|  |  |  |
| --- | --- | --- |
|  |  |  |
|  |  | Distribution Agreement  relating to **[*Insert name of country/region if relevant*]** |
|  |  |  |
|  |  | **[*Insert name of Supplier*]** **(Supplier)**  ***DELETE BEFORE SENDING TO DISTRIBUTOR: This template was prepared by MinterEllisonRuddWatts. This template does not constitute legal advice from MinterEllisonRuddWatts to you, and you use this template at your own risk. If you would like to receive further assistance from the authoring firm, MinterEllisonRuddWatts’ contact details are:***   * ***0800 862 774*** * ***Auckland: PwC Tower, 15 Customs Street West, PO Box 105 249, Auckland 1143, DX CP24061, New Zealand,*** * ***Wellington: Level 18, 125 The Terrace, PO Box 2793, Wellington 6140, DX SP20009, New Zealand***   ***Alternatively, other commercial law firms are also likely to be able to assist you in this regard.*** |
|  |  | **[*Insert name of Distributor*]** **(Distributor)** |

***DELETE BEFORE SENDING TO DISTRIBUTOR: This template Distribution Agreement is only a guide for you (as a NZ Business/Supplier) to consider when dealing with an in-market Distributor. It has been drafted to provide balance in the rights and obligations of the parties, but is weighted slightly in favour of you (as the Supplier), not the Distributor. Depending on the bargaining leverage of the Distributor, they may insist on their contract form to be used. If this Agreement isn’t used, it can form a basis for common commercial terms that you should expect to see in the Distributor’s agreement form.***

***This document is not intended to be or contain legal advice. We strongly recommend you obtain independent legal advice before you commit to or sign any deal, or finalise any Distribution Agreement.***

***Updated 18 May 2021.***

***DELETE BEFORE SENDING TO DISTRIBUTOR – SUMMARY:***

***The basis of this template is that the Distributor buys, marks up and on sells the Products. Before finalising, ensure you obtain independent in-market advice so it adequately covers your commercial deal with the Distributor, and complies with the laws of the market.***

**Components of the template:**

***The legal terms are from pages 6 to 37 inclusive and set out the high level structure of the Agreement.***

***The day-to-day commercial and operational details are included in the schedules from pages 38 to 43 inclusive and set out things like customers, products, and prices.***

**How to complete this template:**

* ***This comprehensive template will need to be tailored to your deal***
* ***Optional clauses are highlighted in green.***
* ***Clauses highlighted in yellow require you to make a choice and complete relevant details (see drafting notes for guidance).***
* ***Once you’ve completed the template, delete all drafting notes and the information in square brackets***
* ***Stylise/reformat the layout of the template to suit your brand/business requirements (e.g. to reduce # pages - change the font size/split text into columns)***

**Distribution Agreement**

|  |
| --- |
|  |

Agreed terms 5

1. Defined terms and interpretation 5

1.1 Defined terms 5

1.2 Interpretation 8

2. Appointment 9

2.1 Appointment 9

2.2 Acknowledgment of non-exclusivity [*Optional*] 9

2.3 Sales to Customers 9

2.4 Non-competition 10

3. Term and renewal 10

3.1 Term 10

3.2 Probation period [*Optional*] 10

3.3 Renewal 10

4. Distributor’s obligations 11

4.1 Sale of the Products 11

4.2 General 12

5. Supplier’s obligations *[Optional]* 14

5.1 Obligations [*Optional*] 14

6. Revenue targets 14

6.1 Acknowledgment of reliance 14

6.2 Review of Revenue Targets 15

6.3 Failure to meet Revenue Targets 15

6.4 Failure of remedy plan 15

7. Forecasts and ordering 15

7.1 Forecasts 15

7.2 Orders 16

8. Delivery and Importation 17

8.1 Delivery of confirmed purchase orders 17

8.2 Importation of the Products 17

9. Prices and payment 17

9.1 Prices 17

9.2 Taxes 17

9.3 Invoicing and payment 17

9.4 Method of Payment and Currency 18

9.5 Interest 18

9.6 Bank guarantee [*Optional*] 18

9.7 No commission 19

10. Terms of business 19

10.1 Terms 19

10.2 Risk 19

10.3 Title 19

10.4 Sale as agent 20

10.5 Cessation of right to sell 20

10.6 Information 20

10.7 Rights of the Supplier 20

11. Quality and returns 20

11.1 Quality 20

11.2 Checking and return of the Products 20

12. Compliance with applicable Laws 22

12.1 Performance of obligations subject to applicable laws 22

12.2 The Distributor’s compliance obligations 22

12.3 The Distributor to obtain permits 22

13. Marketing and sales strategy [*Optional*] 22

13.1 The Distributor's promotion, marketing and sales of the Products [*Optional*] 22

13.2 The Supplier to provide education and training [*Optional*] 22

13.3 Sales and marketing strategies [*Optional*] 23

13.4 Marketing materials [*Optional*] 23

13.5 Marketing expenses [*Optional*] 23

14. Reports, [KPIs] and meetings 24

14.1 Monthly sales report 24

14.2 Quarterly marketing report [*Optional*] 24

14.3 Six monthly report 24

14.4 Key Performance Indicators [*Optional*] 24

14.5 Meetings 25

14.6 Contact person 25

15. Warranties 25

15.1 No warranties regarding the Products 25

15.2 Mutual warranties 26

16. Intellectual Property Rights 26

16.1 Ownership 26

16.2 Use of Trade Marks 26

16.3 The Distributor’s conduct 26

16.4 Infringement 27

16.5 Compliance 28

17. Confidentiality 28

17.1 Confidentiality 28

17.2 Exclusions 28

17.3 Further acknowledgment 29

17.4 Personnel 29

17.5 Return of information 29

18. Liability 29

18.1 The Supplier’s exclusion of liability 29

18.2 The Supplier’s limitation of liability 30

18.3 The Distributor’s indemnity 30

18.4 Exception 30

18.5 Indemnity Claim 30

18.6 Conduct of Indemnity Claim 31

18.7 The Supplier's reputation 31

18.8 Mitigation 31

19. Force majeure 31

19.1 Event 31

19.2 Termination 31

20. Hardship [*Optional*] 32

20.1 Fundamental alteration [*Optional*] 32

20.2 No agreement [*Optional*] 32

21. Termination 32

21.1 Termination 32

21.2 Conduct upon termination 33

21.3 Outstanding orders 33

21.4 Remittance of funds 33

21.5 Survival 33

21.6 New Distributor [*Optional*] 34

22. Notices 34

22.1 Form of Notice 34

22.2 Deemed receipt 34

23. Dispute resolution 34

23.1 No proceedings 34

23.2 Dispute Notice 35

23.3 Referral to chairpersons 35

23.4 Mediation 35

24. General 35

24.1 Governing Law 35

24.2 Assignment and subcontracting 36

24.3 Waiver 36

24.4 Further Assurances 36

24.5 Independent contractor 36

24.6 Entire agreement 36

24.7 Severable provision 36

24.8 Counterparts 37

Schedule 1 - Reference Terms 38

Schedule 2 - Trade Marks 39

Schedule 3 - Customers 40

Schedule 4 - The Products 41

Schedule 5 - Prices 42

Schedule 6 - KPIs [*Optional*] 43

Signing page 44

**Details**

|  |  |
| --- | --- |
| **Date** |  |

**Parties**

|  |  |
| --- | --- |
| Name | [*insert name of Supplier*] |
| Short name | **Supplier** |
| Notice details | [ ] |
| Facsimile | [ ] |

|  |  |
| --- | --- |
| Attention | [ ] |

|  |  |
| --- | --- |
| Name | [*insert name of Distributor*] |
| Short name | **Distributor** |
| Notice details | [ ] |
| Facsimile | [ ] |

|  |  |
| --- | --- |
| Attention | [ ] |

**Background**

1. The Supplier wishes to appoint the Distributor as [the exclusive/a non-exclusive] distributor of the Products in the Territory.
2. The parties have agreed to enter into this Agreement to set out the terms and conditions on which the Distributor will act as a distributor of the Products in the Territory.

[***Drafting note:*** *edit the above description depending on what the Distributor is required to do****.***]

**Agreed terms**

1. **Defined terms and interpretation**
   1. Defined terms

In this Agreement, unless the context otherwise requires:

[**Aged Stock** means Product past the ‘best before’ date of the Product.] [***Optional***]

**Agreement** means this agreement including all of its schedules.

**Business Day** means any day of the week, other than a Saturday or a Sunday, on which registered banks are open for business in [Auckland/Wellington or Auckland and Wellington, New Zealand].

**Confidential Information** means the Supplier Confidential Information and/or the Distributor Confidential Information.

[***Drafting note***: *as a starting position it is easier for the Supplier if Business Day is defined in the same location as the Supplier.*]

**Commencement Date** means the date specified in Schedule 1 as the Commencement Date.

**Contract Period** means the term of this Agreement specified in Schedule 1 as the Contract Period.

**Customers** means the customers specified in Schedule 3 [as amended from time to time under clause 2.3(c)]. [***Optional***]

**Distributor Confidential Information** means information that is not Supplier Confidential Information and that the Distributor notifies to the Supplier as being confidential.

[***Drafting note:*** *consider carving out from Distributor Confidential Information things such as customer details to ensure this becomes Supplier property /confidential information.*]

**Force Majeure Event** affecting a party means anything outside that party’s reasonable control which adversely affects that party’s ability to perform its obligations under this Agreement, including:

* + - 1. an act of God or public enemy;
      2. natural disasters, including earthquakes, volcanic eruptions, floods, storms and lightning strikes;
      3. explosions, fires, destruction of machines, destruction of factories, and of any kind of similar installations;
      4. adverse weather conditions for which provisions could not reasonably have been made;
      5. [unpredictable and reasonably unpreventable delays in delivery of materials, equipment or services necessary for the performance by the party of an obligation under this Agreement; [***Optional***]]
      6. sabotage, riot, civil disturbance, insurrection, epidemic, national emergency (whether in fact or Law) or act of war (whether declared or not);
      7. an act or omission of any officer or agent of any Government Authority not directly or indirectly arising from any act or omission by the party, its agents, representatives or advisors;
      8. governmental restraint, expropriation, prohibition, intervention, direction or embargo; and
      9. [boycotts, strikes, lock-out, work stoppage or other labour hindrance that is not within the control of the party. [***Optional***]]

**Government Authority** means any national, local or regional body, government or other regulatory authority or officer having jurisdiction or authority over or in respect of the Territory and/or the Products.

