DISTRIBUTION AGREEMENT

This Distribution Agreement (the ”Agreement”), is effective [EFFECTIVE DATE],

**BETWEEN: [YOUR COMPANY NAME]** (the “Company”), a company organised and existing under the laws of [COUNTRY], with its head office located at:

 [YOUR COMPLETE ADDRESS]

**AND: [DISTRIBUTOR NAME]** (the "Distributor"), a company organised and existing under the laws of [COUNTRY], with its head office located at:

 [COMPLETE ADDRESS]

**RECITALS**

WHEREAS, the Company has developed certain computer programmes and related documentation more particularly described in Schedule A attached hereto (the "Products") and desires to grant the Distributor the right to market and distribute the Products; and

WHEREAS, the Distributor is in the business of marketing and distributing computer-related products and desires to have the Developer grant it the right to market and distribute the Products.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, the parties hereto agree as follows:

1. **DEFINITIONS**

When used in this Agreement, the following terms shall have the respective meanings indicated, such meanings to be applicable to both the singular and plural forms of the terms defined:

## “Agreement” means this agreement, the Schedules attached hereto and any documents included by reference, as each may be amended from time to time in accordance with the terms of this Agreement.

**“Affiliate”** means any company controlled by, controlling, or under common control with the Company. Affiliate means any person, company or other entity: (i) which owns, now or hereafter, directly or indirectly, twenty-five percent (25%) or more of any class of the voting stock of the Company or is, now or hereafter, directly or indirectly, in effective control of the Company; or (ii) twenty-five percent (25%) or more of any class of the voting stock of which the Company, or a party described in paragraph (i), owns, now or hereafter, directly or indirectly, or of which the Company, or a party described in paragraph (i), is, now or hereafter, directly or indirectly, in control.

**“Customer”** or **“End-User”** means any person or company who purchases or leases Products from the Distributor.

**“Delivery Point”** means the Company's facilities at [FULL ADDRESS]. The delivery point means the Distributor's facilities at [FULL ADDRESS].

**“Schedule”** means a Schedule attached to this Agreement.

**“Products”** means those items described in Schedule A. Products may be deleted from or added to Schedule A and their specifications and design may be changed by the Company at its sole discretion at any time by mailing written notice of such changes to the Distributor. Each change shall become effective [NUMBER] days following the date notice thereof is sent to the Distributor.

**“Specifications”** means those specifications outlined in Schedule D.

**“Territory”** means the geographic area or areas identified in Schedule B.

**“Trademark”** means any trademark, logo, service mark or other commercial designation, whether or not registered, used to represent or describe the Products of the Company, as outlined in Schedule E.

1. **APPOINTMENT OF DISTRIBUTOR**
	1. **Appointment**

The Company hereby appoints the Distributor as the Company's non-exclusive distributor of the Products in the Territory, and the Distributor accepts that position. It is understood that the Company cannot lawfully prevent its distributors located elsewhere from supplying the Products for sale or use within the Territory and that it has no obligation to do so.

OR

The Company hereby appoints the Distributor as the Company's exclusive distributor of the Products in the Territory, and the Distributor accepts that position.

* + 1. The Company, to the extent that it is legally permitted to do so,
			1. shall not appoint any distributor or servicer in the Territory for the Products other than the Distributor,
			2. shall not, and shall cause any Affiliate not to, knowingly sell the Products to any person other than the Distributor or a party designated by the Distributor for use or re-sale within the Territory (except pursuant to an agreement effective at the time this Agreement became applicable to the service so provided), and
			3. shall use its best efforts to prevent any party other than the Distributor from seeking customers for the Products in the Territory, from establishing any branch related to the distribution of Products in the Territory, or from maintaining any distribution depot with respect to the Products in the Territory.
		2. The Company, or any Affiliate, sell any Product which is eventually re-sold in the Territory (other than a sale to the Distributor or a party designated by the Distributor) and the Company, or that Affiliate, had reason to know at the time of its sale of that Product that such re-sale was likely to occur, the Company shall, immediately after the trigger sale (which shall be the re-sale of the Product in the territory or the sale immediately preceding the use of the Product in the Territory) is contracted, pay to the the Distributor [PERCENT] % of the price of that Product under this Agreement at the time that the trigger sale was contracted, which payment shall represent a recapture of certain advertising and capital expenditures made by the Distributor. Nothing contained in this Section shall affect any other right or remedy which the Distributor may have under this Agreement.
1. **LICENCE**
	1. **Distribution licence Conditions**

