of fulfilling Unfulfilled Orders at [*insert details of the price that the Company will pay to buy-back any stock*] (the "**Buy Back Price**"). If the Company wishes to buy back Products pursuant to this Clause:
            1. the Company shall give the Distributor written notice to that effect no later than [*insert number*] Business Days after receipt of the information specified in Clause 22.2(a), specifying the Products that the Company wishes to buy back and the number of units of those Products that the Company requires;
            2. the Distributor shall deliver the relevant Products to the Company at [*insert delivery details*] within [*insert number*] Business Days after the date of the Company's notice or on a date agreed by the Company and the Distributor;
            3. the Company shall pay the Distributor the Buy Back Price for the relevant Products within [*insert number*] days after receipt of a correct invoice from the Distributor in respect of those Products or delivery of the relevant Products to the Company, whichever is later;
            4. risk in the Products shall remain with the Distributor until delivery to the Company at the agreed delivery site, and the [Company]/[Distributor] shall bear the costs of packaging and delivery of the Products in accordance with this Clause;
         4. the Distributor shall, in accordance with the Company's instructions, dispose of any inventory of Products not required by the Distributor for the purpose of fulfilling Unfulfilled Orders and that is not bought back by the Company.
         5. the Distributor shall immediately cease to promote, market or advertise Products;
         6. the Distributor shall immediately cease to make any use of the Marks other than for the purpose of its rights under Clause 22.2(b);
         7. the Distributor shall either return to the Company at the Distributor's cost, or (if the Company so directs) dispose of all advertising materials, sales materials, catalogues, documents or papers whatsoever made available to the Distributor by the Company and relating to the Products and/or Company's business (but excluding correspondence) which the Distributor may have in its possession or under its control.
    3. [***Drafting note: Some jurisdictions give distributors rights to compensation on termination that cannot be avoided by contract. Legal advice should be sought in the relevant jurisdiction*.**]
    4. The following Clauses of this Agreement shall survive expiry or termination of this Agreement: Clause 1, Clause 7, Clause 10, Clause 11, Clause 13, 14.1(e), Clause 16, Clause 17.2, Clause 17.3, Clause 18.4, Clause 20, Clause 22, Clause 23, Clause 25 and Clause 26.
38. Confidentiality
    1. Each party confirms that it understands that Confidential Information constitutes and is comprised of valuable confidential proprietary information, the disclosure of which could have damaging effects on the other party's business.
    2. Each party undertakes to use Confidential Information only for the purpose of its performance of this Agreement and any Accepted Purchase Order and not for any other purpose whatever.
    3. Subject to Clauses 23.4, 23.5 and 23.6, each party undertakes that it shall keep secret and confidential all Confidential Information and not disclose any Confidential Information to any other person.
    4. The Distributor may disclose Confidential Information to Distributor Personnel only to the extent necessary for the purpose of the performance of the Distributor's obligations under this Agreement provided that such Distributor Personnel have entered into confidentiality obligations with the Distributor in respect of such Confidential Information that are at least as protective of the Company's Confidential Information as the obligations of and restrictions on the Distributor under this Clause 23.
    5. The restrictions and undertakings in this Clause shall not apply in respect of any Confidential Information:
       * 1. that is in the public domain at the date of this Agreement otherwise than as a result of a breach of a confidentiality obligation by any person;
         2. that subsequently comes into the public domain, otherwise than as a result of a breach of this Agreement or other breach of a confidentiality obligation by any person, but only after it has come into the public domain;
         3. that the Recipient obtains from a third party not under any confidentiality obligation to the Disclosing Party in respect of such information; or
         4. that the Recipient can demonstrate was already in its possession at the time of disclosure to the relevant party by or on behalf of the other party and in relation to which the relevant party does not owe a separate obligation of confidentiality to the other party.
    6. Each party shall be entitled to disclose Confidential Information:
       * 1. where required to do so by law, regulation or order of a court of competent jurisdiction, but only to the extent necessary to comply with such law, regulation or order; and/or
         2. on a necessary basis and under conditions of confidentiality to its professional advisers, auditors and bankers.
39. Force Majeure
    1. If a party's performance of its obligations under this Agreement is affected by Force Majeure, that party shall, as soon as reasonably possible [and in any event within [*insert number*] calendar days after commencement of the Force Majeure], serve notice in writing on the other party specifying the nature and extent of the circumstances giving rise to Force Majeure.
    2. A party shall have no liability for any delay in performance or any non-performance of any obligation under this Agreement, save for any payment obligation which shall continue in full force and effect, to the extent that such delay or non-performance is due to Force Majeure provided that:
       * 1. that party has given notice to the other party in accordance with Clause 24.1; and
         2. that party takes reasonable steps to mitigate the effect of the Force Majeure,
       1. and provided these conditions are satisfied, the time for performance of the relevant obligation shall be extended to the extent that the delay or non-performance is due to Force Majeure.
    3. If either party is prevented from performing substantially all of its obligations by reason of Force Majeure for a continuous period of more than [*insert number*] months, the other party may terminate this Agreement immediately by giving written notice to the party so prevented.
40. Assignment and subcontracting
    1. Neither party may at any time, without the prior written consent of the other party (such consent not be unreasonably withheld or delayed), assign all or any part of its rights and/or obligations under this Agreement, except thatthe Company may assign all or any part of its rights and/or obligations under this Agreement to any Affiliate of the Company, without the Distributor's prior written consent.
    2. The Distributor shall not sub-contract or delegate any or all of its obligations under this Agreement nor sub-license any of the rights granted to the Distributor under this Agreement to any third party except with the previous written consent of the Company[, such consent not to be unreasonably withheld or delayed.]
    3. The Distributor shall be liable to the Company for the acts and omissions of its subcontractors and sub-licensees as if such acts and omissions were the acts and omissions of the Distributor.
41. General
    1. *Illegality/Severance:* If any provision of this Agreement is declared by any competent court or body to be illegal, invalid or unenforceable under the law of any jurisdiction, or if any enactment is passed that renders any provision of this Agreement illegal, invalid or unenforceable under the law of any jurisdiction, this shall not affect or impair the legality, validity or enforceability of the remaining provisions of this Agreement.
    2. *Notices:* Any notice to be given under this Agreement must be in writing and given by first class post or personal delivery. Notices to the Company shall be sent to [*name*] at [*address*], and notices to the Distributor shall be sent to [*name*] at [*address*], or to such other place as the relevant party shall have notified the other pursuant to this Clause. Any notice given shall be deemed effective (a) when left at the address mentioned above (if delivered personally) or (b) two Business Days after posting by first class post addressed as required above (if given by post).
    3. *Variations:* No purported amendment or variation of this Agreement shall be effective unless it is in writing and duly executed by or on behalf of each of the parties.
    4. *Waiver:* The failure to exercise or delay in exercising a right or remedy of a party under this Agreement shall not constitute a waiver of that right or remedy, and no waiver by a party of any breach of this Agreement shall constitute a waiver of any subsequent breach of the same or any other provision.
    5. *Third Party Rights:* A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Agreement.
    6. *Entire Agreement:* This Agreement and all Accepted Purchase Orders constitute the entire agreement and understanding between the parties relating to the subject matter of this Agreement and supersede any other agreement or understanding (written or oral) between the parties relating to the same.
    7. *No reliance:* Each party acknowledges and agrees that it does not rely on, and shall have no remedy in respect of, any promise, assurance, statement, warranty, undertaking or representation made (whether innocently or negligently) by any other party or any other person except as expressly set out in this Agreement in respect of which its sole remedy shall be for breach of contract.
    8. *Fraud and fraudulent misrepresentation:* Nothing in Clauses 26.6 or 26.7 or elsewhere in this Agreement shall operate or be construed to exclude or limit any liability of any person for fraud, including fraudulent misrepresentation.
    9. *Governing Law and Jurisdiction*:  This Agreement and any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims) shall be governed by English law. The parties submit to the non-exclusive jurisdiction of the English courts for all purposes relating to and in connection with this Agreement and any such dispute or claim.

