Dated [insert date]

Manufacturing & Distribution Licence Agreement

between

[Insert Party Name]

and

[Insert Party Name]



**THIS AGREEMENT** is dated [INSERT DATE]

Parties

1. [INSERT COMPANY NAME], a company registered in [England & Wales] with company number [INSERT NUMBER] whose registered office is [INSERT ADDRESS] (**“Licensor”**); and
2. [INSERT COMPANY NAME], a company registered in [England & Wales] with company number [INSERT NUMBER] whose registered office is [INSERT ADDRESS] (**“**Licensee”)**.**

**Background**

A. The Licensor has the right to grant licences of the Intellectual Property and Designs and to use the Brand Name in the Territory.

B. The Licensee has requested a licence to use the Intellectual Property, Brand Name and Designs in order to manufacture, distribute and market the [INSERT PRODUCT NAME] in the Territory.

C. The Licensor has agreed to grant such a licence to the Licensee on the terms set out in this Agreement.

D. The Licensor has also agreed to grant an exclusive licence to the Licensee to manufacture, distribute and market any new products related to the [INSERT PRODUCT NAME] that the Licensor develops in the Territory.

E. The Licensor also grants the Licensee an exclusive licence to design and sell new products in the same range as the [INSERT PRODUCT NAME], as well as to re-brand all [INSERT PRODUCT NAME] designs in the Territory.

1. Interpretation

## The following definitions shall apply in this Agreement:

**“Brand Name”**means the [INSERT BRAND NAME] and associated Intellectual Property.

**“Designs”** mean the designs created and prepared by the Licensor from which the Licensee shall manufacture the [INSERT PRODUCT NAME] and at the time of manufacture shall include any modifications, improvements, or amendments to the Designs devised or developed by the Licensor either before or during the term of this Agreement and notified to the Licensee.

**“Exclusive”** means that the licensed [INSERT PRODUCT NAME] can be exploited by the Licensee to the exclusion of third parties and the Licensor himself in the Territory.

**“Initial Period”** has the meaning given in clause 3.

**“Intellectual Property”** means the copyright, design rights, trademarks and all other intellectual property rights capable of existing worldwide in the Designs, [INSERT PRODUCT NAME] and in the Brand Name, whether such rights are registered or not.

**“Net Purchase Price”** means the total value of all [INSERT PRODUCT NAME], at the point of sale, sold by the Licensee pursuant to this Agreement, excluding any applicable sales tax such as VAT and any transportation costs.

**“Notice”** means a notice in writing served in accordance with the provisions of clause 26.

**“Quarter”**means one of four three month intervals calculated from the Commencement Date.

**“Royalties”** means the payments to be made to the Licensor by the Licensee under clause 4.

**“Second Term”**means the fixed three Year period from the end of the Initial Period.

**“Subsequent Terms”**means subsequent fixed three year periods following the end of the Second Term.

**“Territory”**means [INSERT TERRITORY] and such other territories as the parties may agree separately in writing (in a form set out in Schedule 1 at the end of this Agreement).

**“[INSERT PRODUCT NAME]”**means the [Insert Product Description] manufactured using the Designs, Brand Name and Intellectual Property.

**“Year”**means the period of 12 months from the Commencement Date and each consecutive period of 12 months thereafter during the term of this Agreement.

1. Grant
	1. Subject to clauses 2.2 and 2.3, in consideration of the obligations undertaken by the Licensee under this Agreement the Licensor grants to the Licensee an exclusive licence to use the Designs, Brand Name and Intellectual Property to manufacture, distribute, and market the [INSERT PRODUCT NAME], throughout the Territory, in accordance with the terms of this Agreement.
	2. The Licensor reserves the right to grant licences of the Designs, Brand Name and Intellectual Property to other licensees outside of the Territory, subject to the Licensee being first offered any such opportunities on the same terms as may have been agreed with other potential licensees.
	3. The Licensor also grants to the Licensee an exclusive licence to:
		1. manufacture, distribute and market any new products that the Licensor develops for the [INSERT PRODUCT NAME] (subsequent to this Agreement) in the Territory;
		2. design, manufacture, distribute and market its own products in connection with the [INSERT PRODUCT NAME] in the Territory; and
		3. re-brand any products, packaging, advertising and promotional materials associated with the [INSERT PRODUCT NAME] and the Brand Name marketed by the Licensee, whether created by the Licensor or the Licensee, with the Licensee’s own illustrations, logos and trade names.
2. Term

