Free non-exclusive distribution agreement: cover

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Non-exclusive distribution agreement

DATE

*[Date]*

PARTIES

1. [*[INDIVIDUAL NAME]* of *[address]*] OR [*[COMPANY NAME]*, a company incorporated in [England and Wales] (registration number *[registration number]*) having its registered office at *[address]*] OR [*[PARTNERSHIP NAME]*, a partnership established under the laws of [England and Wales] having its principal place of business at *[address]*] (the "**Supplier**"); and

2. [*[INDIVIDUAL NAME]* of *[address]*] OR [*[COMPANY NAME]*, a company incorporated in [England and Wales] (registration number *[registration number]*) having its registered office at *[address]*] OR [*[PARTNERSHIP NAME]*, a partnership established under the laws of [England and Wales] having its principal place of business at *[address]*] (the "**Distributor**").

BACKGROUND

1. *[Explain background from the Supplier's perspective.]*

2. *[Explain background from the Distributor's perspective.]*

3. [The Supplier and the Distributor therefore wish to enter into a contract in accordance with the provisions of this Agreement.]

AGREEMENT

1. Definitions

1.1 In this Agreement[, except to the extent expressly provided otherwise]:

"**Agreement**" means this agreement including the Schedules and each Order, and any amendments to this Agreement from time to time;

"**Business Day**" means any weekday other than a bank or public holiday in [England];

"**Business Hours**" means the hours of [09:00 to 17:00 GMT/BST] on a Business Day;

"**Charges**" means the amounts payable in respect of the Products, as set out in Schedule 1 (Distribution particulars), subject to any variations agreed in writing by the parties[ or made in accordance with this Agreement];

"**Confidential Information**" means the Supplier Confidential Information and the Distributor Confidential Information;

"**Distributor Confidential Information**" means:

(a) any information disclosed by [or on behalf of ]the Distributor to the Supplier [during the Term] OR [at any time before the termination of this Agreement] (whether disclosed in writing, orally or otherwise) that at the time of disclosure was marked[ or described] as "confidential" or should have been understood by the Supplier (acting reasonably) to be confidential; and

(b) [the terms of this Agreement];

*[additional list items]*

"**Effective Date**" means [the date of execution of this Agreement];

"**Force Majeure Event**" means [an event, or a series of related events, that is outside the reasonable control of the party affected (including failures of the internet or any public telecommunications network, hacker attacks, denial of service attacks, virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars]);

"**Intellectual Property Rights**" means [all intellectual property rights wherever in the world, whether registrable or unregistrable, registered or unregistered, including any application or right of application for such rights (and these "intellectual property rights" include copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trade marks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs)];

"**Minimum Term**" means[, in respect of this Agreement, the period of 12 months beginning on the Effective Date];

"**Order**" means a binding order between the parties for the supply and purchase of Products made under this Agreement and agreed between the parties in accordance with Clause 7;

"**Products**" means [*[identify products]*] OR [any products that the Supplier supplies or agrees in writing to supply to the Distributor from time to time] OR [those products identified in Paragraph 1 of Schedule 1 (Distribution particulars)];

"**Reserved Territory**" means [all countries, territories and areas excluding the Territory, being countries, territories and areas in respect of which the Supplier may from time to time appoint another distributor and those countries, territories and areas that the Supplier has reserved to itself];

"**Schedule**" means any schedule attached to the main body of this Agreement;

"**Supplier Confidential Information**" means:

(a) any information disclosed by [or on behalf of ]the Supplier to the Distributor [during the Term] OR [at any time before the termination of this Agreement] (whether disclosed in writing, orally or otherwise) that at the time of disclosure was marked[ or described] as "confidential" or should have been understood by the Distributor (acting reasonably) to be confidential; and

(b) [the terms of this Agreement];

*[additional list items]*

"**Supplier Indemnity Event**" has the meaning given to it in Clause 13.1;

"**Term**" means [the term of this Agreement, commencing in accordance with Clause 3.1 and ending in accordance with Clause 3.2]; and

"**Territory**" means *[identify territory]*.

2. Credit

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3. Term

3.1 This Agreement shall come into force upon the Effective Date.

3.2 This Agreement shall continue in force [indefinitely] OR [until *[date]*, at the beginning of which this Agreement shall terminate automatically] OR [until *[event]*, upon which this Agreement shall terminate automatically], subject to termination in accordance with Clause 16 or any other provision of this Agreement.

4. Non-exclusive distributorship

4.1 The Supplier hereby appoints the Distributor as its non-exclusive distributor for the Products in the Territory during the Term.

4.2 The Distributor shall not actively supply the Products in the Reserved Territory.

5. Distributor obligations

5.1 The Distributor shall:

(a) use [reasonable endeavours] to market, distribute and sell the Products[ in the Territory];

(b) [maintain sufficient stocks of the Products to meet customer demand[ in the Territory] (excluding customer demand that the Distributor could not reasonably have been expected to anticipate)];

(c) [maintain such premises and facilities as may be necessary to ensure that the Distributor is able to meet its obligations under this Agreement]; and

(d) [maintain such numbers of adequately trained personnel as may be necessary to ensure that the Distributor is able to meet its obligations under this Agreement].

*[additional list items]*

5.2 The Distributor must not:

(a) represent to any person that it is an agent, sole distributor or exclusive distributor of the Supplier;

(b) pledge or purport to pledge the Supplier's credit;

(c) commit or purport to commit the Supplier to any contracts; or

(d) otherwise incur any liability or potential liability on behalf of the Supplier.

*[additional list items]*

5.3 Save to the extent that the parties have agreed otherwise in writing, the Distributor must provide to the Supplier, or procure for the Supplier, such:

(a) [co-operation, support and advice];

(b) [information and documentation]; and

(c) [governmental, legal and regulatory licences, consents and permits],

 as are reasonably necessary to enable the Supplier to perform its obligations under this Agreement.

5.4 The Distributor shall be responsible for procuring [any third party co-operation] reasonably required by the Supplier to enable the Supplier to perform its obligations under this Agreement.

5.5 The Distributor must not without the Supplier's prior written consent make or give any promises, representations, warranties or guarantees:

(a) on behalf of the Supplier; or

(b) in relation to the Products (other than those that are mandatory under applicable law).