[*insert suitable execution/signature clause*]

1. – Products

[*Insert description of the Products that the Company will sell to the Distributor under this Agreement*.]

[*Insert the name and contact details of the Company's representative to whom the Distributor should send Purchase Orders under this Agreement.*]

1. – Territory

[*Insert details of the countries/regions where the Distributor is appointed to distribute the Company's Products.*]

1. – Company's Terms and Conditions of Sale

[*Insert a copy of the Company's Terms and Conditions of Sale current at the date of this Agreement.*]

1. – Marketing Plan

[*Insert details of:*

* *the agreed marketing plan that the Distributor must comply with; and*
* *the Minimum Marketing Contribution (i.e. amount) per annum that the Distributor must spend in promoting/marketing the Products*; *and*
* *the Revenue Target(s)* *that the Distributor must try to achieve (see Clause 6.1(a))*]

1. – Marks

[*Insert details of the Company's registered and unregistered trade marks that are being licensed to the Distributor under this Agreement.*]

1. – Company's Anti-Bribery Policy
2. – Company Training and Training Fees

[*Insert details of the Company's training programme or Distributor Personnel involved in the marketing, demonstration, sale, distribution and/or first line support of the Company's Products.*]

1. – After Sales Support

[*Insert details of the after sales services and support that the Distributor must provide to its customers in the Territory for the Company's Products.*]