**Incoterms 2020** means the International Chamber of Commerce [official rules](https://iccwbo.org/resources-for-business/incoterms-rules/incoterms-2020/) for the interpretation of trade terms, as amended from time to time.

[***Drafting note:*** *these rules are a series of pre-defined commercial Trade Terms related to common contractual sales practices. The Incoterms rules are intended primarily to clearly communicate the tasks, costs, and risks associated with the transportation and delivery of goods, for example DAP (Delivered at Place) which means the**seller pays for carriage to the named place, except for costs related to import clearance, and assumes all risks prior to the point that the goods are ready for unloading by the buyer.*]

**Insolvency Event** means, in relation to a party:

* + 1. a liquidator is appointed in respect of the party;
    2. a receiver, administrator, trustee and manager (or any of them) (including a statutory manager) is appointed in respect of all or any of its property and such receiver or administrator fails, within 30 days of his or her appointment, to advise the other party that the receiver or administrator will adopt and comply with the terms of this Agreement;
    3. that party is, becomes, or is deemed to be, bankrupt;
    4. that party makes an assignment for the benefit of, or enters into or makes any arrangement or composition with, its creditors;
    5. a resolution is passed, or any proceeding is commenced, for the winding up or liquidation of that party (other than for the purposes of a solvent reconstruction); or
    6. any event analogous to the events described in (a)– (e) occurs in relation to that party under the laws of the Territory.

**Intellectual Property Rights** means all rights and interests in and to the trade marks, inventions, patents, designs, copyrights, moral rights, plant variety rights, database rights, know-how and confidential information, business names, trade names, service marks, trade dress and livery, domain names, layout designs, software (including, without limitation, in source and object codes) and any similar rights in any part of the world, including any registration of such rights and applications for such registrations.

**[KPI** and **KPIs** means the key performance indicators recorded in Schedule 6 which are intended to operate as a measure of the performance of the Distributor under this Agreement.] [***Optional***]

**Law** means any statute, regulation, bylaw, ordinance or subordinate legislation in force from time to time, the common law and the law of equity (if applicable), and any applicable direction, policy, permission, consent, licence, rule, undertaking or order over or in respect of the Territory and/or the Products that is binding on a party and that is made or given by any Government Authority.

**Products** means the products which are to be distributed by the Distributor pursuant to the terms of this Agreement, particulars of which are set out in Schedule 4, together with any other products as may be agreed in writing by the parties from time to time.

**Product Specifications** means the specifications for each Product, as [notified by the Supplier to the Distributor in writing from time to time] or [set out in Schedule 4].

**Related Person** means any person that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, the Supplier or the Distributor (as the context requires). A person controls another person if the person, directly or indirectly, has the power to:

* + 1. appoint a majority of the directors or trustees of the other person; or
    2. otherwise direct or cause the direction of the management, policies or powers of the other person,

whether through the ownership of voting securities, by deed of trust, by appointment of directors or trustees, by contract or otherwise.

**Revenue Targets** means the targets for sales of the Products in the Territory by the Distributor set out in accordance with clause 6.1(b) and specified in Schedule 1, or agreed under clause 3.3 or 6.2.

**Supplier Confidential Information** means:

* + 1. all information, know-how and Intellectual Property Rights in relation to the Products;
    2. all information concerning the business and affairs of the Supplier which is obtained or received by the Distributor as a result of the discussions leading up to, the entering into or the performance of this Agreement, and the existence and terms of this Agreement;
    3. all information provided by the Distributor to the Supplier under clause 14; and
    4. all other information treated by the Supplier as confidential, including all trade secrets, formulas, processes, ideas and inventions, specifications, designs, financial or business information, market research and pricing strategies,

regardless of its form and whether the person receiving the information becomes aware of it before or after the date of this Agreement.

**Term** means the term of this Agreement as set out in clause 3.1.

**Territory** means the [territory/territories] specified in Schedule 1.

**Trade Marks** means the trade marks specified in Schedule 2.

**Trade Term** means a trade term specified in Incoterms 2020 and set out in Schedule 1.

* 1. Interpretation

In this Agreement, unless the context requires otherwise:

* + 1. words importing one gender include any other gender;
    2. words importing the singular include the plural and vice versa;
    3. the terms “including”, “includes” and “include” include the words “without limitation” after those terms;
    4. a reference to a document or instrument includes the document or instrument as novated, amended or replaced from time to time;
    5. a reference to a person includes the Supplier, the Distributor, other corporations, body of persons (whether incorporated or unincorporated), partnership, governmental or local authority or agency;
    6. references to clauses, paragraphs and Schedules are references to clauses and paragraphs of, and Schedules to, this Agreement;
    7. any Schedules, and the provisions in such Schedules, have the same effect as if set out in the body of this Agreement;
    8. where words or expressions are defined, other parts of speech and grammatical forms of that word or expression have corresponding meanings;
    9. [a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Agreement or any part of it; [***Optional***]]
    10. a reference to dollars, NZ$ or $ is a reference to New Zealand currency;
    11. if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day;
    12. any reference to any statute or regulations is a reference to that statute or those regulations as amended or replaced;
    13. a reference to “Trade Marks” is to all of them or any of them as the context requires; and
    14. an obligation not to do something includes an obligation not to permit or assist any other person to do so, whether directly or indirectly.

1. **Appointment**
   1. Appointment

The Supplier hereby appoints the Distributor, and the Distributor accepts the appointment, as [the exclusive/a non-exclusive/the sole] distributor of the Products in the Territory, subject to the terms and conditions of this Agreement.

* 1. Acknowledgment of non-exclusivity [*Optional*]

[The Distributor acknowledges that, for so long as the Distributor’s appointment in respect of the Products is [non-exclusive][sole], the Supplier [and/or its Related Persons and/or the distributors already appointed [or subsequently appointed] by the Supplier] may promote, distribute and sell the Products in the Territory.]

[***Drafting note:*** *this makes it explicit that the Distributor understands that a non-exclusive Distribution Agreement means others can sell the products in the Territory, so should be included in non-exclusive agreements. Use the bracketed language about related persons and/or other distributors if the appointment is non-exclusive, not “sole”. Choose the option of a “sole” distributor if the intention is that the Supplier can sell products in the Territory as well as the Distributor, but that the Supplier will not appoint others to do so.*]

* 1. Sales to Customers

Notwithstanding the provisions of clause 2.1:

* + 1. the Supplier reserves the exclusive right to market and sell the Products in the Territory directly to the Customers. [Except where clause 2.3(b) applies] the Distributor will not sell or attempt to sell any of the Products to the Customers, unless the Distributor has first obtained the Supplier’s prior written consent to do so.
    2. [the Supplier may, if it is unable to do so itself, request the Distributor to sell the Products to a Customer and the Distributor shall comply with that request unless, and then only to the extent, it does not have a sufficient quantity of the Products available for supply to the relevant Customer. The price charged to the Customer for such of the Products will be as [specified by the Supplier, provided the price specified is no less than the price which the Supplier charges the Distributor for the Products, plus [a reasonable margin/a margin of [•]%] for the Distributor’s costs of selling the Products to the Customer] or [a margin agreed by the Supplier and the Distributor on a case by case basis*.* [***Optional***]]

[***Drafting* *note****: the pricing method chosen will need to comply with any competition laws in the Territory.* *Pricing methods that allow the Supplier to set the price at which the Distributor will sell the Product may breach competition laws. We recommend that you seek independent legal advice on your pricing methods.*]

* + 1. [the Supplier has the right, by giving notice to the Distributor, to add Customers to or remove Customers from the list of Customers in Schedule 3. [***Optional***]]

[***Drafting note****: this clause allows the Supplier to retain any existing customers that it has in the Territory. The Distributor’s role should be to find new customers, not to sell to existing ones. Consider including obligation on distributor to notify new customer details to the Supplier, to assist with availability of this information on termination.*]

* 1. Non-competition
     1. The Distributor shall not promote, distribute or sell its own or any third party products in the Territory which compete with the Products, or which are of the same or a [substantially] similar type or description as the Products, unless the Distributor has requested and obtained the Supplier’s prior written consent to do so (which the Supplier may grant or withhold at its sole discretion).
     2. Any consent granted by the Supplier under clause 2.4(a) shall be limited to the specific product or products in respect of which the consent is granted and, in granting its consent, the Supplier shall be entitled to impose any condition it deems fit.
     3. The Distributor acknowledges that when selling products of the same or a [substantially] similar type or description as the Products (as permitted under this clause 2.4), the Distributor will give priority to the Products.

[***Drafting* *note****: consider if there should be any exemptions, such as where a customer specifically requests other products. Generally it is better not to have exemptions if possible, as there can be disagreements as to the scope of the exceptions.*]

1. **Term and renewal**
   1. Term

This Agreement commences on the Commencement Date and expires at the end of the Contract Period, unless renewed under clause 3.3 or terminated earlier in accordance with its terms.

* 1. Probation period [*Optional*]
     1. [The parties shall undertake a formal review of the operation of this Agreement and the Distributor’s performance under it [*insert relevant number*] months after the Commencement Date.
     2. The review shall take place at a time and location [agreed by the parties/specified by the Supplier, provided the location is either in a main commercial centre in New Zealand or the Territory. If the parties agree, the review may take place by phone or video conference].
     3. Each party will ensure representatives of that party with the knowledge and authority to discuss the operation of this Agreement and the Distributor’s performance under it will attend the review.
     4. If any matters raised at the review are not resolved to the satisfaction of [the Supplier/the party raising them] then, after the review is completed, [the Supplier/that party] may, by [*insert relevant number*] Business Days’ notice to [the Distributor/other party], terminate this Agreement.]