The Distributor shall only distribute the Products to end-users (the "End-Users") who enter into an End-User licence Agreement (as hereinafter defined). Except for certain modules of the Maintenance Version (as hereinafter defined) provided by the Company solely to the Distributor hereunder, the software Products shall be in executable object code form only and the Distributor shall have no other right to the source code of such Products. The Distributor shall not modify, translate, decompile, nor create or attempt to create, by reverse engineering or otherwise, the source code from the object code of the Products supplied hereunder, or adapt the Products in any way or for use to create a derivative work. The Distributor may not, and may not permit End-Users to, use, reproduce, sublicence, distribute or dispose of the Products, in whole or in part, except as expressly permitted under this Agreement.

* 1. **The Territory**

The Distributor may market and distribute the Products solely within the geographical limits outlined in Schedule B attached hereto (the "Territory"). The Company retains the right, in its sole discretion, to change the Territory assigned to the Distributor upon [NUMBER] days prior with a written notice to the Distributor.

* 1. **Licence of the Products to End-Users**

In connection with the Distributor's licence and distribution of the Products to End-Users, the Distributor will have End-Users execute an End-User Licence Agreement in the form attached hereto as Schedule C (the "End-User Licence Agreement"). The Distributor may not negotiate the terms of the End-User Licence Agreement with any prospective End-User or agree to any conflicting, different or additional terms from those outlined in the End-User Licence Agreement without the Company's prior written consent. The Company shall have no liability to the Distributor in the event any prospective End-User refuses to agree to enter into an End-User licence Agreement.

* 1. **Product Changes**

The Company retains the right, in its sole discretion, to upgrade or modify the Products from time to time. In addition, upon [NUMBER] days prior with a written notice to the Distributor, the Company may add or delete Products from Schedule A. Upon receipt of any such notice of an upgrade or modification, or upon the expiration of the notice period set forth above for additions or deletions to Schedule A, the Distributor shall cease to market and distribute earlier versions of the Products deleted from Schedule A.

* 1. **Licence to Use Trademark and Trade Name**

Any trademarks and trade names which the Company uses in connection with the licence granted hereunder are and remain the exclusive property of the Company. Nothing contained in this Agreement shall be deemed to give the Distributor any right, title or interest in any trademark or trade name of the Company relating to the Products. Subject to notice from the Company in writing which modifies or cancels such authorisation, during the term of this Agreement, the Distributor may use the trademarks and trade names specified by the Company in writing for normal advertising and promotion of Products.

1. **NO MODIFICATIONS OR BUNDLING**
	1. **No Modifications**

The Distributor will not, without prior written consent of the Company modify, alter, adapt, disassemble, reverse engineer, decompile or amend the Products in any way.

* 1. **Distributor's Name and Logo**

The Distributor may, with the prior written approval of the Company, affix the Distributor's name and logo on the Product in the manner approved by the Company.

* 1. **No Bundling**

The Distributor will not bundle, package or otherwise distribute the Product with, or as part of, any other product or collection of products without the prior written approval of the Company.

1. **MAINTENANCE AND SUPPORT**
	1. **Company Support**

For the maintenance and support fee outlined in Section 5.3, the Company will provide the Distributor with the maintenance services described in Schedule F attached hereto ("Company Support"). The Company reserves the right to designate any modified or updated versions of the Product as new Products, which are not required to be provided under the Company Support. Such new Products will only be provided to the Distributor for distribution to End-Users under maintenance subject to the payment of additional licence and support fees as designated by the Company. The Company will use reasonable efforts to respond to the Distributor's inquiries regarding support promptly. However, the Company does not guarantee the timeliness of its responses or that it will be able to answer all of the Distributor's inquiries.

* 1. **Distributor Support**

Except for the explicit support obligations of the Company outlined in Section 5.1, the Distributor shall remain solely responsible for all installation, maintenance, and support services to the End-Users with regard to the Products. The Company agrees to deliver to the Distributor together with the first Order delivered to the Distributor a maintenance version of such Products which shall include certain modules of the software Products in source code form (the "Maintenance Version"). The Maintenance Version shall be used solely by the Distributor's personnel providing maintenance services to End-Users and shall only be used at the Distributor's site. The Distributor's failure to use or maintain the confidentiality of the Maintenance Version under the terms of this Agreement shall be deemed a material breach of this Agreement.

