**Agency Agreement: sale of goods/services**

**This agreement** is dated date

It is made between us,

1. Your business name (a company incorporated and registered in the Republic of Ireland with company number Company number whose registered office is at Company address (called 'the Principal' in this agreement).
2. Agent's name (a company incorporated and registered in the Republic of Ireland with company number Insert company number whose registered office is at Insert address (called 'the Agent' in this agreement).

Within this agreement, we agree that:

The Agent will be appointed by the Principal:

1. As the Principal's [exclusive **OR** sole **OR** non-exclusive] agent
2. To sell the Products described in Annex 2, from time to time produced by the Principal and as supplied to the Agent by the Principal
3. In the Territory, which is [specify geographic area/country] for the purposes of this agreement.

**Agreed Terms**

The terms agreed here (including the attached Additional Terms and Conditions at Annex 1 and all other attached annexes), set out the basis on which this agency relationship will operate.

1. **Definitions and interpretations**

1.1 If any word, phrase or explanation used within this agreement is not clear, it will be defined and interpreted according to the definitions and interpretations set out in our Additional Terms and Conditions at Annex 1.

**2. Details about the Agent's appointment**

2.1 The Principal appoints the Agent as its [exclusive **OR** sole **OR** non-exclusive] agent to promote and sell the Products in the Territory.

2.2 The Agent shall not actively market or solicit orders for the Products outside the Territory.

2.3 [The Principal shall be free to promote and sell the Products to Reserved Customers in the Territory].

2.4 [The Principal shall [be free to appoint] **OR** [not appoint] other agents to promote and sell the Products in the Territory].

2.5 The Agent shall not be involved in the promotion or sale in the Territory of any products that compete with the Products.

**3. Agent's duties**

The Agent shall at all times:

3.1 act in good faith in the interests of the Principal and not allow its interests to conflict with the duties it owes to the Principal;

3.2 use its best endeavours to promote and sell the Products in the Territory, including:

1. frequent meetings with the Principal, customers and targets as appropriate;
2. maintaining appropriate premises and employing qualified staff;
3. attendance at relevant trade shows and events;
4. [maintaining adequate levels of stock of the Products to meet demand, keeping it fully insured and providing evidence of such insurance to the Principal on request;]

3.3 not incur any liability on behalf of nor pledge the credit of the Principal except as permitted under this agreement or authorised in writing by the Principal;

3.4 send to the Principal those reports on the market for the Products, its promotional activities and on forecast and actual sales of the Products that the Principal shall reasonably request;

3.5 promptly refer any enquiry or order for Products for delivery outside the Territory to the Principal;

3.6 promptly refer to the Principal any complaints received and any disputes involving the Products;

3.7 achieve the Minimum Sales Targets;

3.8 make appropriate creditworthiness assessments of all potential customers and give all reasonable assistance requested by the Principal in collecting payment for Products sold by the Agent;

3.9 [invoice customers for the Products on behalf of the Principal];

3.10 comply with any reasonable direction that the Principal may give;

3.11 when acting as agent under this agreement, refer to itself at all times as “sales agent” of the Principal;

3.12 obtain all licences and approvals required for the sale of the Products in the Territory and for the performance of its duties under this agreement;

3.13 comply with all applicable laws and regulations relating to the sale of the Products in the Territory, other than those relating to the nature, method of manufacture, packaging or labelling of the Products in respect of which it shall notify the Principal of any changes in the applicable laws and regulations;

3.14 maintain a list of customers and potential customers for the Products in the Territory and shall provide copies to the Principal on request;

3.15 comply with Data Protection Legislation, including in relation to the collection and storage of any personal data from customers and potential customers, its transfer to the Principal and any consents required for its use by the Agent or Principal in selling and marketing the Products.

**4. Principal's duties**

The Principal shall:

4.1 act dutifully and in good faith at all times in its relations with the Agent.

4.2 supply to the Agent at the Principal's expense:

1. stocks of the Products delivered to the Agent's premises in such volumes as the Principal may decide, and replenish that stock as necessary;
2. such samples, sales literature and other documentation and information and such technical, market and other support as the Agent may from time to time reasonably require for the purposes of promoting and selling the Products and to enable it properly and efficiently to discharge its duties under this agreement.

4.3 to perform any contracts for the sale of the Products made on its behalf by the Agent under this agreement, within a reasonable period of becoming aware of these contracts, and according to their terms.

4.4 promptly deal with any complaint, dispute or after-sales enquiry relating to the Products raised by a customer in the Territory.