[***Drafting note****: This clause can be used if one of the parties wants an option to trial the relationship/arrangements before committing to a long contract period.*]

* 1. Renewal
     1. This Agreement may be renewed [at the option of the Supplier] [with the [written] agreement of both parties] for [two] further successive renewal term[s] of [*insert relevant number*] years, provided that not less than [*insert relevant number*] months before the expiry of the Contract Period or the relevant renewal term the Supplier has provided the Distributor with a written notice of renewal/the Supplier and the Distributor have agreed in writing to renew the Agreement].
     2. [The Supplier/The Supplier or the Distributor] may, in giving notice of renewal, request a change to any of the terms of this Agreement, which must include the setting of Revenue Targets.
     3. The parties will meet to consider any requested change and negotiate in good faith to seek to agree any amendments to this Agreement.
     4. If agreement on any amendments (including Revenue Targets) is not reached by the expiry of the Contract Period or any renewal term, this Agreement will terminate (unless the parties agree to it continuing for the new renewal term on the existing terms and conditions and with the Revenue Target being the target that applied for the final period of the Contract Period or the relevant renewal term).

1. **Distributor’s obligations**
   1. Sale of the Products

The Distributor will:

* + 1. at all times act in good faith and use its best endeavours to [increase and maximise/actively promote] the sale of the Products within the Territory / [comply with its marketing requirements set out in clause 13];

[***Drafting note:*** *adjust the above clause depending on the marketing requirements of the Supplier.*]

* + 1. [purchase the Products only from the Supplier];
    2. attend regular meetings with the Supplier and provide reports as set out in clause 14;
    3. [meet its KPIs, and complete the KPI reporting and review obligations as set out in clause 14]
    4. comply with all applicable Laws, regulations, standards, awards, ordinances, by-laws or orders applicable to any aspect of its obligations under this Agreement;
    5. maintain in the Territory a knowledgeable, experienced, skilled, competent and efficient team of people to handle the [marketing, sale, delivery and merchandising] of the Products throughout the Territory;

[**Drafting *note:*** *adjust the above clause in square brackets to match the type of activities the Distributor will perform.*]

* + 1. [use its best endeavours to keep the Supplier informed of competitor’s prices and products similar to the Products sold in the Territory, import tariffs, local taxes and any other information that may be useful to the Supplier in connection with the sale of the Products;] [***Optional***]

[***Drafting note:*** *the above optional clause may not be necessary where Distributor is solely responsible for paying local taxes and all importation duties and would therefore be an unnecessary obligation on the Distributor*]

* + 1. [at the Distributor’s cost, remove from sale, and destroy, any Aged Stock;] [***Optional***]

[***Drafting note:*** *you may wish to include this optional clause if your Products are perishable*]

* + 1. maintain an efficient and regular service for the distribution, delivery and sale of the Products throughout the Territory;
    2. [sell the Products in the Territory at prices determined by the Distributor after consultation with the Supplier [with the aim of optimising sales of the Products in the Territory (in a manner consistent with the Supplier’s marketing and brand position) and the Distributor’s revenue from its role under this Agreement]; [***Optional***]

[***Drafting note****: ensure the above clause, if included, complies with any competition laws of the Territory. Pricing methods that allow the Supplier to set the price at which the Distributor will sell the Product may breach competition laws. We recommend that you seek independent legal advice on your pricing methods. If this Agreement is non-exclusive, also consider how other Distributors must price the Products.*]

* + 1. implement trade and consumer promotional activities [as agreed in writing between the Supplier and the Distributor] [as specified by the Supplier];
    2. not sell the Products in any packaging other than that [in which they are supplied by the Supplier to the Distributor][which is provided by the Distributor and approved by the Supplier];
    3. not advertise, market, promote, sell or otherwise supply the Products directly or indirectly to anyone outside the Territory, or supply the Products to any person who the Distributor knows or ought reasonably to suspect will supply the Products to anyone outside the Territory;
    4. not enter into any arrangement with any sub-distributor, or third party for the marketing of Products without the prior written consent of the Supplier, such consent not to be unreasonably withheld;
    5. give no warranty to any third parties supplied by the Distributor regarding the Products other than those required by Law to be given, those given by the Supplier to the Distributor or those approved by the Supplier;
    6. promptly provide the Supplier with details of any complaint received by the Distributor relating to the Products and inform the Supplier immediately of any reported or suspected problems arising from or in relation to the use of the Products, and assist the Supplier with any enquiries concerning a reported or suspected problem; and
    7. advise third parties supplied by the Distributor, and it shall be a specific term of the Distributor’s terms of sale of the Products to third parties, that acceptance of any order does not include or imply the acceptance by the Supplier or the Distributor of any term, condition or provision on or appearing on the third parties’ order form(s).

[***Drafting note:*** *edit obligations depending on the intended scope of the Distributor’s role. Consider if there should be any carve outs, such as where a customer is unable to fulfil a certain obligation. Consider whether there are any other relevant obligations, such as the preparation of business plans, or requirements for retail store fit out or similar.*]

* 1. General

The Distributor will at all times:

* + 1. maintain sufficient inventory of the Products to meet its customers’ orders of the Products, based on the Distributor’s estimate of its customers’ requirements;
    2. use, and use its best endeavours to ensure that all third parties supplied by the Distributor use, appropriate rotation, storage and merchandising procedures for the Products;
    3. store the Products only in [storage facilities that are enclosed, secure, weatherproof, that protect the Products from damage and that incorporate standards of safety and protection against theft and fire that are reasonable taking into account generally accepted industry standards [in the Territory]] **OR** [storage facilities that ensure the quality of the Products is preserved] **OR** [storage facilities that have been approved in writing by the Supplier (such approval not to be unreasonably withheld)];
    4. [permit the Supplier or its duly authorised representatives, on reasonable notice and during normal business hours, to enter the Distributor’s premises or any other location at which the Products are stored and inspect the condition of the Products and otherwise inspect the facilities where such the Products are stored;] [***Optional***]
    5. keep its staff fully trained and up to date with any relevant competitor product and industry developments;
    6. keep abreast of any relevant development or trend in the Territory that may impact on the sale and distribution of the Products;
    7. regularly update the Supplier on any significant market development or trend in relation to the Products in the Territory;
    8. consult with the Supplier on, and provide the Supplier with, all inventory and stock rotation policies and procedures;
    9. conduct its business operations in accordance with [normal/the highest] business standards in the Territory and in a manner to reflect credit on the Supplier and the Distributor and in accordance with all applicable Laws and requirements of any Government Authority;
    10. give the Supplier and its representatives full and open access to the Distributor’s management and sales agents for the purposes of discussing and implementing sales activities or promotions and obtaining market feedback;
    11. request guidance from the Supplier about any information or detail regarding the quality or composition of the Products which may be required from third parties in connection with the Distributor's resale of the Products;
    12. carry out all market servicing functions, including customer service and sales, in a professional manner;
    13. comply with its obligations under any health and safety Law in the Territory and will take all reasonable steps to ensure the health and safety of the Supplier’s personnel while the Supplier’s personnel are at the Distributor’s premises;
    14. on expiry or termination of this Agreement, make an irrevocable offer to sell to the Supplier any unsold Products at landed cost, such offer to remain open for [10] Business Days after the offer is received by the Supplier; and
    15. not incur any costs or expenses on behalf of the Supplier, except with its express written approval.

[***Drafting* *note:*** *edit obligations depending on the intended scope of the Distributor’s role. Consider specifically whether there should be any carve outs, such as where a customer is unable to fulfil a certain obligation*.]

1. **Supplier’s obligations *[Optional]***
   1. Obligations [*Optional*]

[The Supplier will:

* + 1. provide the Distributor with all reasonable assistance and information necessary for the Distributor to satisfy its obligations under this Agreement including *[providing a brand and style manual containing guidelines as to the use of the Brand*]; [***Optional***]
    2. develop the branding and marketing concepts with regard to the Brand and the Products;
    3. be responsible for ensuring that the Brand complies with and does not infringe any laws in any country where it is proposed to use the Brand to market the Product;
    4. ensure the Distributor has all reasonable access to the facilities, financial administrative and accounting systems and support, best practice, processes and procedures, promotional support as necessary or desirable to perform its obligations under this Agreement;
    5. ensure the Distributor has the authority to act for and on behalf of, the Supplier on all day-to-day matters relating to this Agreement;
    6. meet all of its obligations (including, to avoid doubt, payment obligations) under this Agreement and any arrangement or agreement entered by the Distributor on the Supplier’s behalf;
    7. promptly provide notices and other information, and make and communicate decisions, to the Distributor that the Supplier requires the Distributor to provide and communicate,

and it is acknowledged and agreed by the Supplier that a failure by the Supplier to meet such obligations (in whole or in part) that results in the Distributor failing to satisfy its obligations under this Agreement does not constitute a breach of this Agreement by the Distributor and the Distributor will not be liable for any loss, damage or liability that arises due to a failure of the Supplier to fulfil such obligations (in whole or in part).]

[***Drafting note:*** *this clause would be used if more balance was required between the Supplier and the Distributor’s obligations. It should be tailored to the Supplier’s particular obligations. In particular, you should consider how this works with the marketing obligations of each of the parties and clause 13 of this Agreement (if that clause is being used).]*

1. **Revenue targets**
   1. Acknowledgment of reliance
      1. The Distributor acknowledges that the Supplier has entered into this Agreement in reliance on the Distributor’s representations that it will be able to meet the Revenue Targets.
      2. The Distributor will use its best endeavours to meet and exceed the Revenue Targets set out in Schedule 1.
   2. Review of Revenue Targets

If the Distributor fails to meet a Revenue Target, and the Distributor provides evidence acceptable to the Supplier which shows that the failure was directly attributable to delays or failures by the Supplier to deliver the Products, then the Supplier and the Distributor will meet and, acting reasonably and in good faith, seek to agree revised Revenue Targets for that year and future years taking into account the delayed and failed deliveries.

* 1. Failure to meet Revenue Targets

If the Distributor fails to meet a Revenue Target [on any one or more occasions] [for [•] consecutive months], unless the failure was the result of a Force Majeure Event [(provided that the Distributor has used reasonable measures to prevent or mitigate the effects of the Force Majeure Event), or the Supplier reasonably anticipates that the Distributor will fail to meet a Revenue Target, the Supplier may give notice in writing to the Distributor, setting out the nature of the Supplier’s concerns (**Revenue Target notice**). On receipt of the Revenue Target notice, the Distributor will:

* + 1. meet with the Supplier to review the reasons why the Distributor did not meet, or is unlikely to meet (as applicable), the Revenue Target;
    2. if requested by the Supplier, prepare and submit to the Supplier for its approval (not to be unreasonably withheld) a remedy plan setting out how the Distributor considers the likely failure to meet the Revenue Target, and/or any future failure to meet a Revenue Target, can be avoided; and
    3. if the Distributor approves the plan submitted under clause 6.3(b), comply with that plan, together with any other requirements notified by the Supplier (acting reasonably).
  1. Failure of remedy plan

If following [*insert relevant number*] months of the Distributor’s receipt of a Revenue Target notice, the Supplier is not confident that the Distributor will meet the Revenue Target,] the Supplier may do any or all of the following:

* + 1. terminate this Agreement by giving [*insert relevant number*] months’ written notice;
    2. [terminate the exclusive nature of this Agreement and appoint one or more other Distributors within the Territory in addition to the Distributor;] or
    3. withdraw all or any discounts in respect of the Products previously agreed between the parties for the next [12] month period.