* 1. **Maintenance and Support Fee**

For the Company Support, the Distributor shall pay to the Company annually, in advance, a maintenance and support fee equal to [%] of the Prices for the Products licenced to all current End Users, or such amount as may otherwise be agreed to in writing by the Company (the "Company Support Fee"). With each annual payment of the Company Support Fee, the Distributor shall include a list of all current End-Users and a report showing the additions and deletions of End-Users from the previous list, and the date of such addition or deletion.

* 1. **Audit Rights**

The Distributor shall maintain accurate books and records of all licences granted for the Products, End-Users receiving maintenance and the Company Support Fees payable. Upon reasonable notice to the Distributor, and no more frequently than twice a year, the Distributor shall make such books and records available to the Company, at the Distributor's place of business during normal business hours, to audit the payments being made by the Distributor hereunder.

* 1. **Distributor Training**

For a period of [NUMBER] days after the date of this Agreement, the Distributor may request the Company to provide [NUMBER] day of on-site training and assistance to [NUMBER] of the Distributor's personnel who attend such training. After the [NUMBER] day period and for any additional on-site training and assistance requested by the Distributor, the Distributor agrees to pay the Company's current standard rates. The Distributor shall reimburse the Company for any out-of-pocket expenses, including travel-related expenses incurred by the Company to attend the training sessions.

* 1. **End-User Training and Company Consulting Services**

The Distributor shall be solely responsible for the training of End-Users. The Company shall be available at its then current standard rates to provide training, special enhancements, customisation and other special work or services which are not covered by this Agreement.

1. **CONFIDENTIALITY AND PROPRIETARY RIGHTS**
	1. **Confidentiality**

The Distributor acknowledges that in the course of dealings between the parties, the Distributor may acquire information about the Company, its business activities, and operations, its technical information and trade secrets, including but not limited to the Products, all of which are highly confidential and proprietary to the Company (the "Confidential Information"). Confidential Information shall not include information generally available to or known by the public, or information independently developed outside the scope of this Agreement. The Distributor shall hold all such Confidential Information in strict confidence and shall not reveal the same except under a court order or upon request of the Company. The Confidential Information shall be safeguarded with at least as great a degree of care as the Distributor uses to safeguard its own most confidential materials or data relating to its own business but in no event less than a reasonable degree of care.

* 1. **Proprietary Rights**

The Distributor acknowledges and agrees that the Products, and all copies thereof, constitute valuable trade secrets of the Company and/or proprietary and confidential information of the Company and title thereto remains in the Company. Ownership of all applicable copyrights, trade secrets, patents and other intellectual property rights in the Products are and shall remain vested in the Company. All other aspects of the Products, including without limitation, programs, methods of processing, design and structure of individual programmes and their interaction and programming techniques employed therein shall remain the sole and exclusive property of the Company and shall not be sold, revealed, disclosed or otherwise communicated, directly or indirectly, by the Distributor to any person, company or institution whatsoever other than as expressly set forth herein. The copyright notice and restricted rights legends contained in the Products shall appear on all tangible media distributed by the Distributor.

* 1. **Specific Remedies**

If the Distributor commits a breach of any of the provisions of Sections 6.1 and 6.2 above, the Company shall have, in addition to all other rights in law and equity, (a) the right to have such provision specifically enforced by any court having equity jurisdiction, it being acknowledged and agreed that any such breach will cause irreparable injury to the Company, and that money damages will not provide an adequate remedy, and (b) the right to require the Distributor to account for and pay to the Company all compensation, profits, monies or other tangible benefits (collectively "Benefits") derived or received as the result of any transactions constituting a breach of any of the provisions of this Article 6, and the Distributor hereby agrees to account for and pay such Benefits.

1. **LIMITED WARRANTY**
	1. **Limited Warranty**

For [NUMBER] days after delivery of a Product to the Distributor, the Company warrants that the media upon which the Products is delivered will be of good quality and workmanship. Upon written notice from the Distributor of defective media for a Product, the Company shall use reasonable efforts to provide replacement media promptly.

* 1. **Disclaimer of Warranties**

EXCEPT FOR THE LIMITED WARRANTY OUTLINED IN ARTICLE 7.1, THE PRODUCTS ARE PROVIDED "AS IS." THE COMPANY SPECIFICALLY DISCLAIMS ALL WARRANTIES EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE PRODUCTS OR DEFECTS IN THE TAPE, DISKETTE OR OTHER TANGIBLE MEDIA AND DOCUMENTATION, OPERATION OF THE PRODUCTS, AND ANY PARTICULAR APPLICATION OR USE OF THE PRODUCTS.