**5. Stocks, orders and sales**

5.1 On behalf of the Principal, the Agent shall make all sales of the Products on the additional terms and conditions of the Principal (as varied from time to time), a current copy of which is set out at Annex 5.

5.2 The Agent must bring these terms and conditions to the attention of customers and shall not make or give any promises, warranties, guarantees or representations concerning the Products, other than those contained in the Principal's terms and conditions of sale.

5.3 All sales of the Products by the Agent shall be at the price specified in the price lists, which the Principal will supply to the Agent from time to time, subject to discounts and other deductions as the Principal may allow.

5.4 As soon as is practicable after the date of this agreement, and within a reasonable time before the beginning of each subsequent Year of this agreement, the Principal and the Agent shall agree stock levels and the Minimum Sales Target for the relevant Year of this agreement in relation to each of the Products sold under this agreement.

5.5 The Agent shall:

1. maintain sufficient stocks of the Products to meet orders promptly and in accordance with each order that it accepts on behalf of the Principal;
2. keep the Principal informed regularly of its requirements, to enable the Principal to manufacture and deliver to the Agent sufficient quantities of the Products; and
3. not accept orders of Products in excess of agreed stock levels without the prior agreement of the Principal.

**6. Commission**

6.1 The Principal will pay to the Agent a commission equal to X% of the Net Sales Value of all Products for which the Agent concludes a sale on its behalf under this agreement.

6.2 If the Agent is appointed as a successor to a person who was an agent for the Principal in relation to the Products in the Territory, and that person is entitled to commission on any sales of the Products made in the Territory after the appointment of the Agent under this agreement, the commission payable to the Agent under Clause 6.1 shall be reduced by the amount of the commission due to that person.

6.3 Commission will become due when and to the extent that the Principal is paid by the customer for the relevant Products.

6.4 For the purposes of establishing the amount of commission due to the Agent:

1. the Agent shall within 10 Business Days after the end of each month send the Principal a statement showing the aggregate Net Sales Value of each category of Product sold by the Agent during that month;
2. within 10 Business Days after the end of each month, the Principal will send to the Agent a statement showing the Principal's records of (i) the aggregate Net Sales Value of each category of Product sold by the Agent during that month, payment for which was received by the Principal during that same month and (ii) the amount of commission due to the Agent in respect of that month.

6.5 The Agent will invoice the Principal on a monthly basis (in a form suitable for VAT purposes) for the commission due to the Agent, as soon as practicable after receipt by the Agent of the statement of commission sent by the Principal under Clause 6.4(b). The Principal shall pay this invoice within 10 Business Days.

6.6 Each party shall keep a full and accurate record of all enquiries received and transactions conducted by the Agent on the Principal's behalf. At all reasonable times, each party also agrees to permit duly appointed representatives of the other party to inspect all these accounts and records and to take copies of them. For the avoidance of doubt, all rights in these records (including without limitation database right and copyright) shall belong to the Principal.

**7.** **Term**

This agreement shall commence on the Commencement Date and, subject to Clause 2 (Termination) of the additional terms and conditions at Annex 1, shall continue for a period of xx years.

**OR**

This agreement shall commence on the Commencement Date and, subject to Clause 2 (Termination) of the additional terms and conditions at Annex 1, shall be for an initial term of xx years and be automatically extended for further periods of xx years unless terminated by not less than xx months' written notice, such notice to expire at the end of the initial term or any subsequent period for which the agreement is extended.

**OR**

This agreement shall commence on the Commencement Date and, subject to Clause 2 (Termination) of the additional terms and conditions at Annex 1, shall continue until terminated by either party by not less than xx months' written notice

#### 8. Additional terms and conditions

The Additional terms and conditions set out at Annex 1 form an important and integral part of this agreement.

Signed by [personal name], duly authorised for the Principal

Witness to signature: [Signature]

Name: [Name]

Address: [Address]

Signed by [personal name], duly authorised for the Agent

Witness to signature: [Signature]

Name: [Name]

Address: [Address]

**Annex 1 - Principal's Additional Terms and Conditions**

1. **Interpretations and definitions**

1.1 The definitions and rules of interpretation in this clause apply in this agreement.

**Additional Terms and Conditions:** the Principal's additional terms and conditions set out in this Annex 1.

**Business Day:** a day, other than a Saturday, Sunday or public holiday in England, when banks in the Republic of Ireland are open for business.

**Commencement Date:** Date

**Data Protection Legislation:** means the General Data Protection Regulation (EU) 2016/679 (GDPR) and the Data Protection Acts 1998 and 2018 and all successor and replacement legislation, and all other laws and regulations relating to personal data and privacy. (personal data, process, processed or processing, data controller, data processor, data subject and personal data breach, shall each have the meanings given to them in the Data Protection Legislation.)