[***Drafting note:*** *consider whether the provision of revenue targets are necessary to the relevant business arrangement and how they should be specified for your product (i.e. are the goods seasonal, with a longer target period being appropriate?). You should also take into account how long it might take to get final figures at the end of each period.*]

1. **Forecasts and ordering**
   1. Forecasts
      1. The Distributor shall, on the [*insert relevant number*] Business Day of the first month immediately following the date this Agreement is signed, deliver to the Supplier an initial written forecast of its monthly requirements for the Products for the period of [*insert relevant number*] months following that date.
      2. By the [*insert relevant number*] Business Day of each subsequent month, the Distributor will deliver to the Supplier an updated written forecast of its monthly requirements for the Products for the following [*insert relevant number*] month period (even though the forecast may relate to months outside of the Contract Period or a renewal term of this Agreement).
      3. [The Distributor shall act in good faith and use its best endeavours to provide the Supplier with accurate forecasts. However, the parties acknowledge that forecasts provided under this clause 7.1 are estimates only and the Distributor shall not be obliged to purchase the quantity of the Products forecast.] [***Optional***]

**OR**

[Each forecast is a binding order for supply of the quantity of the Products specified in the forecast. The Distributor will submit, and the Supplier will accept, purchase orders for no less than the quantity of the Products specified in each forecast.] [***Optional***]

[***Drafting note:*** *consider the nature of the product and the volume of the orders when choosing whether forecasts should be binding. As the Distributor has control over the forecasts it may be appropriate for the Distributor to bear more of the risk of ‘over-ordering’. Similarly, you may wish to specify that the Supplier will not be liable for an inability to meet the forecast, (within a given margin, for example 5%)*.]

* 1. Orders
     1. The Distributor shall order the Products by delivering purchase orders to the Supplier for the Supplier’s acceptance in accordance with the procedure agreed by the Supplier and the Distributor.
     2. Purchase orders shall specify the type and quantity of the Products ordered, the delivery details for the purchase order, the date the Products are required to be delivered and other relevant information or instructions.
     3. The Distributor will endeavour to ensure that the lead time (i.e. the time between a requested delivery date and the Supplier’s receipt of a purchase order) is as long as practicable, but in any event no shorter than [6] weeks.

[***Drafting note:*** *if a Trade Term is not used then the delivery details need to align with the position on transfer of risk under clause 10, i.e. so it becomes clear who is responsible for export/import clearance, shipping and insurance.*]

* + 1. The Supplier will, no later than [*insert relevant number*] Business Days after the Supplier receives the purchase order, notify the Distributor whether the Supplier:
       1. accepts the purchase order;
       2. proposes changes to the purchase order, in which case the Supplier and the Distributor will endeavour to agree changes to the purchase order as soon as practicable; or
       3. declines the purchase order.
    2. Failure by the Supplier to give notice under clause 7.2(d) does not represent or imply acceptance of a purchase order.
    3. A purchase order will not be binding unless and until its acceptance has been confirmed in writing to the Distributor by the Supplier.

1. **Delivery and Importation**
   1. Delivery of confirmed purchase orders

The Supplier will despatch the Products in confirmed purchase orders within a reasonable timeframe so as to enable the Products to leave or arrive at (as applicable) the place nominated in the purchase order by the nominated date and mode of transport set out in the purchase order.

[***Drafting* *note:*** *consider whether despatch should not occur until the Distributor has been invoiced and paid for the Products. This is particularly important if the creditworthiness of the Distributor is unknown or the Distributor has a poor payment history.*]

* 1. Importation of the Products
     1. The Distributor shall be responsible for the export of the Products from *[Insert dispatch location]* and for the import of the Products into the Territory.
     2. The Distributor shall be liable for any taxes, duties, levies, import charges and any other fees or costs relating to the export of the Products from *[Insert dispatch location]* or the import of the Products into the Territory.

[***Drafting note:*** *typically, the Distributor will be responsible for the export and import of the Products as they are more familiar with the export and import processes and have (or will have) a physical presence in the Territory. Consider whether it might be more practical to have the Supplier responsible for exporting and/or importing the Products, or any part of that process*.]

1. **Prices and payment**
   1. Prices
      1. The prices for the Products are those specified in the Supplier’s price list at the time the Supplier confirms its acceptance of a purchase order, which as at the date of this Agreement are set out in Schedule 5.
      2. The Supplier will give the Distributor no less than 30 days’ prior written notice of any changes to the prices of the Products.
   2. Taxes

The prices are exclusive of all sales or any other taxes, duties or levies applicable to the Products and payable within the Territory. All such taxes, duties or levies are the Distributor’s responsibility. The Distributor is not entitled to withhold or deduct from any amount payable to the Supplier under this Agreement on account of any taxes, duties or levies. The Supplier may charge the Distributor any taxes (including any goods and services or value-added taxes), duties, levies, tariffs, charges, fees or other costs which it incurs (whether incurred in the Territory, the tax jurisdiction of the Supplier, or elsewhere) in connection with the sale of the Products to the Distributor (but not including any taxes imposed on the Supplier’s overall net income).

* 1. Invoicing and payment
     1. The Supplier will provide the Distributor with a written invoice in NZ$ for all the Products supplied (and any other taxes, duties, levies, charges, fees or other costs or amounts that are payable by the Distributor to the Supplier) [no later than [*insert relevant number of days*] days after the end of a month for all the Products for which the Supplier accepted purchase orders in that month] [no later than [*insert relevant number of days*] days after the end of a month for all the Products shipped by the Supplier in that month].
     2. [The Distributor will pay invoices issued by the Supplier in full no later than [*insert relevant payment date*]. [***Optional***]

**OR**

[The purchase price for any Products shipped by the Supplier shall be due and payable 30 days from the date of the [*bill of lading*] or [*air waybill*] for those Products.] [***Optional***]

[***Drafting note:*** *consider the nature of the product and the invoicing/billing processes of the Supplier when electing an invoicing and payment procedure.*]

* 1. Method of Payment and Currency
     1. The Distributor will pay all invoices in [NZ$] by irrevocable electronic funds transfer to an account nominated by the Supplier (or such other means as is agreed to by the parties). The Distributor shall comply at all times with any currency and exchange regulations applying to the payment of invoices for the Products.
     2. [If for any reason moneys are received towards payment or satisfaction of any amount due other than in NZ$ and, upon conversion of such moneys into NZ$, the Supplier realises less than the amount due in NZ$, the Distributor shall pay such further amounts as are necessary to ensure that the Supplier receives the full amount due in NZ$. ]

[***Drafting note:*** *delete the above clause if the elected currency* *in clause 9.4(a)is not NZD*.]

* 1. Interest

If the Distributor fails to pay any amount due to the Supplier by the due date for payment, the Supplier is entitled (without prejudice to any other right or remedy it may have whether under the terms of this Agreement or at Law) to charge interest on the outstanding amount at the rate of [*insert relevant rate*] per cent per annum (net of any withholding taxes that may apply on the interest) above the Supplier’s bank’s overdraft rate in force from time to time, calculated on a daily basis from the date the payment became due until the date actual payment is made in full.

[***Drafting* *note:*** *consider whether to add any other late payment rights eg cancel or suspend other deliveries, immediate payment of all other sums, etc.*]

* 1. Bank guarantee [*Optional*]
     1. [The Supplier may require the Distributor to put in place, with a bank satisfactory to the Supplier, an unconditional bank guarantee in favour of the Supplier, and the Distributor shall put the bank guarantee in place as soon as requested by the Supplier.
     2. The amount of the bank guarantee shall be determined by the Supplier but shall not exceed the Distributor’s credit limit set by the Supplier at the time of the request.
     3. If a bank guarantee is in place, the Supplier may enforce the bank guarantee (in whole or in part) if the Distributor fails to pay any invoice when due. In doing so, the Supplier may recover any amount that is due to it from the Distributor under this Agreement (including interest on unpaid amounts and any costs or expenses incurred by the Supplier in relation to the unpaid amounts).]

[***Drafting note: consider whether the Distributor will be paying by letter of credit, in which case alternative payment clauses are needed.***]

* 1. No commission
     1. The Distributor shall not make any claim against the Supplier or its Related Persons for any commission, fee or other payment relating to the sale of the Products.
     2. The Distributor agrees and accepts that its sole compensation for the sale of the Products [(other than sales to Customers in accordance with clause 2.3(b))] will be the profits it makes from such sales in the Territory in accordance with this Agreement.

1. **Terms of business**
   1. Terms

Except to the extent that it is inconsistent with this Agreement, the Trade Term shall apply to all purchase orders unless otherwise agreed in a purchase order.

[***Drafting* *note:*** *all provisions of this Agreement should be reviewed to ensure consistency with the Trade Term set out in Schedule 1.*]

* 1. Risk

The risk in the Products will pass to the Distributor at the time the Products are [delivered by the Supplier to the Distributor **OR** made available to be uplifted by the Distributor] as determined by the [Trade Term/relevant purchase order].