1. **LIMITATION OF LIABILITY**

IN NO EVENT SHALL THE COMPANY BE LIABLE FOR ANY LOSS OF PROFIT OR ANY OTHER COMMERCIAL DAMAGE, INCLUDING BUT NOT LIMITED TO SPECIAL, INCIDENTAL, CONSEQUENTIAL OR OTHER INDIRECT DAMAGES UNDER ANY CAUSE OF ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, CLAIMS ARISING FROM MALFUNCTION OR DEFECTS IN THE PRODUCTS. THE COMPANY'S MAXIMUM LIABILITY HEREUNDER IS EXPRESSLY LIMITED TO THE AMOUNT PAID UNDER THIS AGREEMENT BY THE DISTRIBUTOR TO THE COMPANY WITHIN [NUMBER] MONTH PERIOD IMMEDIATELY PRECEDING THE CAUSE GIVING RISE TO THE CLAIM.

1. **DISTRIBUTOR OBLIGATIONS**
	1. **Marketing Efforts**

The Distributor agrees to use its best efforts to promote the sale of the Products in their Territory. The Distributor agrees to permit the Company to review all of the Distributor's promotion and advertising material for the Products before use. The Distributor shall not use and shall withdraw and retract any promotion or advertising that the Company finds unsuitable, or is in breach of the terms of this Agreement. For the current licence fee, the Company agrees to deliver to the Distributor a single-user version of the Software Product (the "Single-User Version"). In the event the Company delivers the Single-User Version to the Distributor, use of the Single-User Version shall be subject to the terms and conditions of this Agreement.

* 1. **Prohibited Practices**

The Distributor may not make any contracts or commitments on behalf of the Company or make any warranties or other representations regarding the Products other than those authorised herein or by the Company in a separate writing.

1. **ACCOUNTS, AUDITS AND INSPECTION**

**10.1 Distributor to Keep Records**

The Distributor will keep all proper books, records and accounts ("Records") relating to the distribution of the Product and will retain such Records for a period of [NUMBER] years after the date of termination of this Agreement.

**10.2 Company's Right to Inspect Records**

The Company is entitled, on [NUMBER] Business Days prior notice in writing to the Distributor, to visit (or appoint an independent accountant to attend) the Distributor's premises and inspect the Distributor's Records as reasonably necessary to verify the information contained in any Report delivered by the Distributor under this Agreement. The Distributor must permit such inspection at any time up to [NUMBER] years after termination of this Agreement.

* 1. **Payment of Any Difference Revealed by Inspection**

10.3.1 If an inspection under Article 10.2 reveals that the total amount payable to the Company *in re*spect of any Calendar Quarter is a sum greater than the amount specified in the relevant Report or Reports, then the Distributor will pay to the Company the difference within [NUMBER] days of demand in writing by the Company which demand will be accompanied by a copy of an accountant's report.

* + 1. If the amount payable to the Company under this Article 10.2 exceeds the amount specified in the relevant Report or Reports by 5% or more, then the Distributor will also pay the costs and expenses of that inspection.
	1. **If Reports Not Delivered**

10.4.1 If the Distributor fails to deliver a Report or Reports within the time required by Article 5.4, the Company may appoint an independent accountant to examine the Records of the Distributor to ascertain the amount payable by the Distributor for the relevant Calendar Quarter.

* + 1. The Distributor will permit that accountant to inspect the Distributor's Records.
		2. The amount certified by that accountant to be payable *in re*spect of any Calendar Quarter together with the costs and expenses of that inspection are payable by the Distributor within [NUMBER] days of demand by the Company for that amount, such demand to be in writing and accompanied by a copy of the accountant's report.

**10.5 Inspection of Distributor's Facilities**

In addition to the preceding rights of inspection, the Company may during regular Business Hours on not less than [NUMBER] Business Days provide a written notice to inspect the Distributor's premises and facilities to verify the Distributor's compliance with any terms of this Agreement.

1. **MARKETING AND PROMOTION**

**11.1 Marketing Plan**

The Distributor will comply with the Marketing Plan *in re*lation to the publicity, advertising, and marketing strategies of the Product in their Territory. Any variations to the Marketing Plan will be agreed in writing by the parties. The Distributor shall be entitled, during the term of the distribution terms created by this Agreement and any extension thereof, to advertise and hold itself out as an authorised Distributor of the Products.