This Agreement shall be for an initial fixed period lasting from the Commencement Date until [INSERT DATE] (**“Initial Period”**)and shall be automatically renewed unless terminated by either party in accordance with clause 5.

1. Royalties
	1. In consideration of the rights granted by the Licensor in clause 2, the Licensee shall pay to the Licensor a royalty equal to an amount of:
		1. [INSERT FIGURE]% of the Net Purchase Price in respect of all [INSERT PRODUCT NAME] designed by the Licensor and sold by the Licensee; or
		2. [INSERT FIGURE]% of the Net Purchase Price in respect of all [INSERT PRODUCT NAME] designed by the Licensee and sold by the Licensee.
	2. Within 7 days after the end of each Quarter during the term of this Agreement, the Licensee shall deliver to the Licensor a statement giving particulars of all sales of the [INSERT PRODUCT NAME] effected by the Licensee during the month and showing the total royalties payable to the Licensor for that month.
	3. Within 14 days after the end of each Quarter, the Licensee shall pay the Royalties due for that month by direct credit into the bank account of the Licensor (details of which shall be notified in writing to the Licensee from time to time).
2. Duration and Termination
	1. **Termination without cause**: a termination notice shall first be served by either party by [INSERT DATE] to be effective on [INSERT DATE] otherwise the licence shall be deemed to have been automatically renewed for another three Year Second Term following the end of the Initial Period.
	2. Once a notice is validly served under clause 5.1, the termination will be effective at the end of the Initial Period.
	3. For the avoidance of doubt, the earliest this contract can come to an end in accordance with clauses 5.1 and 5.2 is three years from the Commencement Date.
	4. After the Initial Period, this Agreement shall automatically continue thereafter for a Second Term and Subsequent Terms until terminated by either party giving not less than [INSERT FIGURE] months prior written notice to terminate on the expiry date of the Second Term or the expiry date of any relevant Subsequent Term.
	5. **Termination for breach**: The Licensee may immediately give Notice terminating this Agreement where:
		1. the Licensor fails to perform any of its obligations under this Agreement; or
		2. there is any insolvency event that impacts on the Licensor.
	6. Termination shall not affect the rights and remedies of the Licensee in respect of the breach or antecedent breach by the Licensor of any of its obligations under this Agreement.
3. Termination Consequences
	1. Subject to clauses 6.2 and 6.3, on termination of this Agreement the Licensee shall discontinue all use of the Intellectual Property and shall immediately pay any outstanding Royalties due under clause 4.3 to the Licensor plus (where applicable) a pro rata amount.
	2. If the Licensee shall have any remaining stock of the [INSERT PRODUCT NAME] at the time of termination then the Licensor may at his discretion purchase such remaining stock at the cost price for which the products were manufactured.
	3. Any products in the course of manufacture at the time of termination may be completed within 120 days and disposed of in compliance with the terms of this Agreement but not otherwise.
	4. If this Agreement is cancelled by the Licensor without complying with any of the sub clauses of clause 5, the Licensee shall be entitled to liquidated damages for the remainder of the Initial Period, Second Term or Subsequent Term, calculated by multiplying the net profits of the Licensee (pursuant to this Agreement) for the average month of the last 12 month period before such cancellation by the remaining number of months left before the end of the Initial Period.
4. Licensee's Obligations as to Quality

The Licensee shall manufacture the [INSERT PRODUCT NAME] to its own specifications and at all times use it’s reasonable endeavours to ensure that the products are of the highest quality possible.