[***Drafting*** ***note:*** *carefully consider how the risk in the Products will be allocated. For example, if you apply the Trade Term DAP (Delivered At Place), this means that the seller delivers the goods, and transfers risk to the buyer:*

1. *when the goods are placed at the disposal of the buyer;*
2. *on the arriving means of transport ready for unloading;*
3. *at the named place of destination; or*
4. *at the agreed point within that place, if any such point is agreed*

*The seller bears all risks involved in bringing the goods to the named place of destination or to the agreed point within that place. This means that delivery and arrival at the destination are the same.* ]

* 1. Title
     1. Title in the Products for which the Supplier has accepted a purchase order does not pass to the Distributor until the Supplier has received the purchase price in full in accordance with this Agreement.
     2. Until title in the Products passes to the Distributor:

[***Drafting* *note:*** *review these provisions against any applicable security agreement regime in the Territory to ensure the Supplier maintains title as contemplated.*]

* + - 1. the Distributor is a bailee of the Products only, and acquires no legal or beneficial right in the Products;
      2. the Distributor will not supply or resell the Products to any person other than in the ordinary course of the Distributor’s business;
      3. if the Distributor supplies or resells the Products to any person, then the Distributor holds all proceeds of such supply or resale of the Products in a separate account on trust for, and as fiduciary for, the Supplier immediately after they are received;
      4. the Distributor will not store the Products in any location other than [*insert location(s) of warehouses where the Products may be stored*], and must ensure that the Products are stored separately from any other Products and in a manner which makes them readily identifiable as the Supplier’s Products;
      5. the Distributor will not give, permit or allow any person to have or acquire a security interest in the Products;
      6. the Distributor will insure the Products for their full replacement value with an insurer approved by the Supplier; and
      7. the Distributor will not remove, cover or deface any identifying mark on the Products.
  1. Sale as agent

Subject to this clause 10, the Distributor is permitted by the Supplier to agree to sell the Products in which title has not yet passed to the Distributor on the express condition that such an agreement to sell shall specify that the Distributor is selling the Products as agent of, and bailee for, the Supplier.

* 1. Cessation of right to sell

The Distributor’s right to possession of, and its authority to sell, the Products ceases immediately prior to:

* + 1. an Insolvency Event; or
    2. a landlord entering into possession of any premises occupied by the Distributor.
  1. Information

The Distributor will keep full details and inventory of the Products it holds and make this information available to the Supplier (or its representatives) on request.

* 1. Rights of the Supplier
     1. If an event described in clause 10.5 occurs, the Supplier (or its representatives) may enter upon any premises occupied by the Distributor where the Products are stored or where they are reasonably thought to be stored for the purpose of recovery of the Products and may repossess the same without hindrance by the Distributor.
     2. The Distributor hereby irrevocably grants to the Supplier a right of access to enter onto premises occupied by the Distributor for the purpose of recovery of such Products.

1. **Quality and returns**
   1. Quality

The Products delivered to the Distributor shall comply with the relevant Product Specifications.

* 1. Checking and return of the Products
     1. No later than [*insert relevant number*] Business Days after the Products are deemed to be delivered to the Distributor in accordance with the [Trade Term/relevant purchase order], the Distributor may inspect all or a sample of the Products to determine whether the Products:
        1. conform with the Product Specifications; and
        2. are of the type and quantity specified in the relevant confirmed purchase order.
     2. If, following an inspection of the Products, the Distributor discovers that:
        1. the Products delivered do not conform with the Product Specifications; or
        2. the type and quantity of the Products delivered do not conform with the type and quantity specified in the relevant confirmed purchase order,

(in either case, a **“Non-Conforming Delivery”**) the Distributor must immediately notify the Supplier of the details of the non-conformance (a **“Non-Conforming Delivery Notice**) and provide such evidence as the Supplier reasonably requires of the non-conformance, but in any event no later than [*insert relevant number*] Business Days after the Products are deemed to be delivered to the Distributor in accordance with the [Trade Term/relevant purchase order].

* + 1. If the Supplier receives a Non-Conforming Delivery Notice, the Supplier will, at its option:
       1. in the case of the Products that do not meet the Product Specifications or that are not the Products specified in the relevant confirmed purchase order, arrange for the affected Products to be returned to the Supplier at the Supplier’s expense and:
          1. replace the Products that are returned with conforming or the correct Products (as the case may be); or
          2. reimburse the Distributor for the price of the Products that are returned (if the Distributor has paid the relevant invoice) or issue a credit note for the price of the Products returned (if the Distributor has not paid the relevant invoice); or
       2. offer the Distributor:
          1. a discount on the price of the non-conforming Products; or
          2. a refund of the Products that are missing from the delivery; or
          3. the option to pay the price for the incorrect Products that were delivered instead of the price for the Products that were supposed to be delivered,

in which case the option chosen by the Distributor shall represent the Distributor’s sole remedy for the non-conformance.

* + 1. The Distributor’s sole remedy for any Non-Conforming Delivery is the remedy set out in this clause 11.2.
    2. The Products will be deemed to be accepted at the close of the [*insert relevant number*] Business Day after the Products are deemed to be delivered to the Distributor in accordance with the [Trade Term/relevant purchase order], unless a notice of Non-Conforming Delivery Notice has been given pursuant to clause 11.2(b) prior to that date.

1. **Compliance with applicable Laws** 
   1. Performance of obligations subject to applicable laws

Any obligation to be performed in accordance with this Agreement shall apply only to the extent that such obligation is not inconsistent with applicable Laws in the Territory.

* 1. The Distributor’s compliance obligations

The Distributor shall comply with all applicable Laws in the Territory which relate to the purchase, importation, [promotion, marketing,] storage, packaging, labelling, distribution and sale of the Products and to the performance of its obligations under this Agreement.

[***Drafting*** ***note:*** *delete the above highlighted text if Distributor is not responsible for promotional/ marketing activities. Note that many countries have specific requirements for packaging ang labelling of products. Generally, the Distributor will be best placed to understand those requirements. Consider whether there are any reasons that the Supplier should be responsible for labelling and packaging.*]

* 1. The Distributor to obtain permits
     1. For the purposes of giving effect to clause 12.1, the Distributor shall:
        1. hold and maintain in good standing any necessary licences, permits, authorisations, consents, registrations and approvals required by or from any Government Authority in connection with the purchase, importation, [promotion, marketing,] storage, packaging, labelling, distribution and sale of the Products in the Territory and to the performance of the Distributor’s obligations under this Agreement; and
        2. apply in its own name or in the name of the Supplier (but only with the prior written authorisation of the Supplier) for any necessary health registrations, consents, authorisations, licences, permits or approvals, or renewals of them, required by health authorities or any other Government Authority in connection with the activities to be performed under this Agreement.
     2. Unless otherwise agreed in writing, the costs of obtaining and maintaining any such licences, permits, authorisations, approvals, registrations and consents referred to in clause 12.3(a) shall be met by the Distributor.

1. **Marketing and sales strategy [*Optional*]**
   1. The Distributor's promotion, marketing and sales of the Products [*Optional*]
      1. [The Distributor will use its best endeavours to successfully promote, market and sell the Products in the Territory by establishing and maintaining, at its own cost, a professional promotion, marketing and sales team and strategy dedicated to the promotion, marketing and sale of the Products. ]
      2. [The Distributor will ensure that its promotion, marketing and sale of the Products in the Territory is consistent with the Supplier’s brand and values, as notified by the Supplier to the Distributor from time to time.]
   2. The Supplier to provide education and training [*Optional*]

[The Supplier will provide appropriate education and training, at the Distributor’s cost, to the Distributor's sales and marketing staff regarding the Products to assist the Distributor in meeting its obligations under this clause 13.]

* 1. Sales and marketing strategies [*Optional*]
     1. [The Supplier will provide the Distributor with a copy of the Supplier’s sales and marketing strategy for the Products on or around [*insert relevant month*] in each year.]
     2. No later than [*insert relevant number*] [Business Days/weeks/months] after receiving the Supplier’s sales and marketing strategy, the Distributor will prepare and send the Distributor’s sales and marketing strategy (including the marketing budget) for the Products in the Territory to the Supplier. The Distributor’s sales and marketing strategy must be consistent with the principles of the Supplier’s sales and marketing strategy.]
     3. If in the Supplier’s reasonable opinion the Distributor’s sales and marketing strategy is inconsistent with the Supplier’s sales and marketing strategy, the Supplier will notify the Distributor of the inconsistencies and the changes the Supplier requires to be made to the Distributor’s sales and marketing strategy. The Distributor will implement any changes reasonably requested by the Supplier to ensure that the Distributor’s sales and marketing strategy is consistent with the Supplier’s sales and marketing strategy for the Products.
     4. The parties must meet each year to discuss the Distributor's sales and marketing strategy (including the marketing budget) for the Products. At each meeting under this clause 13.3(d), the Distributor will present evidence and updated data to the Supplier to report on progress against the sales and marketing strategy (including the marketing budget) for the Products;
  2. Marketing materials [*Optional*]
     1. [The Distributor will submit any marketing materials including, without limitation, trade publications, brochures, articles or flyers, developed by it in association with sales or marketing of the Products to the Supplier for written approval to use such marketing materials.
     2. The Distributor will not use any such marketing materials until it has received the Supplier’s written approval (such approval not to be unreasonably withheld or delayed). Such approval does not release the Distributor from its obligations to ensure that all marketing materials comply with Law.]
  3. Marketing expenses [*Optional*]
     1. [The Distributor is solely responsible for all expenses incurred in connection with its sales, promotion and marketing of the Products.
     2. If the Distributor’s marketing expenses are less than the amount in the Distributor’s sales and marketing strategy, and the Supplier believes the failure to adhere to the budget is affecting sales or the reputation of the Products in the Territory, the Supplier may (without prejudice to its other remedies):
        1. terminate the exclusive nature of this Agreement and appoint one or more other distributors within the Territory in addition to the Distributor]; or
        2. withdraw all or any discounts in respect of the Products previously agreed between the parties for the next [12] month period. ]

[***Drafting note:*** *Consider whether a minimum marketing spend of a percentage of sales revenue is appropriate. If this clause is not used, consider how marketing will be undertaken and what control the Supplier wants/needs over this.*]

1. **Reports, [KPIs] and meetings**
   1. Monthly sales report
      1. The Distributor will, by the [*insert relevant number*] Business Day of each month, when providing the forecast required under clause 7.1, submit to the Supplier a written sales report detailing sales of the Products by the Distributor for the previous calendar month and for the year to date, and such other information as the Supplier may reasonably request in respect of the Products.
      2. The form of the report shall be as agreed by both parties or, if agreement cannot be reached, in the form specified by the Supplier.
   2. Quarterly marketing report [*Optional*]

The Distributor will send the Supplier quarterly reports (to be issued on the [*insert relevant number*] Business Day of [*insert relevant months*]) setting out itemised accounts of the Distributor's marketing expenses, and including copies of all supporting documents and invoices.