**11.2 Company to Approve all Marketing Material**

The Distributor will submit all advertising, sales promotion and public relations material used from time to time by the Distributor and relating to the Product for the Company's to provide a written approval. Subject to Article 11.2, no such material may be used in conjunction with the promotion of the Product without the Company's prior written approval.

**11.3 Company's Approval**

The Company will notify the Distributor within [NUMBER] Business Days following receipt of the material referred to in Article 11.2 whether it approves, disapproves or requires any alteration to such material. If no notification is received within the said period, the Company will be deemed to have given its approval. The Company will not unreasonably withhold its consent to such material.

1. **WITHDRAWAL OF PRODUCT**

**12.1 Suspension of Distribution**

The Company may direct the Distributor in writing to suspend the distribution of the Product (and the Distributor will comply with that direction) for a period up to [NUMBER] days ("Suspension Period") if:

* + 1. The Product is defective; or

12.1.2 If the Company is advised by its legal advisers that the Product:

12.1.2.1 infringes or may infringe the Intellectual Property Rights of any person; or

 12.1.2.2 is or may be defamatory, obscene, false, misleading or deceptive.

**12.2 Distributor to Notify**

If the Distributor becomes aware of any of the matters described in Articles 12.1(A) or (B), the Distributor will immediately notify the Company in writing and request the Company to issue a direction under Article 12.1. The Company will not be obliged to issue any such direction.

**12.3 If Company is Unable to Rectify the Product**

If the Company is unable to rectify the Product within the Suspension Period, such inability will constitute a Termination Event.

**12.4 If Company can Rectify the Product**

If the Company can rectify the Product within the Suspension Period (or any extension thereof agreed upon by the parties) the Distributor must resume distribution of the Product.

1. **TERM AND TERMINATION**

**13.1 Term**

This Agreement shall have an initial term of [NUMBER] years from the Effective Date (the "Initial Term"), and shall thereafter automatically renew for successive [NUMBER] year(s) periods (each a "Renewal Term"), unless earlier terminated in accordance with the terms of this Agreement. Either party may cancel this Agreement effective on the last day of the Initial Term, or any Renewal Term, by serving written notice of such termination on the other party at least [NUMBER] days prior to the effective date thereof.

**13.2 Company Termination**

This Agreement may be terminated immediately by the Company under any of the following

conditions:

* + 1. If one of the parties shall be declared insolvent or bankrupt;
		2. If a petition is filed in any court to declare one of the parties bankrupt or for a reorganisation under the Bankruptcy Law or any similar statute and such petition is not dismissed in [NUMBER] days or if a Trustee in Bankruptcy or a Receiver or similar entity is appointed for one of the parties;
		3. If the Distributor does not pay the Company within [NUMBER] days from the date that any payments are due hereunder;
		4. If the Distributor breaches the provisions of Sections 6.1 or 6.2 of this Agreement; or
		5. If the Distributor otherwise materially breaches the terms of this Agreement, and such breach is not cured within [NUMBER] days after the Company gives written notice of such breach.

**13.3 Duties Upon Termination**

Provided termination is not a result of a material breach of Sections 6.1 or 6.2; the parties agree to continue their cooperation to effect an orderly termination of their relationship. The Distributor may continue running the Maintenance Version solely for purposes of providing maintenance to End-Users granted licences under an End User Licence Agreement before termination. Upon termination, the Distributor shall have no right to order or receive any additional copies of the Products, and all of the Distributor's rights and licences granted hereunder shall immediately cease. Within [NUMBER] days of termination, the Distributor shall return all copies of any promotional materials, marketing literature, written information, and reports about the Products that have been supplied by the Company.

1. **INDEMNIFICATION**

**14.1 Copyright Indemnification**

The Company shall indemnify, defend and hold the Distributor harmless from any claims, demands, liabilities or expenses, including reasonable attorneys' fees, directly resulting from any infringement or violation of any copyright with respect to the Products, as so awarded against the Distributor by a court of competent jurisdiction, and provided the Distributor is not in breach of this Agreement. Following a decision by a court of competent jurisdiction that the Products infringe any third party's copyright, the Company shall, in its sole discretion:

* + 1. Procure for the Distributor the right to continue to use, distribute and sell the Products at no additional expense to the Distributor;
		2. Provide the Distributor with a non-infringing version of the Products with substantially similar functionality;
		3. Notify the Distributor that the Products are being withdrawn from the market and immediately terminate this Agreement.