1. Licensee's Obligations as to Marketing
	1. The Licensee shall at all times use its reasonable endeavours to promote and sell the [INSERT PRODUCT NAME].
	2. It is agreed by the Licensee that the [INSERT PRODUCT NAME] will be sold only to recognised wholesale firms for resale, retail firms, retail firms for resale to the public, or direct to the public.
	3. The Licensee shall be responsible for setting any prices associated with the [INSERT PRODUCT NAME].
2. Inspection

The Licensee shall permit the Licensor at all reasonable times to inspect the Licensee's premises in order to satisfy the Licensor that the Licensee is complying with its obligations under this Agreement.

1. Use and protection of Intellectual Property
	1. The copyright material comprised in the Intellectual Property shall be protected as follows:
		1. every unit of the [INSERT PRODUCT NAME] and all packaging, advertising and point of sale materials used in connection with the [INSERT PRODUCT NAME] shall bear the following copyright identification '© [INSERT LICENSOR NAME]' and the statement ‘manufactured under licence from [INSERT LICENSOR NAME]'; and
		2. no copyright material comprised in the Intellectual Property or Designs may be used in connection with the manufacture, distribution, or marketing of any goods other than the [INSERT PRODUCT NAME] (or any other products produced pursuant to this Agreement) for which the use of such material is specified.
	2. The Licensee shall not use any of the Intellectual Property as part of the Licensee's name or the name of any entity associated with it without the prior written consent of the Licensor.
	3. The Licensee shall not during the term of this Agreement or at any future time register or use any of the Intellectual Property in its own name as proprietor.
	4. The Licensee recognises the Licensor's title to the Intellectual Property and shall not claim any right title or interest in the Intellectual Property or any part of it, save as is granted by this Agreement.
	5. The Licensee shall promptly call to the attention of the Licensor the use of any part of the Intellectual Property by any third party or any activity of any third party which might in the opinion of the Licensee amount to infringement or passing off.
	6. The Licensee shall not except with the prior written consent of the Licensor make use of the name of the Licensor in any connection otherwise than is expressly permitted by this Agreement.
2. Confidentiality
	1. The Licensee undertakes that it shall keep (and it shall ensure that its respective directors and employees keep) secret and confidential all know-how relating to the manufacture of the [INSERT PRODUCT NAME] and any information (whether or not technical) of a confidential nature communicated to it by the Licensor, either preparatory to, or as a result of, this Agreement, and shall not disclose the same or any part of the same to any person other than its directors or employees directly or indirectly concerned in the manufacture, use or sale of the [INSERT PRODUCT NAME], provided that before any such disclosure takes place, the Licensee shall ensure that each of the directors and employees concerned shall execute a confidentiality undertaking with the Licensor in a form approved by the Licensor, such approval not to be unreasonably withheld.
	2. The provisions of clause 11.1 shall not apply to such know-how and information as the Licensee:

(a) can prove to have been in its possession at the date of receipt, or which becomes public knowledge otherwise than through a breach of an obligation of confidentiality owed (whether directly or indirectly) to the Licensor; or

(b) is necessarily disclosed as a result of the marketing of, servicing or repair of the [INSERT PRODUCT NAME].

* 1. The Licensor shall equally be bound to keep the Licensee’s know-how confidential.
	2. The provisions of this clause 11 shall remain in force notwithstanding expiry or earlier termination of this Agreement.
1. Action against Third Parties
	1. The Licensor shall have the sole right to take action against third parties in respect of the Intellectual Property and if required to do so by the Licensor, the Licensee shall co-operate fully with the Licensor in any such action with the Licensee's expenses incurred in doing so being borne by the Licensor.
	2. If the Licensor fails to take any such action against third parties in relation to the Intellectual Property, the Licensee may serve Notice on the Licensor and on the expiry of 30 days after the service of such Notice the Licensee shall be entitled to prosecute such action itself and at its own expense provided that the Licensor has not served Notice within the 30 day period of its own intention to take action and provided that all damages recovered from third parties shall be the exclusive property of the Licensee.
2. Indemnity

The Licensor shall indemnify the Licensee against all actions, claims, costs, damages, losses and expenses arising out of the Licensee's use of the Intellectual Property and Designs in accordance with the terms of this Agreement.