* 1. Six monthly report

The Distributor will, by the first Business Day of [*insert relevant months*] in each year, submit to the Supplier a written report containing the following information in respect of the previous six calendar months:

* + 1. analysis of sales for each Product by the Distributor compared with:
       1. the initial forecast prepared in accordance with clause 7.1 which was submitted at the beginning of the relevant six month period; and
       2. sales results for the corresponding period in the previous year;
    2. changes in the market for the Products in the Territory and the structure of that market;
    3. customer feedback regarding the Products;
    4. analysis of economic, market, political or legal information considered by the Distributor as relevant to marketing and sales of the Products in the Territory;
    5. the position of like products sold by competitors of the Supplier in the Territory and the competitors’ market shares and pricing;
    6. [the Distributor’s performance against the KPIs established under clause 14.4]; and

[***Drafting note:*** *delete the above clause if the referenced clause 14.4 (see below) is not used.*]

* + 1. such other matters as are reasonably requested by the Supplier from time to time.
  1. Key Performance Indicators [*Optional*]
     1. The Distributor agrees that the KPIs in Schedule 6 must be achieved by the Distributor during the relevant period specified in Schedule 6 to the satisfaction of the Supplier in its sole discretion (acting reasonably).
     2. The Distributor shall by the first Business Day of [*insert relevant months*] in each year, report on its performance against the KPIs for the preceding [*insert relevant months*], such report to be prepared in the form and manner required by the Supplier (**KPI Report**).
     3. The Supplier will review the KPI Report and notify the Distributor in writing within [*insert relevant* number] Business Days of receiving the KPI Report if it believes Distributor has not met any KPI.
     4. Where the Distributor fails to meet any KPIs, then in the first instance the Supplier will discuss with the Distributor in good faith an agreed performance plan with the objective of improving the Distributor’s KPI performance. However, if the Distributor’s failure to meet any KPIs continues for [*insert relevant period of* time] consecutive months during the Contract Period, such failure shall be deemed to be a breach of a material provision of this Agreement which is not capable of remedy for the purpose of termination under clause 21.1(d).
     5. The KPIs will be reviewed on an [annual basis] on the anniversary of the Commencement Date (or another date agreed between the parties) for the remainder of the Contract Period. If the parties are unable to agree on any revised KPIs as part of this review process, the Supplier will determine the KPIs on a reasonable basis. If Distributor does not agree to any revised KPI, Distributor may terminate the Agreement by providing [6] months’ written notice to the Supplier.
  2. Meetings
     1. Representatives of the parties will meet regularly to discuss matters raised by either party in relation to this Agreement and each party’s performance of its obligations under it.
     2. The meetings shall take place at such dates, times and places as are agreed by the parties or, if a date, time and place cannot be agreed, then at such dates, times and places as are reasonably specified by the Supplier, but in any event not less than once every [*insert relevant period of time*].
     3. Each party will provide the other with a written notice of the matters that party wishes to discuss at such meetings no less than [*insert relevant number*] Business Days before each meeting.
     4. The parties will ensure that their representatives who attend such meetings have the relevant knowledge and authority in relation to matters to be discussed at such meetings and to agree any actions decided on at such meetings.
     5. If the parties agree to meet in person to discuss any matter relating to this Agreement, each party will bear its own costs in relation to travelling to, and attending such meetings.
  3. Contact person

Each party must nominate a person to be the principal point of contact between them in relation to matters arising under this Agreement.

1. **Warranties**
   1. No warranties regarding the Products

Except as expressly provided in this Agreement, and to the full extent permitted by law, the Supplier expressly excludes all express or implied warranties and representations regarding the Products and their use (including without limitation their merchantability or fitness for any particular purpose).

* 1. Mutual warranties

Each party warrants to the other that:

* + 1. the execution and delivery of this Agreement has been properly authorised by all necessary corporate action; and
    2. it has full corporate power and lawful authority and the legal power to execute and deliver this Agreement and to perform or cause to be performed its obligations under this Agreement.

1. **Intellectual Property Rights** 
   1. Ownership
      1. The Distributor acknowledges and agrees that all existing and future Intellectual Property Rights that relate to or subsist or reside in the Trade Marks and the Products (including any improvements to the Products) are the sole property of the Supplier or a Related Person of the Supplier. All goodwill arising from the use of the Trade Marks by the Distributor enures for the exclusive benefit of the Supplier. [***Drafting note:*** *consider in each case trade mark position in Territory vis a vis 3rd party rights and distributor rights.*]
      2. Except as specified in clause 16.2, the Distributor acknowledges and agrees that it has no rights in respect of any Intellectual Property Rights that relate to or subsist or reside in the Products.
   2. Use of Trade Marks
      1. The Supplier grants the Distributor a personal, non-transferable, revocable, royalty free licence to use the Trade Marks solely to the extent necessary for the Distributor to market, promote and sell the Products in the Territory during the Term.
      2. The Distributor will not transfer, assign or sub-licence any of its rights under clause 16.2(a).
   3. The Distributor’s conduct

The Distributor will use the Trade Marks solely for the purposes set out in clause 16.2(a) and in relation to the Trade Marks will:

* + 1. faithfully reproduce the Trade Marks on all display advertising, property, vehicles and stationery in the manner stipulated by the Supplier and in accordance with the Supplier’s directions;
    2. submit to the Supplier in full colour all proposed use of the Trade Marks, get-up designs and all display advertising and the like as created by or for the Distributor and, before such Trade Marks, get-up designs and display advertising and the like are used, shall obtain the prior written approval of the Supplier for their use;
    3. at all times ensure and maintain the distinctiveness and reputation of the Trade Marks (as determined by the Supplier) and the Distributor shall cease or modify any use of the Trade Marks not consistent with such requirements as the Supplier may [reasonably] require;
    4. ensure that, if requested by the Supplier, use of the Trade Marks is accompanied by words indicating that the Trade Marks are the registered trade marks of the Supplier;

[***Drafting note:*** *ensure trademarks are cleared for use and registered in the Territory.*]

* + 1. not at any time do, or permit to be done, any act or thing which will in any way impair the rights and title of the Supplier and/or its Related Persons in and to the Trade Marks;
    2. not include the Trade marks in whole or part in any company name, business name, domain name or similar thing;
    3. not during or after the Term, directly or indirectly, challenge or contest, or call into question, or raise any question concerning the validity or ownership of the Trade Marks or any registration or registrations of the Trade Marks in the Territory or elsewhere;
    4. not during or after the Term, directly or indirectly, register or obtain for its own or another’s use such trade marks or other designs or names similar to the Trade Marks in connection with its own business or otherwise, without the prior written consent of the Supplier; and
    5. make use of the Trade Marks only for the purposes authorised in this Agreement and not in any other way, in particular, shall not use the Trade Marks in any way which would tend to allow them to become generic, lose their distinctiveness, become liable to mislead the public, or be materially detrimental to or inconsistent with the good name, goodwill, reputation and image of the Supplier and its Related Persons.

[***Drafting note:*** *local legal assistance is recommended in relation to these restraints to ensure compliance.*]

* 1. Infringement
     1. The Distributor will promptly notify the Supplier in writing of any possible infringement or illegal use of the Trade Marks or any other Intellectual Property Rights that relate to or subsist or reside in the Products of which the Distributor becomes aware, and in doing so will provide the Supplier with all relevant information regarding the possible infringement or illegal use at the reasonable cost of the Distributor.

[***Drafting note:*** *depending on the country, certain statutory rights of the Distributor to take action may need to be overridden expressly.]*

* + 1. The Supplier has the right but no obligation, at its own expense, to commence proceedings or take other action in the Territory regarding the possible infringement or illegal use of a Trade Mark or any of its other Intellectual Property Rights. Any money paid or damages or costs awarded as a result is for the Supplier’s benefit. The Distributor will give the Supplier any assistance reasonably requested by the Supplier in relation to any proceedings commenced or other action taken in the Territory regarding the possible infringement or illegal use of a Trade Mark or any of the Supplier’s other Intellectual Property Rights.
    2. The Distributor will not commence proceedings or take any other action in the Territory against a third party for possible infringement or illegal use of a Trade Mark or any of the Supplier’s other Intellectual Property Rights in the Territory without the Supplier’s prior written approval.
    3. The Distributor will promptly notify the Supplier in writing if the Distributor becomes aware that use of any of the Trade Marks or Intellectual Property Rights that relate to or subsist or reside in the Products or the sale or offer for sale of the Products infringes or allegedly infringes the intellectual property rights of a third party. The Distributor will not make any admissions or enter into any settlement or take any substantive step in connection with any such infringement or alleged infringement. The Distributor will co-operate with the Supplier’s reasonable requests [at the expense of the Supplier] in taking all steps as the Supplier may consider advisable or necessary.
  1. Compliance

Notwithstanding any provision in this Agreement to the contrary, the Distributor shall be solely responsible for ensuring that use of the Trade Marks by the Distributor in the Territory complies with all legal, statutory, regulatory and other requirements.