5.6 Without prejudice to the Supplier's express obligations under this Agreement, the Distributor must comply with all applicable laws, rules and regulations relating to, and must obtain all licences, permits and approvals required in relation to:

(a) the marketing, promotion and advertising of the Products; and

(b) the import, export, distribution, sale, supply and delivery of the Products.

5.7 The Distributor undertakes that it will not, during the Term and without the prior written consent of the Supplier, take any action that will or is reasonably likely to have a material negative impact on the reputation and/or goodwill of the Supplier.

6. Supplier obligations

6.1 The Supplier shall provide to the Distributor [all reasonable support, advice and assistance requested by the Distributor] in relation to [the marketing of the Products by the Distributor] in accordance with this Agreement[, and in particular shall *[specify particular obligations]*].

6.2 The Supplier undertakes that it will not, during the Term and without the prior written consent of the Distributor, take any action that will or is reasonably likely to have a material negative impact on the reputation and/or goodwill of the Distributor.

7. Order procedure

7.1 Before the agreement of an Order, the parties may discuss and negotiate the terms of the proposed Order, but no contractual obligations to supply or purchase the Products shall come into force until the procedure set out in this Clause 7 has been completed.

7.2 The parties shall comply with the following procedure in respect of the agreement of an Order. [First, the Distributor shall deliver to the Supplier a written request, which shall include the quantities of Products that the Distributor wishes to order; second, the Supplier shall deliver to the Distributor a written quotation, which shall set out the quantities of Products that the Supplier is prepared to supply and the Charges payable in respect of the proposed Order; third, if the Distributor agrees to the terms of the quotation, the Distributor shall deliver to the Supplier a written notice of acceptance of the quotation. An Order in respect of the Products identified in the quotation shall come into force upon the delivery of that written notice of acceptance.]

7.3 The supply of all Products by the Supplier to the Distributor under or relating to this Agreement shall be subject to [Schedule 2 (Terms and conditions of supply)].

8. No assignment of Intellectual Property Rights

8.1 Nothing in this Agreement shall operate to assign or transfer any Intellectual Property Rights from the Supplier to the Distributor, or from the Distributor to the Supplier.

9. Charges

9.1 The Distributor shall pay the Charges to the Supplier in accordance with this Agreement.

9.2 All amounts stated in or in relation to this Agreement are, unless the context requires otherwise, stated [inclusive of any applicable value added taxes] OR [exclusive of any applicable value added taxes, which will be added to those amounts and payable by the Distributor to the Supplier].

9.3 If there is a material increase in the cost to the Supplier of obtaining or supplying the Products, the Supplier may increase the Charges by giving to the Distributor written notice of the increase at any time before supply of the Products, providing that:

(a) the Supplier must give that notice as soon as reasonably practicable;

(b) [the Distributor shall have the right upon receipt of that notice to terminate this Agreement]; and

(c) any increase under this Clause 9.3 must not exceed the increase in cost to the Supplier.

9.4 The Supplier may elect to vary [any element of the Charges] by giving to the Distributor not less than [30 days'] written notice of the variation[ expiring [on any anniversary of the date of execution of this Agreement]][, providing that no such variation shall result in an aggregate percentage increase in the relevant element of the Charges during the Term that exceeds[[ 2]% per annum over] the percentage increase, during the same period, in [the Retail Prices Index (all items) published by the UK Office for National Statistics]].

10. Payments

10.1 The Supplier shall issue an invoice for the Charges to the Distributor [promptly] OR [at any time] following [the supply of the Products] OR [the agreement of an Order in respect of the Products] OR [*[specify date]*].

10.2 The Distributor must pay the Charges to the Supplier within the period of [30 days] following [the issue of an invoice in accordance with this Clause 10] OR [the receipt of an invoice issued in accordance with this Clause 10].

10.3 The Distributor must pay the Charges by [debit card, credit card, direct debit, bank transfer or cheque] (using such payment details as are notified by the Supplier to the Distributor from time to time).

10.4 If the Distributor does not pay any amount properly due to the Supplier under this Agreement, the Supplier may:

(a) charge the Distributor interest on the overdue amount at the rate of [8% per annum above the Bank of England base rate from time to time] (which interest will accrue daily until the date of actual payment and be compounded at the end of each calendar month); or

(b) claim interest and statutory compensation from the Distributor pursuant to the Late Payment of Commercial Debts (Interest) Act 1998.

11. Confidentiality obligations

11.1 The Supplier must:

(a) keep the Distributor Confidential Information strictly confidential;

(b) not disclose the Distributor Confidential Information to any person without the Distributor's prior written consent[, and then only under conditions of confidentiality [approved in writing by the Distributor] OR [no less onerous than those contained in this Agreement]];

(c) use the same degree of care to protect the confidentiality of the Distributor Confidential Information as the Supplier uses to protect the Supplier's own confidential information of a similar nature, being at least a reasonable degree of care;

(d) [act in good faith at all times in relation to the Distributor Confidential Information]; and

(e) [not use any of the Distributor Confidential Information for any purpose other than *[specify purposes]*].

11.2 The Distributor must:

(a) keep the Supplier Confidential Information strictly confidential;

(b) not disclose the Supplier Confidential Information to any person without the Supplier's prior written consent[, and then only under conditions of confidentiality [approved in writing by the Supplier] OR [no less onerous than those contained in this Agreement]];

(c) use the same degree of care to protect the confidentiality of the Supplier Confidential Information as the Distributor uses to protect the Distributor's own confidential information of a similar nature, being at least a reasonable degree of care;

(d) [act in good faith at all times in relation to the Supplier Confidential Information]; and

(e) [not use any of the Supplier Confidential Information for any purpose other than *[specify purposes]*].

11.3 Notwithstanding Clauses 11.1 and 11.2, a party's Confidential Information may be disclosed by the other party to that other party's [officers, employees, professional advisers, insurers, agents and subcontractors] [who have a need to access the Confidential Information that is disclosed for the performance of their work with respect to this Agreement and ]who are bound by a written agreement or professional obligation to protect the confidentiality of the Confidential Information that is disclosed.