**Intellectual Property:** any patent, copyright, registered design, trademark, domain name, know-how or other intellectual property right subsisting in the Territory in respect of the Products, whether or not registered.

**Minimum Sales Target:** the aggregate Net Sales Value of Products for the relevant [Quarter **OR** Year] as [agreed between the parties from time to time OR set out in Annex 3].

**Net Sales Value:** the price of the Products invoiced to the customer, but excluding VAT or other sales taxes, carriage, insurance and any discounts or rebates.

**Products:** the products set out in 2 as amended from time to time by written agreement.

**Reserved Customers:** those customers listed in Annex 4.

**Territory:** specify geographic area/country.

**Quarter:** each period of three calendar months starting on 1 January, 1 April, 1 July and 1 October.

**Trademark(s):** [the trademark(s) listed **OR** those trademarks listed in Annex 6].

**Year:** a period of 12 months, with the first Year commencing on the Commencement Date.

1.2 Clause, Annex and paragraph headings shall not affect the interpretation of this agreement.

1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.4 The Annexes form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Annexes.

1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.6 A reference to a **holding company** or a **subsidiary** means a holding company or a subsidiary (as the case may be) as defined in section 8 of the Companies Act 2014.

1.7 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

1.8 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

1.9 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.

1.10 A reference to **writing** or **written** includes email.

1.11 Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

**2. Termination**

2.1 Either party may terminate this agreement by giving written notice to the other party, if that other party:

1. commits a material breach of this agreement and, if the breach is capable of being remedied, fails to remedy it within 30 days after receipt of a written notice specifying the breach and requiring it to be remedied;
2. fails to pay any sum payable by it under this agreement within 14 days of the due date for payment;
3. is unable to pay its debts due to insolvency or otherwise becomes insolvent or suspends making payments to all or any class of its creditors or announces an intention to do so;
4. any distress, execution, attachment or other legal process affects the whole or a material part of its assets and is not discharged within 14 Business Days;
5. a receiver or similar officer is appointed over the whole or any part of its assets or it requests any person to appoint such a receiver or similar officer or any other steps are taken to enforce any security over any of its property;
6. any order is made or resolution is passed or a petition is presented or application is made or notice filed or other steps are taken in any jurisdiction for:
	1. the winding up, dissolution or liquidation of it (other than a winding‑up petition that is vexatious or frivolous and is discharged within 10 Business Days of issue); or
	2. the making of an administration order against it or there is given to any person a notice (whether formal or informal) of an intention to appoint an administrator or any such appointment is made in relation to it;
7. any proposal is made for a voluntary arrangement or composition with its creditors;
8. any event analogous to any of the above takes place under another jurisdiction;
9. the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
10. (being an individual) is the subject of a bankruptcy petition, application or order or dies or due to incapacity becomes unable to perform their obligations under this agreement.

2.2 The Principal may terminate this agreement by giving written notice to the Agent if:

1. the Agent fails to meet the Minimum Sales Targets for any [year **OR** two successive Quarters]; or
2. there is a change of control of the Agent (within the meaning of the Taxes Consolidation Act 1997 (as amended).

**3. Consequences of termination**

3.1 Termination of this agreement shall not affect any rights or obligations of the parties that have accrued up to the date of termination.

3.2 On termination of this agreement:

1. the Agent shall have the right to be indemnified if and to the extent that the European Communities (Commercial Agents) Regulations 1994 (as amended from time to time) apply. This will be the case provided the Agent gives the required notice of its intention to claim the indemnity;
2. the Agent shall cease immediately to promote, market, advertise or sell the Products;
3. the Agent shall immediately cease to describe itself as an sales agent of the Principal and immediately cease to use all trademarks, trade names and brand names of the Principal; and
4. the Agent shall at its own expense within 30 days return to the Principal all stocks of the Products (other than any for which it has accepted orders from customers before the date of termination), samples and any advertising, promotional or sales material relating to the Products then in the possession of the Agent, or otherwise dispose of the same as the Principal may instruct.

3.3 On termination of this agreement, the commission payment provisions of Clause 6 in the main body of this agreement shall continue in force in relation to all sales of the Products, where the sale has been concluded before the date of termination.

**4. Trademarks and IP**

4.1 The Principal grants the Agent the non-exclusive right to use

1. the Trademarks in the Territory on or in relation to the Products for the purposes of this agreement
2. other Intellectual Property belonging to the Principal and whose use is necessary for the Agent to perform its duties under this agreement.