1. **Confidentiality** 
   1. Confidentiality

Each party:

* + 1. agrees that all Confidential Information and trade secrets (including without limitation, the terms of this Agreement) communicated to one party (**Recipient Party**) by the other party (**Disclosing Party**) whether before or after the Commencement Date:
       1. is strictly confidential;
       2. will be used by the Recipient Party only for the purposes of this Agreement;
       3. will not be disclosed to any third party without the prior written consent of the Disclosing Party;
       4. remains the property of the Disclosing Party;
    2. will take the same measures (being not less than reasonable measures) to protect the Disclosing Party’s Confidential Information in its possession as it takes to protect the confidentiality of its own information; and
    3. in particular, acknowledges and agrees that it is relying on these confidentiality provisions to protect its own, and the other party’s, strategic and other business information.
  1. Exclusions

The confidentiality obligations in clause 17.1 do not apply to any Confidential Information that:

* + 1. was, or after the Commencement Date becomes, generally available to the public through no fault of the Recipient Party;
    2. was, prior to the time of disclosure, already in the possession of the Recipient Party without an obligation of confidence;
    3. is, after the time of disclosure, lawfully received from a third party under no secrecy obligation to the Disclosing Party;
    4. is required to be disclosed by court order or any Law, or to the extent relevant, is disclosed to any stock exchange to the extent that such disclosure is required pursuant to the listing rules of that stock exchange, provided that, to the extent consistent with enabling the Recipient Party to discharge obligations under any applicable Law or regulatory requirements in full and on time, the Disclosing Party first having the opportunity to review or comment on the formal content of the proposed disclosure; or
    5. is independently developed by the Recipient Party without using the Disclosing Party’s Confidential Information.
  1. Further acknowledgment

In particular, and without limiting clause 17.1, the parties acknowledge and agree that in the performance of this Agreement they and their personnel:

* + 1. may have access to third party confidential information and intellectual property provided to the other party as part of its business; and
    2. shall treat that third party confidential information and intellectual property as if it were Confidential Information under this Agreement.
  1. Personnel

Each party shall:

* + 1. advise its personnel who receive the Disclosing Party's Confidential Information of its confidential nature;
    2. ensure that such personnel who receive any Confidential Information comply with the confidentiality provisions of this clause 17; and
    3. be responsible for the acts and omissions of such personnel in relation to the confidentiality obligations of this clause 17.
  1. Return of information

Upon the effective date of termination or expiry of this Agreement, each party shall, as soon as reasonably possible but within 20 Business Days:

* + 1. return to the Disclosing Party (without keeping or making any copy); or
    2. at the option of the Disclosing Party, destroy,

all Confidential Information furnished by or obtained from the Disclosing Party in connection with this Agreement and still in its possession, except for information which the Disclosing Party agrees in writing can be retained or is retained for archival purposes.

1. **Liability**
   1. The Supplier’s exclusion of liability

To the maximum extent permitted at Law, the Supplier is not liable to the Distributor for:

* + 1. any indirect or consequential loss or damage, loss of revenue, loss of profit, loss of business opportunity, loss of goodwill or loss of anticipated savings; or
    2. personal injury of any person,

suffered or incurred by the Distributor due to the Supplier’s negligence, any breach of this Agreement by the Supplier, or that arises in any way in relation to the supply or failure to supply the Products to the Distributor.

* 1. The Supplier’s limitation of liability

To the maximum extent permitted at Law, the Supplier’s liability to the Distributor under or in relation to this Agreement and the Products (including for negligence) is limited:

* + 1. for any event or series of related events, to $[*insert amount*]; and
    2. for all events or series of related events occurring in any period of 12 consecutive months, to the total amount paid by the Distributor to the Supplier in that 12 month period.

[***Drafting* *note:*** *consider whether there should be any exceptions to these exclusions and limitations, such as for breaches of confidentiality or breaches of intellectual property provisions.*]

[***Drafting note:*** *if you are acting for the Distributor, consider including exclusion and limitations on the Distributor’s liability.*]

* 1. The Distributor’s indemnity

The Distributor will indemnify and keep the Supplier indemnified against all losses, claims, damages, costs, liabilities, proceedings, actions, demands and expenses (including legal expenses incurred in defending and/or resisting the same) (together, **Damages**) made against or incurred or suffered by the Supplier, including in relation to claims, proceedings, actions or demands of third parties, resulting from:

* + 1. a breach by the Distributor of the terms of this Agreement;
    2. any act or omission of the Distributor or any of its personnel in connection with this Agreement, whether negligent or not, affecting a third party;
    3. any negligent, wilful, reckless or unlawful act or omission of the Distributor or any of its personnel in connection with this Agreement;
    4. any injury or death to the Supplier's personnel arising out of or in connection with this Agreement; and
    5. loss or damage to physical property caused by an act or omission of the Distributor or its personnel.
  1. Exception

The indemnity in clause 18.3 does not apply to the extent that the Damages are caused by:

* + 1. any negligent, wilful, reckless or unlawful act or omission of the Supplier; or
    2. a breach of a term of this Agreement by the Supplier,

but only to the extent that the act, omission or breach directly results in the Damages being suffered.

* 1. Indemnity Claim

If a third party makes a claim or demand or brings any proceeding or action against the Supplier in respect of which the Distributor must indemnify the Supplier under clause 18.3 (**Indemnity Claim)**:

* + 1. the Supplier must promptly give the Distributor notice;
    2. the Distributor must promptly admit its liability under clause 18.3; and
    3. the Supplier must promptly give any assistance reasonably requested by the Distributor in relation to the Indemnity Claim.
  1. Conduct of Indemnity Claim

The Distributor has sole control and conduct of any Indemnity Claim and any resulting settlement negotiations unless:

* + 1. otherwise agreed in writing with the Supplier; or
    2. in the reasonable opinion of the Supplier, the Indemnity Claim is not being conducted in accordance with clause 18.7, in which case:
       1. the Supplier may give the Distributor notice that the Supplier will defend itself; and
       2. the Distributor must give any assistance reasonably requested by the Supplier to defend the Indemnity Claim.
  1. The Supplier's reputation

The Distributor must ensure that any Indemnity Claim is fully and promptly defended and, in defending the Indemnity Claim, the Distributor must not unnecessarily or unreasonably take or fail to take any action that in doing so would damage the Supplier's reputation.

* 1. Mitigation

Notwithstanding any other clause of this Agreement, each party must use its reasonable efforts to mitigate any loss arising out of or in connection with the Agreement (including under an indemnity).

1. **Force majeure**
   1. Event
      1. Neither party will be liable for any delay in meeting, or failure to meet, its obligations under this Agreement (other than the obligation to pay money) to the extent that such delay or failure is caused by a Force Majeure Event affecting that party (including, without limitation, any delay or failure caused by any act or omission to act of the other party) and the party that fails to meet its obligations could not take reasonable measures to prevent or mitigate the effects of the Force Majeure Event.
      2. If either party is prevented from meeting its obligations under this Agreement due to a Force Majeure Event affecting that party, it will immediately notify the other of the circumstances, the extent of the obligations affected, the likely duration and any alternative means for performance of the obligation and consult with the other party as to the means, and use its best endeavours, to minimise the effects of its inability to perform its obligations under this Agreement.
   2. Termination

If either party is unable for a period of not less than [*insert relevant number*] Business Days to perform its obligations under this Agreement by reason of any Force Majeure Event, the other party may terminate this Agreement by written notice. Terminations under this clause 19 shall not prejudice the rights of either party against the other party in respect of any matter or thing occurring under this Agreement prior to termination.

1. **Hardship [*Optional*]**
   1. Fundamental alteration [*Optional*]

[If an event or events occur that were not contemplated by the parties and that fundamentally alter the balance of this Agreement by placing an excessive burden on one of the parties in the performance of its contractual obligations:

* + 1. that party may make a request for revision of this Agreement within a reasonable time from the moment it becomes aware of the event and of its effect on the balance of this Agreement including the grounds on which the request is based;
    2. the parties will then, acting reasonably and in good faith, consult one another with a view to revising this Agreement on an equitable basis, in order to ensure that neither party suffers excessive prejudice; and
    3. the request for revision does not of itself suspend performance of this Agreement.]
  1. No agreement [*Optional*]

[If the parties fail to agree on a revision of this Agreement within [*insert relevant number*] Business Days of the request, this Agreement remains in force in accordance with its original terms.]

1. **Termination**
   1. Termination

This Agreement may be terminated:

* + 1. in accordance with clauses [3.2] or 6.4 or 19.2;

***[Drafting*** ***note:*** *delete reference to clause 3.2 if a probation period is not used.]*

* + 1. immediately by the Supplier, without any requirement for notice, if the Distributor breaches clause 16.2(b) or clause 16.3; or
    2. immediately by the Supplier, if the Distributor is in breach of its payment obligations under this Agreement and fails to remedy the breach within [20] Business Days’ notice from the Supplier; or
    3. by [*insert relevant number*] Business Days’ written notice given by either party, if the other party breaches or defaults in the performance of any material provision of this Agreement, provided that, if that other party cures the breach or default within [*insert relevant number*] Business Days of receipt by it of the notice of termination, the Agreement shall continue in full force and effect. Notice given under this paragraph must specify the breach or default giving rise to the right of termination; or
    4. immediately by either party, by written notice to the other, if the other party suffers an Insolvency Event; or
    5. [immediately on written notice given by the Supplier to the Distributor where:
       1. a change takes place in the shareholding of the Distributor or of the shareholding of any entity or person beneficially holding shares in the Distributor (either directly or through one or more intermediaries); and
       2. the effect of the change is that the ultimate effective power to appoint a majority of the Distributor’s directors passes to some person or group of persons acting in concert; and
       3. the Supplier has not given its prior written consent to the change;] **[*Optional*]**or
    6. [on the expiry of [*insert relevant number*] Business Days’ notice in writing by [the Supplier to the Distributor/one party to the other] of its intention to terminate this Agreement. **[*Optional*]**]
  1. Conduct upon termination

On termination or expiry of this Agreement, the Distributor will:

* + 1. immediately cease to make any representation that it is a distributor of the Products or that it is authorised to sell the Products;
    2. remove from public view any signs, banners, wall-charts or other documents or items stating or suggesting that the Distributor is a distributor of the Products or that it is authorised to sell the Products;
    3. return to the Supplier, or at the Supplier’s direction destroy, all brochures and information or material in the Distributor’s possession or control relating to marketing of the Products;
    4. immediately take steps to, and as soon as reasonably practical, cease any permitted use of the Trade Marks or business names of the Supplier or its Related Persons in association with its business under this Agreement, and shall not use any name or mark which is similar to the Trade Marks in connection with any products; and
    5. terminate or transfer as directed by the Supplier, any licences, permits, authorisations, approvals, consents and registrations applied for in the name of the Supplier and following termination the Distributor will then not use any such licences, permits, authorisations, approvals, consents and registrations; and
    6. take all reasonable steps to ensure that (where applicable), the Distributor’s personnel or the Distributor’s Related Persons will comply with clauses 21.2(a) to 21.2(e).
  1. Outstanding orders

If notice is given to terminate this Agreement:

* + 1. the Supplier is not bound to accept any further purchase orders placed by the Distributor; and
    2. the Supplier will, unless otherwise agreed, comply with its obligations to fulfil any purchase orders which it had previously accepted, provided that the Distributor agrees to pay all invoices on such accepted orders in accordance with this Agreement and the termination was not under clauses 21.1(e) or 21.2(f), or due to non-payment by the Distributor.