1. Warranties

14.1 The Licensor represents, warrants, undertakes and agrees with the Licensee as follows:

(a) the Licensor is the sole unencumbered absolute legal and beneficial owner of the Intellectual Property and all other rights associated with the [INSERT PRODUCT NAME]; and

(b) the Licensor has not assigned or encumbered or licensed or transferred or otherwise disposed of any rights of copyright or any other rights in or to the [INSERT PRODUCT NAME] except pursuant to this Agreement and has not entered into any agreement or arrangement which might conflict with the parties’ rights and obligations under this Agreement.

1. Licensee’s Limitation of Liability
	1. This clause 15 limits the liability of the Licensee in relation to any aspect of this Agreement.
	2. The liability of the Licensee for all claims, costs, damages and expenses when taken together shall not exceed [INSERT FIGURE].
	3. The Licensee shall not be liable for any amounts that do not exceed [INSERT FIGURE].
	4. The Licensee shall not have any liability for any losses or damages which may be suffered by the Licensor for any indirect or consequential loss, which fall within any of the following categories:

(a) special damage even though the party was aware of the circumstances in which such special damage could arise;

 (b) loss of profits;

 (c) loss of anticipated savings;

 (d) loss of business opportunity;

 (e) loss of goodwill; and

 (f) loss of data,

 provided that this clause shall not prevent claims for direct financial loss that are not excluded by any of categories (a) to (f) inclusive.

1. Nature of Relationship
	1. The relationship created by this Agreement is that of licensee and licensor, and not employer and employee, nor are the parties partners or joint venture partners.
	2. The Licensee is not entitled to act as the Licensor’s agent, nor shall the Licensor be liable in respect of any representation, act or omission of the Licensee of whatever nature.
2. Assignment
	1. The Licensee may at any time, assign or transfer the benefit of this Agreement or grant any sub-licence to any third party.
	2. The Licensor shall only assign or transfer the benefit of this Agreement or grant any sub-licence, providing that the Licensor first obtains the prior written consent of the Licensee.
3. Option
	1. At any time that this Agreement is effective and within one month of the Agreement being terminated (howsoever caused) the Licensee shall be entitled to give notice to exercise this option to acquire all rights and ownership that the Licensor shall have to the Intellectual Property, Designs, Brand Name and [INSERT PRODUCT NAME] (**“Rights”**), subject to the consideration for the acquisition of such rights being agreed as follows:

(a) the parties appointing a mutually agreed independent accountant to calculate the value of the Rights, whose decision shall be binding; or

(b) if the parties cannot agree to appoint such independent accountant in accordance with clause 18.1 (a), within one month of the Licensee giving notice to exercise this option, either party may appoint Kelvin King of Valuation Consulting LLP to either himself, or for him to select someone else to, as an independent arbitrator calculate the value of the Rights, whose decision shall be binding on the parties.

* 1. The parties agree to enter into all relevant agreements in order to exercise this option and transfer the Rights.
1. Variation

This Agreement may only be amended by a document in writing signed by a duly authorised signatory of each party.

1. Further Assurance

The parties shall execute all further documents as may be necessary or desirable to give full effect to the terms of this Agreement and to protect the rights of the parties under it.