11.4 No obligations are imposed by this Clause 11 with respect to a party's Confidential Information if that Confidential Information:

(a) is known to the other party before disclosure under this Agreement and is not subject to any other obligation of confidentiality;

(b) is or becomes publicly known through no act or default of the other party; or

(c) [is obtained by the other party from a third party in circumstances where the other party has no reason to believe that there has been a breach of an obligation of confidentiality].

11.5 The restrictions in this Clause 11 do not apply to the extent that any Confidential Information is required to be disclosed by any law or regulation, by any judicial or governmental order or request, or pursuant to disclosure requirements relating to the listing of the stock of either party on any recognised stock exchange.

11.6 Upon the termination of this Agreement, each party must immediately cease to use the other party's Confidential Information.

11.7 [Following the termination of this Agreement, and within [5 Business Days] following the date of receipt of a written request from the other party] OR [Within [5 Business Days] following the date of termination of this Agreement], the relevant party must destroy or return to the other party (at the other party's option) all media containing the other party's Confidential Information, and must irrevocably delete the other party's Confidential Information from its computer systems.

11.8 The provisions of this Clause 11 shall continue in force [indefinitely following the termination of this Agreement] OR [for a period of [5 years] following the termination of this Agreement, at the end of which period they will cease to have effect].

12. Warranties

12.1 The Supplier warrants to the Distributor that it has the legal right and authority to enter into this Agreement and to perform its obligations under this Agreement.

12.2 The Distributor warrants to the Supplier that it has the legal right and authority to enter into this Agreement and to perform its obligations under this Agreement.

12.3 All of the parties' warranties and representations in respect of the subject matter of this Agreement are expressly set out in this Agreement. To the maximum extent permitted by applicable law, no other warranties or representations concerning the subject matter of this Agreement will be implied into this Agreement or any related contract.

13. Supplier Indemnity

13.1 The Supplier shall indemnify and shall keep indemnified the Distributor against [any and all liabilities, damages, losses, costs and expenses][ (including legal expenses and amounts reasonably paid in settlement of legal claims)] suffered or incurred by the Distributor and arising directly or indirectly as a result of:

(a) [any claim, dispute and/or proceedings resulting from or arising in connection with any death, personal injury or damage to property caused in whole or part by a failure of the Products to comply with the warranties given by the Supplier in this Agreement];

(b) [any claim, dispute and/or proceedings resulting from or arising in connection with any infringement by the Products of a third party's Intellectual Property Rights];

(c) [any breach of Clause 11]; or

(d) [any[ other] breach of this Agreement],

 (a "**Supplier Indemnity Event**").

13.2 The Distributor must:

(a) upon becoming aware of an actual or potential Supplier Indemnity Event, notify the Supplier;

(b) provide to the Supplier all such assistance as may be reasonably requested by the Supplier in relation to the Supplier Indemnity Event;

(c) allow the Supplier the exclusive conduct of all disputes, proceedings, negotiations and settlements with third parties relating to the Supplier Indemnity Event; and

(d) not admit liability to any third party in connection with the Supplier Indemnity Event or settle any disputes or proceedings involving a third party and relating to the Supplier Indemnity Event without the prior written consent of the Supplier,

 [without prejudice to the Supplier's obligations under Clause 13.1] OR [and the Supplier's obligation to indemnify the Distributor under Clause 13.1 shall not apply unless the Distributor complies with the requirements of this Clause 13.2].

13.3 The indemnity protection set out in this Clause 13 [shall] OR [shall not] be subject to the limitations and exclusions of liability set out in this Agreement[, except *[exceptions]*].

14. Limitations and exclusions of liability

14.1 Nothing in this Agreement will:

(a) limit or exclude any liability for death or personal injury resulting from negligence;

(b) limit or exclude any liability for fraud or fraudulent misrepresentation;

(c) limit any liabilities in any way that is not permitted under applicable law; or

(d) exclude any liabilities that may not be excluded under applicable law.

14.2 The limitations and exclusions of liability set out in this Clause 14 and elsewhere in this Agreement:

(a) are subject to Clause 14.1; and

(b) govern all liabilities arising under this Agreement or relating to the subject matter of this Agreement, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty, except to the extent expressly provided otherwise in this Agreement.

14.3 [Neither party shall be liable to the other party] OR [The Supplier shall not be liable to the Distributor] OR [The Distributor shall not be liable to the Supplier] in respect of any losses arising out of a Force Majeure Event.

14.4 [Neither party shall be liable to the other party] OR [The Supplier shall not be liable to the Distributor] OR [The Distributor shall not be liable to the Supplier] in respect of any loss of profits or anticipated savings.

14.5 [Neither party shall be liable to the other party] OR [The Supplier shall not be liable to the Distributor] OR [The Distributor shall not be liable to the Supplier] in respect of any loss of revenue or income.

14.6 [Neither party shall be liable to the other party] OR [The Supplier shall not be liable to the Distributor] OR [The Distributor shall not be liable to the Supplier] in respect of any loss of use or production.

14.7 [Neither party shall be liable to the other party] OR [The Supplier shall not be liable to the Distributor] OR [The Distributor shall not be liable to the Supplier] in respect of any loss of business, contracts or opportunities.

14.8 [Neither party shall be liable to the other party] OR [The Supplier shall not be liable to the Distributor] OR [The Distributor shall not be liable to the Supplier] in respect of any loss or corruption of any data, database or software.

14.9 [Neither party shall be liable to the other party] OR [The Supplier shall not be liable to the Distributor] OR [The Distributor shall not be liable to the Supplier] in respect of any special, indirect or consequential loss or damage.

14.10 The liability of [each party to the other party] OR [the Supplier to the Distributor] OR [the Distributor to the Supplier] under an Order shall not exceed the greater of:

(a) *[amount]*; and

(b) [the total amount paid and payable by the Distributor to the Supplier under that Order].

14.11 The aggregate liability of [each party to the other party] OR [the Supplier to the Distributor] OR [the Distributor to the Supplier] under this Agreement shall not exceed the greater of:

(a) *[amount]*; and

(b) [the total amount paid and payable by the Distributor to the Supplier under this Agreement].