[***Drafting*** ***note:*** *consider whether the ordering system used by the parties might mean that the Distributor is holding goods that have not yet been paid for by the Distributor. These should be returned to the Supplier.*]

* 1. Remittance of funds

On termination of this Agreement, the Distributor will, unless otherwise agreed, pay immediately to the Supplier all moneys outstanding for the Products for which the Supplier has confirmed a purchase order.

* 1. Survival

Except as otherwise provided in this Agreement, termination or expiry of this Agreement does not affect:

* + 1. any party pursuing whatever rights and remedies that may be available to it under this Agreement, at Law or in equity as a result of termination or which accrued up to and including the termination or expiry date; and
    2. the provisions of this Agreement which expressly, or by their nature are intended to survive termination or expiry, including this clause 21 and clauses 16.1, 16.3(f), 16.3(g), 16.3(h), 16.3(i), 17, 18, 22 and 24.
  1. New Distributor [*Optional*]
     1. [The Distributor will on termination or expiry of this Agreement, at the request of the Supplier, execute and lodge or cause to be executed and lodged all documents, and do or cause to be done all acts, so as to enable the Supplier to appoint a new distributor in the Territory.
     2. If this Agreement is terminated by the Distributor under clause 21.1(d) or 21.1(e), or by the Supplier under clause 21.1(g), the Supplier will reimburse the Distributor for all reasonable costs incurred by the Distributor in relation to this clause 21.6. In all other cases the Distributor shall bear its own costs.]

1. **Notices** 
   1. Form of Notice

A notice, consent or approval to be given under this Agreement (**Notice**) may be given by either party to the other by personally serving it on the party, or by sending it by courier, registered mail, post, or email to the other party at the address set out at the start of this Agreement (or to such other address as the party to be notified may advise for the purpose from time to time).

* 1. Deemed receipt

Any Notice or document so given will be deemed to be received:

* + 1. if personally served or sent by courier or registered mail, at the time when it was actually delivered;
    2. if sent by post, [*insert relevant number*] Business Days after the time it was posted to the recipient; or
    3. if sent by email, at the time the email leaves the communication systems of the sender, provided that the sender does not receive any error message relating to the sending of the email at the time of sending,

provided that if a Notice or document is received by a party on a date that is not a Business Day, or the delivery or transmission is made after 5.00pm on a Business Day, then the notice will be deemed to have been received on the next Business Day.

1. **Dispute resolution**

[***Drafting note:*** *use the clause below or insert a dispute resolution clause that is suitable for your situation.*]

* 1. No proceedings

A party must not commence legal proceedings (except proceedings seeking interlocutory relief) in respect of a dispute arising out of this Agreement (**Dispute**) unless it has first complied with this clause 23.

* 1. Dispute Notice

A party claiming that a Dispute has arisen must give each party to the Dispute (**Disputant**) written notice (**Dispute Notice**) setting out details of the Dispute.

* 1. Referral to chairpersons

Any Dispute the subject of a Dispute Notice must be initially referred to the chairperson (or his or her nominee) of each Disputant who must use their best efforts to resolve the Dispute within 20 Business Days after the Dispute is referred to them.

* 1. Mediation
     1. If the chairpersons (or their nominees) of the Disputants cannot resolve the Dispute under clause 23.3, then a Disputant may give written notice to each other Disputant requiring each of them to resolve the Dispute by mediation.
     2. The mediation is to be conducted in terms of the [Resolution Institute/Arbitrators and Mediators Institute of New Zealand Inc/international equivalent such as Chartered Institute of Arbitrators, International Institute of Arbitrators etc] standard mediation agreement.
     3. The identity of the mediator is to be agreed in writing by the Disputants or, failing such agreement within [10] Business Days, is to be selected by the chairperson for the time being of the [Resolution Institute/Arbitrators and Mediators Institute of New Zealand Inc /international equivalent such as Chartered Institute of Arbitrators, International Institute of Arbitrators etc]. (or his or her nominee).
     4. Each Disputant will bear the costs and expenses that it incurs in connection with the mediation and will share equally the fees and costs of the mediator.
     5. The mediation will be non-binding.

[***Drafting note:*** *edit depending on the governing law and the most convenient forum for both you and the Distributor.*]

1. **General** 
   1. Governing Law

This Agreement and the rights and obligations of the parties hereunder shall be governed by and construed in accordance with the Laws of [*insert relevant country*]. Each party submits to the non-exclusive jurisdiction of the courts of [*insert relevant country*].

[***Drafting* *note:*** *for international agreements, you may wish to specify that you will use arbitration rather than a court system, as it can be easier to enforce arbitration rulings across borders and can provide more certainty and ability for the parties to control the process.*

*In choosing which system/court jurisdiction and country’s law to use consult your in-market lawyer and consider:*

* *Where the Territory is (i.e. where the goods are being sold);*
* *Where the parties are incorporated and where they have a permanent business presence (ideally you would only use the courts of a jurisdiction if a party was incorporated in that jurisdiction or had a permanent presence there as it is easier to enforce judgements in those circumstances);*
* *In the case of the relevant legal system, jurisdictions from a “common law” tradition are often preferable for New Zealand companies as they are often similar to New Zealand law. Therefore, jurisdictions such as Australia, England, Singapore, Canada and the United States of America may be preferable, taking into account the location of the parties. You should also consider potential language barriers, logistics around the distance from the head offices of the parties, access to the courts of a jurisdiction, and the specifics of the jurisdiction’s laws. Some jurisdictions, for example, have specific laws that cover matters like compensation for termination, or require permission from the courts to terminate agreements. You may also want to think about any impact an overarching framework like the European Union may have.*]
  1. Assignment and subcontracting
     1. Neither party will assign, transfer or novate this Agreement or any rights or obligations under this Agreement, without the prior written consent of the other party, (such consent not to be unreasonably withheld or delayed).
     2. The Distributor will not sub contract or sub license its interest in, or its rights or obligations under, this Agreement without the Supplier’s prior written consent.
  2. Waiver

No failure or delay by either party in exercising any right, power or privilege under this Agreement will operate as a waiver, nor will any single or partial exercise preclude any other or further exercise or the exercise of any right, power or privilege under this Agreement.

* 1. Further Assurances

Each party will make all applications, execute all documents and do all acts and things necessary to implement and to carry out its obligations under this Agreement.

* 1. Independent contractor
     1. The relationship between the Distributor and the Supplier is that of two independent contractors and not that of principal and agent.
     2. Neither the Distributor nor any employee of the Distributor is an employee or agent of the Supplier for any purposes whatsoever and none has any right or authority to assume or create on behalf of the Supplier any commitment, expense or liability whatsoever, except as specifically provided in this Agreement.
  2. Entire agreement
     1. This Agreement constitutes the entire agreement and understanding between the Supplier and the Distributor and supersedes any previous written or oral agreement or understanding between the parties in relation to this Agreement. Each party acknowledges and confirms that it does not enter this Agreement in reliance on any representation or warranty or other undertaking not fully reflected in the terms of this Agreement.
     2. Any modification or variation of this Agreement must be in writing and signed by both parties.
  3. Severable provision
     1. If any provision of this Agreement is held to be invalid, illegal or unenforceable, it will be severed and the remainder of this Agreement will remain in full force and effect.
     2. To the extent legally permissible, an arrangement which reflects the original intent of the parties shall be substituted for such invalid or unenforceable provisions.
  4. Counterparts

This Agreement may be executed in one or more counterparts and each such counterpart shall be deemed to be an original.

1. **- Reference Terms**

|  |  |  |
| --- | --- | --- |
|  | **Commencement Date** | [***Insert relevant date***] |
|  | **Contract Period** | The period of [***Insert relevant number***] years from the Commencement Date. |
|  | **Territory** | [***Insert territory***] |
|  | **Trade Term** | [***Insert*** ***Trade Terms***]  [***Drafting note:*** *these are a series of pre-defined commercial terms related to common contractual sales practices that are intended primarily to clearly communicate the tasks, costs, and risks associated with the transportation and delivery of goods for example DAP – Delivered at Place (named place of destination)**– the**seller pays for carriage to the named place, except for costs related to import clearance, and assumes all risks prior to the point that the goods are ready for unloading by the buyer .For a full list of Trade Terms see the* [**Incoterms 2020**](https://iccwbo.org/resources-for-business/incoterms-rules/incoterms-2020/)*.*] |
|  | **Delivery** | [***Insert delivery details***] |
|  | **Revenue Target** |  |

|  |  |  |
| --- | --- | --- |
| [*Date to date*] | [*Date to date*] | [*Date to date*] |
| **[*Insert revenue target*]** | **[*Insert revenue target*]** | **[*Insert revenue target*]** |

1. **- Trade Marks**

|  |  |  |  |
| --- | --- | --- | --- |
| **MARK** | **APPLICATION NO.** | **APPLICATION DATE** | **CLASS** |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |

**[*Insert relevant trade mark details, if any*]**

1. **- Customers**

**[*Insert existing customer details, if any*]**

1. **- The Products**

**[*Insert product details*]**

1. **- Prices**

**[*Insert pricing details*]**

1. **- KPIs [*Optional*]**
2. KPIs

[*insert details*]

[*e.g.* Minimum Product orders required to be placed and fully paid for by Distributor per calendar year:]

[e.g. The total amount of Product to be sold by the Distributor for the first [*insert relevant number*] months of the Contract Period is NZD$[*insert relevant number*]. The target percentage of the total amount relative to each Product is:

* + 1. [*Product 1*] – [*insert percentage*]
    2. [*Product 2*] – [*insert percentage*]
    3. [*Product 3*] – [*insert percentage*]

or actual revenue within [5]% either above or below of such targets, provided the total amount is achieved.]

[***Drafting note:*** *This Schedule 6 provides some example KPIs you may wish to use as a starting point to measure the Distributor’s performance. All KPIs* ***must*** *be drafted to meet the requirements of each distribution arrangement.*]

**Signing page**

**EXECUTED** as an agreement

| **[*insert full name of the supplier*]** by: |  |
| --- | --- |
|  | Signature of [director/authorised signatory] |
|  | Name of [director/authorised signatory] |
|  | Signature of [director/authorised signatory] |
|  | Name of [director/authorised signatory] |

| **[*insert FULL name of the Distributor*]** by: |  |
| --- | --- |
|  | Signature of [director/authorised signatory] |
|  | Name of [director/authorised signatory] |
|  | Signature of [director/authorised signatory] |
|  | Name of [director/authorised signatory] |