4.2 The Agent shall only use the Trademarks and other Intellectual Property of the Principal in a manner approved by the Principal (from time to time) and will always ensure that that this usage is also accompanied by an appropriate acknowledgement that the trademark(s) (or registered trademark(s)) and any other relevant Intellectual Property rights in question belong to the Principal.

4.3 The Agent shall not:

1. make any modifications to the Products or their packaging;
2. alter, remove or tamper with any Trademarks, numbers, or other means of identification used on or in relation to the Products;
3. use any of the Trademarks of other Intellectual Property of the Principal in any way that might prejudice their distinctiveness or validity or the goodwill of the Principal therein; or
4. use in relation to the Products any trademarks other than the Trademarks without obtaining the prior written consent of the Principal.

4.4 Except as provided in Clause 4.1 the Agent shall have no rights in respect of any trade names or Trademarks or other Intellectual Property of the Principal used in relation to the Products and/or the goodwill associated with any and all of these. The Agent acknowledges here that, except as expressly provided in this agreement, it shall not acquire any rights in respect of any trade names or Trademarks or any of the Intellectual Property of the Principal and that all such rights and goodwill are, and shall remain, vested in the Principal.

4.5 At the expense of the Principal, the Agent shall take all such steps as the Principal may reasonably require, to assist the Principal in maintaining the validity and enforceability of the Intellectual Property of the Principal during the term of this agreement.

4.6 Without prejudice to the right of the Agent or any third party to challenge the validity of any Intellectual Property of the Principal, the Agent shall not do or authorise any third party to do any act which would or might invalidate or be inconsistent with any Intellectual Property of the Principal and shall not omit or authorise any third party to omit to do any act which, by its omission would have that effect or character.

4.7 The Agent shall notify the Principal immediately of any actual, threatened or suspected infringement in the Territory of any of the Intellectual Property of the Principal which comes to the Agent's notice and of any claim by any third party that the sale of the Products in the Territory infringes any rights of any other person, and the Agent shall at the request and expense of the Principal do all such things as may be reasonably required to assist the Principal in taking or resisting any proceedings in relation to any such infringement or claim.

**5. Interest**

If either party fails to make a payment under this agreement when due, then (without prejudice to any other right under this agreement) the defaulting party shall pay interest on the overdue sum. Interest will accrue at the Central Bank base rate for the time being plus 4% from the due date to the date of payment.

**6. Events beyond a party's control ('Force majeure')**

6.1 Neither party shall be in breach of this agreement nor liable for delay in performing, or failure to perform, any obligation under this agreement if such delay or failure results from a cause beyond its reasonable control. If the period of delay or non-performance continues for NUMBER weeks **OR** months, the party not affected may terminate this agreement by giving NUMBER days' written notice to the affected party.

6.2 The parties agree that these causes shall include (but are not limited to) acts, events, omissions or accidents beyond the reasonably control of one or both of them, such as:

1. strikes, lock-outs or other industrial action
2. terrorism, civil commotion, riot, invasion, war threat or preparation for war
3. fire, explosion, storm, flood, earthquake, subsidence, epidemic, bad weather or other natural physical disaster
4. impossibility of the use of railways, shipping, aircraft, motor transport or other means of public or private transport and
5. political interference with the normal operations

**7. Anti-bribery**

7.1 The Agent shall:

1. comply with all applicable laws and regulations relating to anti-bribery and anti-corruption;
2. maintain during the period of this agreement its own policies and procedures to ensure compliance with this Clause 7, and will enforce them where appropriate;
3. promptly report to the Principal any request or demand for any undue financial or other advantage of any kind received by the Agent in connection with the performance of this agreement;
4. provide such evidence of compliance as the Principal may reasonably request.

7.2 The Agent shall ensure that anyone involved with it in performing services in relation to this agreement is subject to a written agreement which imposes on them substantially the same terms as those imposed on the Agent in this Clause 7. The Agent shall be responsible for the compliance by such persons with such terms and shall be directly liable to the Principal for any breach by such persons of any of them.

**8. Confidentiality**

8.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by Clause 8.2.

8.2 Each party may disclose the other party's confidential information:

1. to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this Clause 8; and
2. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

8.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this agreement.

**9. Notices**

9.1 Any notice given to a party under or in connection with this agreement shall be in writing and shall be:

1. sent by email to the address set out below (or such other address as notified in writing by that party to the other):
	1. email address of Principal
	2. email address of Agent

**OR**

1. delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case).