15. Force Majeure Event

15.1 If a Force Majeure Event gives rise to a failure or delay in either party performing any obligation under this Agreement[ (other than any obligation to make a payment)], that obligation will be suspended for the duration of the Force Majeure Event.

15.2 A party that becomes aware of a Force Majeure Event which gives rise to, or which is likely to give rise to, any failure or delay in that party performing any obligation under this Agreement, must:

(a) promptly notify the other; and

(b) inform the other of the period for which it is estimated that such failure or delay will continue.

15.3 A party whose performance of its obligations under this Agreement is affected by a Force Majeure Event must take reasonable steps to mitigate the effects of the Force Majeure Event.

16. Termination

16.1 The Supplier may terminate this Agreement by giving to the Distributor [not less than 30 days'] written notice of termination[, expiring [at the end of any [calendar month]] OR [after the end of the Minimum Term]]. The Distributor may terminate this Agreement by giving to the Supplier [not less than 30 days'] written notice of termination[, expiring [at the end of any [calendar month]] OR [after the end of the Minimum Term]].

OR

16.1 Either party may terminate this Agreement by giving to the other party [not less than 30 days'] written notice of termination[, expiring [at the end of any [calendar month]] OR [after the end of the Minimum Term]].

16.2 Either party may terminate this Agreement immediately by giving written notice of termination to the other party if:

(a) the other party commits any [breach] OR [material breach] of this Agreement[, and the breach is not remediable];

(b) [the other party commits a [breach] OR [material breach] of this Agreement, and the breach is remediable but the other party fails to remedy the breach within the period of [30 days] following the giving of a written notice to the other party requiring the breach to be remedied]; or

(c) [the other party persistently breaches this Agreement (irrespective of whether such breaches collectively constitute a material breach)].

16.3 Either party may terminate this Agreement immediately by giving written notice of termination to the other party if:

(a) the other party:

(i) is dissolved;

(ii) ceases to conduct all (or substantially all) of its business;

(iii) is or becomes unable to pay its debts as they fall due;

(iv) is or becomes insolvent or is declared insolvent; or

(v) convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;

(b) an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party;

(c) an order is made for the winding up of the other party, or the other party passes a resolution for its winding up[ (other than for the purpose of a solvent company reorganisation where the resulting entity will assume all the obligations of the other party under this Agreement)]; or

(d) [if that other party is an individual:

(i) that other party dies;

(ii) as a result of illness or incapacity, that other party becomes incapable of managing his or her own affairs; or

(iii) that other party is the subject of a bankruptcy petition or order.]

17. Effects of termination

17.1 Upon the termination of this Agreement, all of the provisions of this Agreement shall cease to have effect, save that the following provisions of this Agreement shall survive and continue to have effect (in accordance with their express terms or otherwise indefinitely): [Clauses 1, 4.2, 5.1, 5.2, 5.5, 5.6, 6.1, 7.2, 10.2, 10.4, 11, 13, 14, 17, 19 and 20 and Paragraphs 1, 2 and 4 of Schedule 2 (Terms and conditions of supply)].

17.2 Except to the extent that this Agreement expressly provides otherwise, the termination of this Agreement shall not affect the accrued rights of either party.

18. Notices

18.1 Any notice from one party to the other party under this Agreement must be given by one of the following methods (using the relevant contact details set out in Clause 18.2):

(a) [[delivered personally or sent by courier], in which case the notice shall be deemed to be received [upon delivery]]; or

(b) [sent by [recorded signed-for post], in which case the notice shall be deemed to be received [2 Business Days following posting]],

*[additional list items]*

 providing that, if the stated time of deemed receipt is not within Business Hours, then the time of deemed receipt shall be when Business Hours next begin after the stated time.

18.2 The parties' contact details for notices under this Clause 18 are as follows:

(a) in the case of notices sent by the Distributor to the Supplier, *[contact details]*; and

(b) in the case of notices sent by the Supplier to the Distributor, *[contact details]*.

18.3 The addressee and contact details set out in Clause 18.2 may be updated from time to time by a party giving written notice of the update to the other party in accordance with this Clause 18.

19. General

19.1 No breach of any provision of this Agreement shall be waived except with the express written consent of the party not in breach.

19.2 If any provision of this Agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions of this Agreement will continue in effect. If any unlawful and/or unenforceable provision would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant provision will be deemed to be deleted).

19.3 This Agreement may not be varied except by a written document signed by or on behalf of each of the parties.

19.4 Neither party may without the prior written consent of the other party assign, transfer, charge, license or otherwise deal in or dispose of any contractual rights or obligations under this Agreement.

19.5 This Agreement is made for the benefit of the parties, and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement under or relating to this Agreement are not subject to the consent of any third party.

19.6 Subject to Clause 14.1, this Agreement shall constitute the entire agreement between the parties in relation to the subject matter of this Agreement, and shall supersede all previous agreements, arrangements and understandings between the parties in respect of that subject matter.

19.7 This Agreement shall be governed by and construed in accordance with [English law].

19.8 The courts of [England] shall have exclusive jurisdiction to adjudicate any dispute arising under or in connection with this Agreement.

20. Interpretation

20.1 In this Agreement, a reference to a statute or statutory provision includes a reference to:

(a) that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and

(b) any subordinate legislation made under that statute or statutory provision.

20.2 The Clause headings do not affect the interpretation of this Agreement.

20.3 References in this Agreement to "calendar months" are to [the 12 named periods (January, February and so on) into which a year is divided].

20.4 In this Agreement, general words shall not be given a restrictive interpretation by reason of being preceded or followed by words indicating a particular class of acts, matters or things.

EXECUTION

The parties have indicated their acceptance of this Agreement by executing it below.

SIGNED BY [*[individual name]* on [...............], the Supplier] OR [*[individual name]* on [...............], duly authorised for and on behalf of the Supplier]:

........................................

SIGNED BY [*[individual name]* on [...............], the Distributor] OR [*[individual name]* on [...............], duly authorised for and on behalf of the Distributor]:

........................................