**14.2 Distributor Indemnification**

The Distributor shall indemnify, defend and hold the Company harmless from any claims, demands, liabilities or expenses, including reasonable attorneys' fees, incurred by the Company as a result of any claim or proceeding against the Company arising out of or based upon (i) the combination, operation or use of the Products with any hardware, products, programmes or data not supplied or approved in writing by the Company, if such infringement would have been avoided but for such combination, operation or use or (ii) the modification of the Products by the Distributor or End-Users.

1. **REFERRALS**

If the Company or any Affiliate is contacted by any party inquiring about the purchase of Products in their Territory (other than the Distributor or a party designated by the Distributor), the Company shall, or shall request that Affiliate to, refer such party to the Distributor for handling.

1. **RELATIONSHIP OF PARTIES**
	1. The Distributor is an independent contractor and is not the legal representative or agent of the Company for any purpose and shall have no right or authority (except as expressly provided in this Agreement) to incur, assume or create in writing or otherwise, any warranty over any of the Company's employees, all of whom are entirely under the control of the Company, who shall be responsible for their acts and omissions.
	2. The Distributor shall, at its own expense, during the term of this Agreement and any extension thereof, maintain full insurance under any Workmen's Compensation Laws effective in the jurisdiction or other applicable law covering all persons employed by and working for it in connection with the performance of this Agreement, and upon request shall furnish the Company with satisfactory evidence of the maintenance of such insurance.
	3. The Distributor accepts exclusive liability for all contributions and payroll taxes required under Country Laws and Unemployment Compensation Laws or other payments under any laws of similar character in any applicable jurisdiction as to all persons employed by and working for it.
	4. Nothing contained in this Agreement shall be deemed to create any partnership or joint venture relationship between the parties.
2. **SALE OF PRODUCTS BY DISTRIBUTOR**

The Distributor agrees to exercise its best efforts to develop the largest possible market for the Products in their Territory and shall continuously offer, advertise, demonstrate and otherwise promote the sale of Products in their Territory.

* 1. The parties have consulted together and now agree that if the Distributor's best efforts are used as provided in this Section, a minimum of [SPECIFY] Products ("Annual Market Potential") will be purchased and distributed in their Territory during the first year of this Agreement.
	2. At the beginning of each subsequent year hereunder the parties will consult together in good faith and agree on the Annual Market Potential applicable to that year; provided, however, that if they cannot agree, the Annual Market Potential for the immediately Preceding year will apply to the current year.
1. **COMPETING PRODUCTS**

The Distributor agrees that it will not distribute or represent any Products in their Territory which compete with the Company’s Products during the term of this Agreement or any extensions thereof.

1. **NEW PRODUCTS**

If the Company or any Affiliate now or hereafter manufactures or distributes, or proposes to manufacture or distribute, any product other than the Company’s Products, the Company shall immediately notify, or cause such Affiliate to notify the Distributor of that fact and of all details concerning that product. The Distributor may request from the Company distribution rights for that product in their Territory or any portion thereof, and if so requested, the Company shall grant, or shall cause the subject Affiliate to grant, such distribution rights to the Distributor on terms and conditions no less favourable than those provided in this Agreement with respect to Products.

If the Distributor does not obtain those distribution rights or obtains them only for a portion of the Territory, and the Company or an Affiliate later desires to offer those distribution rights for their Territory or any portion thereof to another party, the Company shall first, or shall request such Affiliate to first, make that offer in writing to the Distributor on terms and conditions which shall be specified fully in that offer. That offer shall contain a full description of the subject product and its operation.

The Distributor may request, and the Company shall promptly provide, or shall cause such Affiliate promptly to provide, further information concerning the product or the offer. If the Distributor fails to accept such offer, the Company or the Affiliate may then offer the product to another party for distribution in the Territory, but may not offer it on terms and conditions more favourable than those offered to the Distributor. If the Company or the Affiliate desires to make a better offer to another party, the Company shall first or shall cause the affiliate first to, make such better offer to the Distributor in accordance with the procedure set forth above.