1. Entire Agreement
	1. This Agreement and the documents referred to in it, constitute the entire agreement and understanding of the parties and supersede any previous agreement between the parties relating to the subject matter of this agreement.
	2. Each of the parties acknowledges and agrees that, in entering into this Agreement and the documents referred to in it, it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to this Agreement or not) other than as expressly set out in this Agreement as a warranty or representation. The only remedy available to it for breach of such warranties or representations shall be for breach of contract under the terms.
2. No Waiver

No waiver by either of the party’s obligations under this Agreement shall be deemed effective unless made in writing, nor shall any waiver in respect of any breach be deemed to constitute a waiver of or consent to any subsequent breach by either party of its obligations.

1. Dispute Resolution
	1. In the event of a dispute in relation to this Agreement the parties shall first attempt to resolve such dispute through negotiation.
	2. Where negotiation is unsuccessful, the parties agree to refer the matter to mediation.
	3. Where a party desires to refer a dispute to mediation it shall serve Notice on the other party specifying its wish to go to mediation and the nature of the dispute. Within 14 days of such Notice the parties shall agree who will mediate the dispute and in the absence of agreement a mediator shall be appointed by the UK’s Centre for Effective Dispute Resolution. The parties shall equally bear the costs of mediation and their own legal fees.
	4. The obligations under clauses 23.1 to 23.3 shall not prevent either party seeking urgent interlocutory relief.
2. Governing Law & Jurisdiction

This Agreement shall be governed by the laws of England and Wales and the parties exclusively submit to the jurisdiction of the Courts of England and Wales.

1. Severance

In the event that any provision of this Agreement is declared by any judicial or other competent authority to be void, voidable or illegal, the remaining provisions shall continue to apply.

1. Notices

Any Notice to be served on either of the parties by the other shall be sent by pre-paid recorded delivery, registered post or by email to the correct address of either party and shall be deemed to have been received by the addressee within 7 days of posting or 24 hours if sent by email.

|  |  |
| --- | --- |
| SIGNED AS A DEED by an authorised representative of [LICENSEE] in the presence of: | ))……………………………………) |
|  |  |  |  |
| W | Signature: |  |
| I | Name: |  |
| T | Address: |  |
| N |  |  |
| E |  |  |
| S |  |  |
| S | Occupation: |  |

|  |  |
| --- | --- |
| SIGNED AS A DEED by [LICENSOR] in the presence of: | ))……………………………………) |
|  |  |  |  |
| W | Signature: |  |
| I | Name: |  |
| T | Address: |  |
| N |  |  |
| E |  |  |
| S |  |  |
| S | Occupation: |  |

**Schedule 1**

**Additional Territories Agreement**

Dated 20[15]

Between

1. [Insert Party Name] (**Licensee**); and
2. [Insert Party Name] (**Licensor**).

**Agreed terms**:

1. Further to a Licence Agreement dated [Insert Date] between the Licensor and the Licensee, the parties agree that the following territories:
	* 1. [Insert Territory]; and
		2. [Insert Territory],

shall from the date of this subsequent agreement form part of the definition of the ‘Territory’ at clause 1.1 (i) of the Licence Agreement.

1. For the avoidance of doubt, all other terms of the Licence Agreement shall continue in force except as varied by this additional agreement.
2. This additional agreement shall be governed by the laws of England and Wales and the parties exclusively submit to the jurisdiction of the Courts of England and Wales.

This agreement has been executed as a deed.

|  |  |
| --- | --- |
| SIGNED AS A DEED by an authorised representative of [Licensee] in the presence of: | ))……………………………………) |
|  |  |  |  |
| W | Signature: |  |
| I | Name: |  |
| T | Address: |  |
| N |  |  |
| E |  |  |
| S |  |  |
| S | Occupation: |  |

|  |  |
| --- | --- |
| SIGNED AS A DEED by [Licensor]in the presence of: | ))……………………………………) |
|  |  |  |  |
| W | Signature: |  |
| I | Name: |  |
| T | Address: |  |
| N |  |  |
| E |  |  |
| S |  |  |
| S | Occupation: |  |