SCHEDULE 1 (DISTRIBUTION PARTICULARS)

1. Specification of Products

*[Specify Products]*

2. Financial provisions

*[Insert financial provisions]*

SCHEDULE 2 (TERMS AND CONDITIONS OF SUPPLY)

Please read the Schedule carefully. All contracts that the Supplier may enter into from time to time for [the supply of products] shall be governed by the Schedule, and the Supplier will ask the Distributor for the Distributor's express written acceptance of the Schedule before [supplying any products].

1. Supply

1.1 Unless the parties agree otherwise in writing:

(a) the Products must be collected by the Distributor or a person acting on behalf of the Distributor from [the premises of the Supplier] within the period of [5 Business Days] following the receipt by the Distributor of a written notice from the Supplier stating that the Products are ready for collection;

(b) the Distributor shall be responsible for arranging [loading, transport, unloading and transit insurance] in respect of the Products;

(c) the Distributor shall be responsible for paying all costs relating to such [loading, transport, unloading and transit insurance]; and

(d) risk in the Products shall pass from the Supplier to the Distributor upon the collection of the Products by the Distributor.

OR

1.1 Unless the parties agree otherwise in writing:

(a) the Products must be delivered by the Supplier or a person acting on behalf of the Supplier to [the premises of the Distributor][ within *[period]*];

(b) the Supplier shall be responsible for arranging [loading, transport, unloading and transit insurance] in respect of the Products;

(c) the Supplier shall be responsible for paying all costs relating to such [loading, transport, unloading and transit insurance]; and

(d) risk in the Products shall pass from the Supplier to the Distributor upon the delivery of the Products by the Supplier.

1.2 If the parties agree that the Products shall be supplied by instalments, each instalment shall constitute part of this Agreement, and shall not be subject to a separate contract.

1.3 Any date or dates for the supply of the Products agreed by the parties under this Agreement shall[ not] be of the essence of this Agreement.

1.4 The Supplier shall use reasonable endeavours to comply with reasonable requests by the Distributor to postpone the delivery of the Products[, providing that such postponements must not exceed [30 days]].

2. Title

2.1 Legal and equitable title to the Products will pass from the Supplier to the Distributor upon the later of:

(a) [delivery] OR [collection] OR [delivery or collection] of the Products; and

(b) receipt by the Supplier of all amounts due from the Distributor under this Agreement[ or any other contract between the parties].

2.2 Until title to the Products has passed to the Distributor, the Distributor shall hold the Products as the fiduciary agent and bailee of the Supplier.

2.3 Until title to the Products has passed to the Distributor, the Distributor must:

(a) store the Products in a [secure, safe, dry and clean] environment separately from other products and goods;

(b) ensure that the Products are easily identifiable as belonging to the Supplier;

(c) not deface, destroy, alter or obscure any identifying mark on the Products or their packaging;

(d) ensure that no charge, lien or other encumbrance is created over the Products;

(e) deliver up the Products to the Supplier upon demand;

(f) [insure the Products on the Supplier's behalf for their full price against all risks to the reasonable satisfaction of the Supplier (and on request produce to the Supplier such policy of insurance and a receipt for the then-current premium)]; and

(g) [hold all proceeds of the insurance referred to above on trust for the Supplier and not mix them with any other moneys or pay the proceeds into any overdrawn bank account].

2.4 The Supplier shall be entitled without further notice to inspect and/or recover possession of any Products to which it retains title; and the Distributor grants to the Supplier and its employees and agents an irrevocable licence to enter at any time any premises where the Products are[ or may be] situated for the purpose of inspecting or removing any Products the title to which has remained with the Supplier.

2.5 The Supplier may bring an action for the Charges[ and any other amounts due under this Agreement], notwithstanding that title to the Products has not passed to the Distributor.

3. Warranties

3.1 The Supplier warrants to the Distributor that:

(a) the Supplier has (or will have at the relevant time) the right to sell the Products;

(b) the Products are free from any charge or encumbrance, subject to the express provisions of the Schedule[ and to any charge or encumbrance disclosed or known to the Distributor before the parties entered into this Agreement];

(c) the Distributor shall enjoy quiet possession of the Products, subject to the express provisions of the Schedule;

(d) [the Products correspond to any description of the Products supplied by the Supplier to the Distributor];

(e) the Products are of satisfactory quality;

(f) [the Products are fit for any purpose expressly [or impliedly] OR [(but not merely impliedly)] made known by the Distributor to the Supplier before the parties entered into this Agreement];

(g) [the Products correspond to any sample of the Products supplied by the Supplier to the Distributor, and will be free from any defect making their quality unsatisfactory, but which would not be apparent on reasonable examination of the sample]; and

(h) [the Products will comply with all laws, rules and regulations applicable to the marketing and sale of the Products in [the United Kingdom][ and all standards agreed between the parties], and the Products will bear all mandatory marks and signs associated with such laws, rules, regulations and standards].

3.2 All of the parties' warranties and representations in respect of the subject matter of this Agreement are expressly set out in the Schedule. To the maximum extent permitted by applicable law, no other warranties or representations concerning the subject matter of this Agreement will be implied into this Agreement or any related contract.

4. Breach of warranty

4.1 If any Products do not comply with [any warranty given by the Supplier under this Agreement], the Distributor may[ with the prior agreement of the Supplier] return those Products to the Supplier for (at the option of [the Supplier] OR [the Distributor]):

(a) a full credit of the Charges paid to the Supplier for such Products;

(b) replacement Products; or

(c) [a credit note in respect of the Charges paid to the Supplier for such Products, to be offset against future purchases from the Supplier],

 providing that [the original delivery costs for such Products, return costs, re-delivery costs and related costs] shall be met by [the Supplier] OR [the Distributor].

4.2 Products returned under Paragraph 4.1 must be [properly packed] and returned to [the premises of the Supplier] within [30 Business Days] following receipt of the Products by the Distributor[; and any Products returned in contravention of this Paragraph 4.2 will not be the subject of [any refunds, credits or replacements] and the Distributor will continue to be liable for payment of any unpaid Charges in respect of such Products].

Free non-exclusive distribution agreement: drafting notes

A distributorship is a contractual arrangement whereby one business is permitted to market and sell the products of another business. Typically, a distributorship will be granted in respect of a particular market, often a geographically-defined market.