1. **DISTRIBUTOR SALES, SERVICE AND STORAGE FACILITIES**
	1. The Distributor shall, at its expense, engage and maintain a sales, service, and products handling organisation in the Territory, staffed with such experienced personnel as are necessary to enable the Distributor to perform its obligations under this Agreement.
	2. The Distributor shall, at its expense, maintain facilities and personnel in the Territory that will enable it promptly and satisfactorily to perform, at a reasonable price, all necessary servicing of Products sold by the Distributor. To assist the Distributor in the discharge of this service and maintenance function, the Company shall provide service and maintenance training, without charge, to any reasonable number of the Distributor's personnel as the Distributor shall designate.
2. **TRAINING OF DISTRIBUTOR**

As promptly as practicable after the execution of the Agreement, the Company shall transmit to the Distributor information, materials, manuals and other technical documents necessary to enable the Distributor to perform its obligations under this Agreement. Throughout the term of this Agreement and any extension thereof, the Company shall continue to give the Distributor such technical assistance as the Distributor may reasonably request. The Distributor shall reimburse the Company for all reasonable out-of-pocket expenses incurred by the Company in providing technical assistance.

1. **TERMS OF PURCHASE AND SALE OF PRODUCTS**
	1. The Distributor shall purchase its requirements for the Products from the Company. Such requirements shall include (i) purchasing and maintaining an inventory of Products that is sufficient to enable the Distributor to perform its obligations hereunder, and (ii) at least one (1) demonstration model of the Products.
	2. Each order for Products submitted by the Distributor to the Company shall be subject to written acceptance by the Company, and the Company may, in its discretion, accept or reject any order for Products without obligation or liability to provide any reason to the Distributor for its rejection of such a request.
	3. The Company shall supply sufficient Products to the Distributor to enable the Distributor to meet the full demand for Products in their Territory.
	4. All orders for Products transmitted by the Distributor to the Company shall be deemed to be accepted by the Company at the time such orders are received by the Company to the extent that they comply with the terms of this Agreement and the Company shall perform in accordance with all accepted orders. The Company shall confirm its receipt and acceptance of each order within [NUMBER] days of receipt of the order.
	5. Purchases for re-sale only. All Products purchased by the Distributor shall be purchased solely for commercial re-sale or lease, excepting those Products reasonably required by the Distributor for advertising and demonstration purposes.
2. **ORDER PROCEDURE**
	1. Each order for Products issued by the Distributor to the Company under this Agreement shall identify that it is an order and shall further set forth the delivery date or dates and the description and quantity of Products which are to be delivered on each of such dates. An order for Products shall not provide a delivery date less than [NUMBER] days after the date that order is delivered to the Company.
	2. The individual contracts for the sale of Products formed by the Distributor's submission of orders to the Company pursuant to the terms and conditions hereof shall automatically incorporate, to the extent applicable, the terms and conditions hereof, shall be subject only to those terms and conditions (together with all terms in orders which are contemplated by this Agreement) and shall not be subject to any conflicting or additional terms included in any documents exchanged in connection therewith.
3. **CANCELLATION OF ORDERS**

All cancellation of orders by the Distributor shall be in writing, or if not initially in writing, shall be confirmed in writing. If the Distributor cancels an order, which has been accepted by the Company, the Distributor shall reimburse the Company for any cost incident to such order incurred by the Company before the time it was informed of the cancellation.

1. **PURCHASE PRICE**

The prices for Products and any discounts applicable thereto are outlined in Schedule G. All prices are “Free on Board” (FOB) the Delivery Point. If the price for any Product is not set forth on Schedule G and the Distributor nevertheless orders such a Product from the Company, the parties hereby evidence their intention thereby to conclude a contract for the sale of that Product at a reasonable price to be determined by the Parties mutually negotiating in good faith.

1. **PRICE CHANGES**

The Company reserves the right, in its sole discretion, to change prices or discounts applicable to the Products. The Company shall give a written notice to the Distributor of any price change at least [NUMBER] days before the effective date thereof. The price in effect as of the date of the Distributor's receipt of the notice of such price change, and shall remain applicable to all orders received by the Company before that effective date.

1. **PACKING**

The Company shall, at its expense, pack all Products in accordance with the Company's standard packing procedure, which shall be suitable to permit shipment of the Products to their Territory; provided, however, that if the Distributor requests a modification of those procedures, the Company shall make the requested modification and the Distributor shall bear any reasonable expenses incurred by the Company in complying with such modified procedures which are in excess of the expenses which the Company would have incurred in following its standard procedures.

1. **DELIVERY: TITLE AND RISK OF LOSS**

All deliveries of Products sold by the Company to the Distributor under this Agreement shall be made F.O.B. to Delivery Point, and title to and risk of loss of Products shall pass from the Company to the Distributor at the Delivery Point. The Distributor shall be responsible for arranging all transportation of Products, but if requested by the Distributor, the Company shall, at the Distributor's expense, assist the Distributor in making such arrangements. The Distributor shall also procure insurance for the transportation of the Products, and such insurance shall be of a kind and on terms current at the port of shipment. If the Company is requested to assist the Distributor in arranging for transportation, the Distributor shall reimburse the Company

for all costs applicable to the Products following their delivery to the Distributor, including, without limitation, insurance, transportation, loading and unloading, handling and storage. The Distributor shall pay all charges, including customs duty and sales tax, incurred with respect to the Products following their Delivery to the carrier or forwarder.