As this is a non-exclusive distribution agreement, the grant of the distributorship does not preclude the supplier (or a third party appointed by the supplier) from distributing the products in the relevant market.

A set of T&Cs of sale/supply are included with the agreement. These cover delivery, risk, title and similar matters.

This free document is substantially identical to our standard non-exclusive distribution agreement, except that this document includes a textual credit (ie attribution). Purchase the standard document if you would like to use this document without the textual credit.

DATE

* Insert the date of execution of the document.

PARTIES

Subsection 1

* Is the first party an individual, a company or a partnership?
* What is the full name of the individual (including middle names)?
* What is the postal address of the first party?
* What is the full company name of the first party?
* In which jurisdiction is the first party incorporated?
* What is the registration number of the first party?
* What is the registered office address of the first party?
* What is the name of the first party partnership?
* In which jurisdiction is the first party partnership established?
* Where is the principal place of business of the first party?

Subsection 2

* Is the second party an individual, a company or a partnership?
* What is the full name of the individual (including middle names)?
* What is the postal address of the second party?
* What is the full company name of the second party?
* In which jurisdiction is the second party incorporated?
* What is the registration number of the second party?
* What is the registered office address of the second party?
* What is the name of the second party partnership?
* In which jurisdiction is the second party partnership established?
* Where is the principal place of business of the second party?

BACKGROUND

Do you wish to include in the document a description of the background to the document?

Subsection 1

* Explain the background to this document from the perspective of the Supplier.

Subsection 2

* Explain the background to the document from the perspective of the Distributor.

Subsection 3

* It is common to provide a very short summary of what the contract is about.

AGREEMENT

Clause 1: Definitions

Clause 1.1

Definition of Business Day

* The bank and public holidays of which jurisdiction should be excluded from the definition of "Business Day"?

Definition of Business Hours

* What are business hours for the purposes of this document?

Definition of Charges

* Is there any scope for varying charges without the agreement of one of the parties?

Definition of Distributor Confidential Information

* Might confidential information be disclosed to the first party by someone other than the second party, on behalf of the second party?
* Information disclosed during which of these periods is or might be treated as confidential for the purposes of this document?
* Should information that is merely described as confidential be protected?
* Will the terms of this document be confidential to the second party?

Definition of Effective Date

* When will the contract come into force?

Definition of Force Majeure Event

* Specify particular examples of force majeure events.

Definition of Minimum Term

* What minimum term will apply?

Definition of Supplier Confidential Information

* Might confidential information be disclosed to the second party by someone other than the first party, on behalf of the first party?
* Will the terms of this document be confidential to the first party?

Definition of Term

* Define "Term", the period during which the contract will subsist.

Definition of Territory

* Identify the relevant territory.

Clause 2: Credit

Clause: Free documents licensing warning

Optional element. Although you need to retain the credit, you should remove the inline copyright warning from this document before use.

Clause 3: Term

Clause 3.2

* Is the term of the contract indefinite, or will it come to an end upon some agreed date, or upon the occurrence of a defined event?
* Upon what date will the contract terminate?
* Upon the occurrence of what event will the contract terminate?

Clause 4: Non-exclusive distributorship

Clause 4.2

Optional element.

Clause 5: Distributor obligations

Clause 5.1

* What general obligations will the Distributor have in relation to the distribution of products?
* Consider requiring a higher standard of performance, such as "all reasonable endeavours" or "best endeavours".

Clause 5.3

Optional element.

* What must the Distributor provide to the Supplier?

Clause 5.4

Optional element.

* What types of third party co-operation will the Distributor be responsible for procuring?

Clause 5.5

Optional element.

Clause 5.6

Optional element.

Clause 5.7

Optional element.

Clause 6: Supplier obligations

Clause 6.2

Optional element.

Clause 8: No assignment of Intellectual Property Rights

Optional element.

Clause 9: Charges

Clause 9.2

Optional element.

* Are payment amounts stated inclusive or exclusive of VAT?

Clause 9.3

Optional element.

Clause 9.4

Optional element. Will the Supplier be permitted to vary the charges, or any element of the charges, in any circumstances?

* Which elements of the charges may be varied?
* What notice period should apply to the variation of charges?
* Must notice of the variation expire upon some specific date?
* Should variations of charges be limited by reference to an index?
* Specify the relevant date.
* Will the charges variation cap exceed RPI by a defined percentage?
* Identify the index in question.
* Specify the relevant percentage.

Clause 10: Payments

Clause 10.2

* What is the period for payment of invoices?
* When does the period for payment of an invoice begin to run?

Clause 10.3

Optional element.

* Using what methods should payments be made?

Clause 10.4

Optional element.

* What contractual interest rate should apply to late payments?

Clause 11: Confidentiality obligations

Optional element.

Clause 11.1

* In the event of a disclosure of confidential information made by the first party with the prior written consent of the second party, should the first party be bound to place confidentiality obligations upon the recipient of the information?
* Will the second party have to give its written approval to the specific conditions under which confidential information is disclosed by the first party to a third party, or is it sufficient that such disclosures are made under conditions of confidentiality no less onerous than those set out in this document?
* Should the Supplier be required to act in good faith in relation to confidential information?
* Should the first party be placed under an obligation to only use the information disclosed for a defined purpose?

Clause 11.2

* In the event of a disclosure of confidential information made by the second party with the prior written consent of the first party, should the second party be bound to place confidentiality obligations upon the recipient of the information?
* Will the first party have to give its written approval to the specific conditions under which confidential information is disclosed by the second party to a third party, or is it sufficient that such disclosures are made under conditions of confidentiality no less onerous than those set out in this document?
* Should the Distributor be required to act in good faith in relation to confidential information?
* Should the second party be placed under an obligation to only use the information disclosed for a defined purpose?

Clause 11.3

Optional element.

* To whom may a party disclose confidential information supplied by the other party?
* Should disclosures made under this provision be prohibited unless there is a "need to know"?

Clause 11.4

* Should a party be free to disclose all information received from third parties in circumstances where that party has no reason to believe that there has been a breach of a confidentiality obligation?

Clause 11.6

Optional element. Should the parties be prohibited from making any further use of confidential information following termination?

Clause 11.7

Optional element. Should the document include an express requirement that the parties destroy, delete or return confidential information upon termination?

* Must the Distributor request the destruction, return and/or deletion of confidential information following termination, or will the obligation to destroy, return and/or delete always apply?
* What period, following a request from the Distributor, will the Supplier have to destroy, return and/or delete confidential information?
* Within what period following termination must the first party destroy, delete or return the second party's confidential information?

Clause 11.8

* Will the confidentiality obligations in this section continue indefinitely, or will they come to an end at some point following termination of the contract?
* For what period following termination will the confidentiality obligations continue?

Clause 12: Warranties

Optional element.

Clause 12.1

Optional element.

Clause 12.2

Optional element.

Clause 13: Supplier Indemnity

Should the document include any indemnities?

Clause 13.2

Optional element.

* Will the indemnity only apply where the Distributor complies with the requirements of this provision?

Clause 13.3

Optional element.

* Will the indemnity provisions be subject to the limitations and exclusions of liability in the document?
* Will there be any exceptions to the general rule here?
* Specify the exceptions to the general rule.

Clause 14: Limitations and exclusions of liability

Contractual limitations and exclusions of liability are regulated and controlled by law, and the courts may rule that particular limitations and exclusions of liability in contracts are unenforceable. The courts are particularly likely to intervene where a party is seeking to rely on a limitation or exclusion of liability in its standard terms and conditions, but will also sometimes intervene where a term has been individually negotiated. The courts may be more likely to rule that provisions excluding liability, as opposed to those merely limiting liability, are unenforceable. If there is a risk that any particular limitation or exclusion of liability will be found to be unenforceable by the courts, that provision should be drafted as an independent term, and be numbered separately from the other provisions. It may improve the chances of a limitation or exclusion of liability being found to be enforceable if the party seeking to rely upon it specifically drew it to the attention of the other party before the contract was entered into. Exclusions and limitations of liability in UK B2B contracts are primarily regulated by the Unfair Contract Terms Act 1977 ("UCTA"). Contracts regulated by UCTA cannot exclude or restrict a party's liability: (i) for death or personal injury resulting from negligence (Section 2(1), UCTA); or (ii) for breach of the obligations arising from Section 12 of the Sale of Goods Act 1979 or Section 8 of the Supply of Goods (Implied Terms) Act 1973 (Section 6(1), UCTA). Furthermore, except insofar as the relevant term satisfies the requirements of reasonableness, such contracts cannot exclude or restrict liability: (i) for negligence (which includes a breach of an express or implied contractual obligation to take reasonable care or exercise reasonable skill) (Section 2(2), UCTA); or (ii) for breach of the obligations arising from Section 13, 14 or 15 of the Sale of Goods Act 1979 or Section 9, 10 or 11 of the Supply of Goods (Implied Terms) Act 1973 (Section 6(3), UCTA); or (iii) for misrepresentation (Section 3, Misrepresentation Act 1967). In addition, if a contract is regulated by UCTA, and one of the parties is dealing on the other's written standard terms of business, then except insofar as the relevant contractual term satisfies the requirements of reasonableness the other party cannot: (i) exclude or restrict its liability in respect of a breach of contract; or (ii) claim to be entitled to render a contractual performance substantially different from that which was reasonably expected of him; or (iii) claim to be entitled, in respect of the whole or any part of its contractual obligation, to render no contractual performance at all (Section 3, UCTA). Where the possession or ownership of goods passes under or in pursuance of a contract not governed by the law on the sale of goods or hire purchase, additional provisions apply. For example, liability under such a contract in respect of goods' correspondence with their description or samples, or their quality or fitness for any particular purpose, cannot be excluded or restricted except insofar as the term satisfies the requirement of reasonableness (Section 7(3), UCTA), and liability for breach of Section 2 of the Supply of Goods and Services Act 1982 (which implies certain warranties concerning title and quiet possession) cannot be excluded at all (Section 7(3A), UCTA). See Section 7, UCTA for more details. If you wish to try to limit/exclude for liability in respect of reckless, deliberate, personal and/or repudiatory breaches of contract, you should specify this in relation to the relevant provision (for example, using the following wording: "The limitations and exclusions of liability in this Clause [number] will apply whether or not the liability in question arises out of any reckless, deliberate, personal and/or repudiatory conduct or breach of contract"). In many circumstances, however, the courts will find these types of limitations and exclusions to be unenforceable. These guidance notes provide a very incomplete and basic overview of a complex subject. Accordingly, you should take legal advice if you may wish to rely upon a limitation or exclusion of liability.

Clause 14.1

Do not delete this provision (except upon legal advice). Without this provision, the specific limitations and exclusions of liability in the document are more likely to be unenforceable.

Clause 14.3

* Which of the parties will be the beneficiary of this limitation of liability?

Clause 14.4

Optional element.

* Which of the parties will be the beneficiary of this limitation of liability?

Clause 14.5

Optional element.

* Which of the parties will be the beneficiary of this limitation of liability?

Clause 14.6

Optional element.

* Which of the parties will be the beneficiary of this limitation of liability?

Clause 14.7

Optional element.

* Which of the parties will be the beneficiary of this limitation of liability?

Clause 14.8

Optional element.

* Which of the parties will be the beneficiary of this limitation of liability?

Clause 14.9

Optional element.

"Consequential loss" has a special meaning in English law: it means any loss that, whilst not arising naturally from the breach, was specifically in the contemplation of the parties when the contract was made.

* Which of the parties will be the beneficiary of this limitation of liability?

Clause 14.10

Optional element. Do you want to include a per-order liability cap in this document?

Liability caps may be unenforceable in practice.

* Which of the parties will be the beneficiary of this liability cap?
* What monetary amount should be used in the liability cap?
* What floating amount should be used in the liability cap?

Clause 14.11

Optional element. Do you want to include an aggregate liability cap in this document?

Liability caps may be unenforceable in practice.

* Which of the parties will be the beneficiary of this liability cap?
* What monetary amount should be used in the liability cap?
* What floating amount should be used in the liability cap?

Clause 15: Force Majeure Event

Optional element.

Clause 15.1

* Will obligations to make payments be excluded from the scope of the force majeure exception?