1. **INSPECTION AND ACCEPTANCE**

Promptly upon the receipt of a shipment of Products, the Distributor shall examine the shipment to determine whether any item or items included in the shipment are in short supply, defective or damaged. Within [NUMBER] days of receipt of the shipment, the Distributor shall notify the Company in writing of any shortages, defects or damage which the Distributor claims existed at the time of delivery. Within [NUMBER] days after the receipt of such notice, the Company will investigate the claim of shortages, defects or damage, inform the Distributor of its findings, and deliver to the Distributor Products to replace any which the Company determines, in

its sole discretion, were in short supply, defective or damaged at the time of delivery.

1. **PAYMENT**

Upon delivery and acceptance of Products, the Company may submit to the Distributor the Company's invoice for those Products. The Distributor shall pay each such proper invoice within [NUMBER] days after the Distributor's receipt of that invoice. Payment shall be made in [CURRENCY] to a bank account to be notified in writing by the Company to the Distributor.

1. **FORCE MAJEURE**

Neither party shall be liable or deemed to be in default for any delay or failure in performance under this Agreement or interruption of service resulting directly or indirectly from acts of God, or any causes beyond the reasonable control of such party.

1. the **ASSIGNMENT**

This Agreement is not assignable by either party hereto without the consent of the other, except that this Agreement shall be assignable by the Company to an affiliated entity or upon the sale of the right to licence and sub-licence the Products to the purchaser of said right. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors.

1. **SEVERABILITY AND WAIVER**

**33.1 Severability**

If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of this Agreement. No waiver by any party of any breach of any provisions hereof shall constitute a waiver unless made in writing signed by the party.

**33.2 No Waiver Except by Notice in Writing**

No right under this Agreement is waived or deemed to be waived except by notice in writing signed by the party waiving the right.

1. **ENTIRE AGREEMENT**

This Agreement, including the Schedules attached hereto, contains the entire understanding of the parties and there are no commitments, agreements, or understandings between the parties other than those expressly set forth herein. This agreement shall not be altered, waived, modified, or amended except in writing signed by the parties hereto and notarised.

1. **ARBITRATION**

Any controversy or claim arising out of or relating to this contract or the breach thereof shall be settled by arbitration to be held in the [CITY], in accordance with the law in this jurisdiction, and judgement  upon the award rendered by the arbitrators may be entered in any Court having jurisdiction thereof.

1. **GOVERNING LAW**

This Agreement shall be governed by and construed by the laws of the [Province] of [COUNTRY]. Jurisdiction for litigation of any dispute, controversy or claim arising out of or in connection with this Agreement, or the breach thereof shall be only in the Country or the Provincial Court with competent jurisdiction located in [COUNTRY].

1. **INTERPRETATION**

In this Agreement:

* 1. Headings and underlinings are for convenience only and do not affect the interpretation of this Agreement;
	2. A reference to this Agreement includes an Annexure, Exhibit or Schedule to this Agreement;
	3. A provision of this Agreement will not be interpreted against a party just because that party prepared the provision;
	4. Words importing a gender include any gender;
	5. A reference to an agreement other than this Agreement includes an undertaking, agreement or legally enforceable arrangement or understanding whether or not in writing;
	6. A reference to an Article or Schedule is a reference to an Article or Schedule to this Agreement.

The parties have incoprorated this agreement on the date aforementioned with full knowledge of its content, significance, and with the intention to be legally bound by the aforementioned terms.

COMPANY DISTRIBUTOR

Authorised Signature Authorised Signature

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Print Name and Title Print Name and Title

**SCHEDULE A**

**THE PRODUCTS**

**SCHEDULE B**

**THE TERRITORY**

**SCHEDULE C**

**END-USER LICENCE AGREEMENT**

**SCHEDULE D**

**SPECIFICATIONS**

**SCHEDULE E**

**TRADEMARKS AND COPYRIGHTS**

**SCHEDULE F**

**MAINTENANCE AND SUPPORT SERVICES**

**SCHEDULE G**

**PRICES AND DISCOUNTS FOR PRODUCTS**