Clause 15.2

Optional element.

Clause 15.3

Optional element.

Clause 16: Termination

Clause 16.1

* What notice period will apply?
* Must the notice of termination expire after some particular period, or on some particular day?
* What is the notice period when the Distributor is giving the Supplier written notice of termination?
* Will the Distributor's right to terminate for convenience be restricted?
* How will the limitation on the expiry of the termination notice period operate?
* Specify the relevant period.
* In what way will the Distributor's right to terminate for convenience be restricted?
* Insert relevant time period.

Clause 16.1

* What notice period will apply?
* Must the notice of termination expire after some particular period, or on some particular day?
* How will the limitation on the expiry of the termination notice period operate?
* Insert relevant time period.

Clause 16.2

* In what circumstances may a party terminate for breach?
* Will all breaches, or only material breaches, give rise to a right of termination?
* What is the remediation period here?
* Should each party have a right to terminate if the other party is persistently in breach of contract, even where there has been no material breach?

Clause 16.3

* Will the winding up of a party as part of a solvent company reorganisation give rise to a right of termination for the other party?
* Will or might a party to the document be an individual, rather than a corporate entity?

Clause 18: Notices

Optional element.

Clause 18.2

* Insert all required addressee, address and contact details for contractual notices sent to the Supplier.
* Insert all required addressee, address and contact details for contractual notices sent to the Distributor.

Clause 19: General

Clause 19.1

Optional element.

Clause 19.2

Optional element.

Clause 19.3

Optional element.

This is intended to prevent, for example, one party wrongfully claiming that a term of the contract was changed in a telephone call.

Clause 19.4

Optional element.

Clause 19.5

Optional element.

This provision is designed to exclude any rights a third party may have under the Contracts (Rights of Third Parties) Act 1999.

Clause 19.6

Optional element.

Clause 19.7

This template has been drafted to work in the English law context. If you plan to change the governing law, you should have the document reviewed by someone with expertise in the law of the relevant jurisdiction.

* Which law will govern the document?

Clause 19.8

Optional element.

As a practical matter, it makes sense for the courts with expertise in the relevant law to have the right to adjudicate disputes. Where one of the parties is outside England (or at least the UK), you may want to grant the courts of their home jurisdiction the right to adjudicate disputes, as this could ease enforcement in some circumstances.

* The courts of which jurisdiction will have the exclusive right to adjudicate disputes relating to the document (subject to applicable law)?

Clause 20: Interpretation

Should provisions concerning the interpretation of the document be included?

Clause 20.1

Optional element.

Clause 20.2

Optional element.

Clause 20.3

Optional element.

Clause 20.4

Optional element.

This provision is designed to exclude the application of a rule of interpretation known as the ejusdem generis rule. That rule may affect the interpretation of contractual clauses that list particular examples or instances of some more general idea, by limiting the scope of the general idea by reference to those particular examples or instances.

EXECUTION

Subsection: Execution of contract by first party (individual, company or partnership)

* Will the contract be signed by the (first party) contracting individual, or a person on behalf of the (first party) contracting entity?
* What is the full name of the first party signatory?
* On what date is the first party signing the contract?
* Add the full name of the person who will sign the document on behalf of the first party.
* On what date is the contract being signed on behalf of the first party?

Subsection: Execution of contract by second party (individual, company or partnership)

* Will the contract be signed by the (second party) contracting individual, or by a person on behalf of the (second party) contracting entity?
* What is the full name of the second party signatory?
* On what date is the second party signing the contract?
* Add the full name of the person who will sign the document on behalf of the second party.
* On what date is the contract being signed on behalf of the second party?

SCHEDULE 1 (DISTRIBUTION PARTICULARS)

Optional element.

Paragraph 1: Specification of Products

Optional element.

* Insert the specification for the services.

Paragraph 2: Financial provisions

Optional element.

* Insert financial provisions.

SCHEDULE 2 (TERMS AND CONDITIONS OF SUPPLY)

Paragraph 1: Supply

Paragraph 1.2

Optional element.

Paragraph 1.3

Optional element.

Paragraph 1.4

Optional element.

Paragraph 3: Warranties

Paragraph 3.1

Optional element.

The warranties in UK supply agreements are heavily regulated by statute, as detailed in this note. Except where there appears from a contract, or can be inferred from its circumstances, an intention that the supplier will only transfer to the customer a limited title, then a warranty that the supplier has a right to sell will be implied by law (Section 12(1), Sale of Goods Act 1979) and cannot be restricted or excluded (Section 6(1), Unfair Contract Terms Act 1977). Although it is referred to here as a warranty, the implied term is to be treated as a condition under the Sale of Goods Act 1979, and a breach of this warranty will therefore be a material breach. A warranty that goods are sold free from encumbrances is implied by Section 12(2) of the Sale of Goods Act 1979, and generally speaking may not be excluded or restricted. A warranty of quiet possession is implied by Section 12(3) of the Sale of Goods Act 1979, and generally speaking may not be excluded or restricted. A warranty of conformity to description is implied by Section 13 of the Sale of Goods Act 1979 where there is a "sale by description", and may only be excluded or restricted if the exclusion or restriction is reasonable. A warranty of satisfactory quality is implied by Section 14(2) of the Sale of Goods Act 1979, and may only be excluded or restricted if the exclusion or restriction is reasonable. However, the warranty will not be implied where the matter making the quality of the products unsatisfactory: (i) is specifically drawn to the customer's attention before the contract is made; (ii) ought to have been revealed by the pre-contract examination of the products that was performed by the customer; or (iii) in the case of a "sale by sample", would have been apparent upon a reasonable examination of the sample. A warranty of fitness for purpose is implied by Section 14(3) of the Sale of Goods Act 1979, and may only be excluded or restricted if the exclusion or restriction is reasonable. A warranty of conformity to sample is implied by Section 15 of the Sale of Goods Act 1979 where there is a "sale by sample", and may only be excluded or restricted if the exclusion or restriction is reasonable.

Paragraph 4: Breach of warranty

Optional element.

Because these provisions contain procedural and remedial limitations upon the liability of the supplier, they could be subject to close judicial scrutiny.