9.2 Any notice shall be deemed to have been received:

1. if sent by email, at 9.00 am on the next Business Day after transmission
2. if delivered by hand at the time the notice is left at the proper address;
3. if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service;

9.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

**10. Assignment and Sub-Contracting**

This agreement is personal to the Agent and it cannot be assigned, sub-contracted delegated, disposed of or otherwise altered without the express, prior written consent of the Principal.

**11. Entire agreement**

11.1 This agreement contains the entire agreement between the parties and supersedes all previous agreements and understandings between them, whether written or oral, relating to its subject matter.

11.2 Each party agrees that it shall have no remedies in respect of any statement, representation or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

**12. Severance**

If any part of this agreement is or becomes invalid, illegal or unenforceable in the eyes of any court of competent jurisdiction, that part shall be modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant part shall be deemed deleted. Any modification to or deletion of that part under this clause shall not affect the validity and enforceability of the rest of this agreement.

**13. Waiver**

A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not:

1. waive that or any other right or remedy.
2. prevent or restrict the further exercise of that or any other right or remedy.

**14. Variation**

No variation of this agreement shall be effective unless it is in writing and signed by the parties.

**15. Announcements**

Save as required by law, neither party shall make or permit any public announcement relating to this agreement or its terms without the prior written consent of the other party (which will not be unreasonably withheld or delayed).

**16. Data protection**

At its own expense, each party agrees to ensure that any mailing list or customer database supplied to the other party is at all times compliant with the applicable and most recent legislation and regulatory requirements relating to the handling of data and databases, including any control and processing of personal data and the privacy of individuals and communications. Failure by either Party to comply with this paragraph will constitute a material breach of this Agreement. Each party agrees to provide the other, on request, a copy of their respective Privacy Notice setting out the detail of how they handle personal data related to their trading relationships.

**17. Law and jurisdiction**

17.1 This agreement is governed by the laws of the Republic of Ireland. The parties agree to submit to the jurisdiction of the courts of the Republic of Ireland in relation to any dispute or claim arising out of or in connection with this agreement.

17.2 If a dispute or claim arises out of or in connection with this agreement, the parties will use their reasonable endeavours to resolve it within 7 days. If it is not resolved within 7 days, it will be referred to the managing directors (or persons of their equivalent title) of each party, who will use their reasonable endeavours to resolve it within a further 7 days.

17.3 The parties hereby submit to the exclusive jurisdiction of the Irish courts in relation to any dispute or claim arising out of or connected with this agreement.

### Annex 2 - Products OR Services

insert your list of products – be as specific as you reasonably can. You can upload an image of an existing schedule here instead if that is easier

### Annex 3 - Minimum Sales Target

### Annex 4 - Reserved Customers

### Annex 5 - Principal's Terms and Conditions of Sale

### Annex 6 - The Trademarks

Guidance notes:

Agency Agreement

Agency agreements are a great way to expand your business, without having to set up additional operations to do so.

Agents act on behalf of another business, usually to sell that businesses products or services for them.

They are mostly treated as an extension of your business, not as a separate business partner, like a distributor.

When you use an agent, you’re still very much in control of what that agent does, including how it prices, markets and otherwise sells your goods or services, and all of that detail needs to be clearly captured in an agreement, so that both you and the agent are clear on what’s expected and any targets and obligations you want to impose on the agent.

This is important because with the freedom to dictate how the agent acts, also comes the responsibility for what happens to your goods and services while the agent is selling them, meaning that you continue to carry the risk in those goods and services, as if you were selling and delivering them yourself.

In fact, the agent will enter into contracts in your name, not theirs, so you’ll definitely want to be clear on the rights you’re giving them and what you want them to do.

Agency agreements are often used by businesses who want to expand their sales into a new country or a new way of selling (e.g. online).

They may want to do this non-exclusively, so that they retain the right to sell (or give others the right to sell), in that new place alongside the agent, or they might grant the agent an exclusive right to sell on their behalf and surrender (usually on a time-limited basis) the right to sell in the same place themselves.

A commission will normally be payable by you to the agent, and you may want to set minimum sales or performance targets and other conditions for the agent to meet before that commission is payable; again, this is the sort of detail that your agency agreement should record, as well as how long you want this arrangement to last.

#### What's the difference between each type of agent?

**Sole agent**: the only one with the right to act on your behalf and sell your products. Sole agents are protected from you appointing other agents, resellers or distributors in a given area or anywhere.

As principal however, you won't be prevented from actively seeking sales and directly supplying customers in the same area.

**Exclusive agent**: the only agent to sell within a particular defined market or area.

Appointing an exclusive agent prevents you from appointing another agent in the territory allocated to that exclusive agent, but doesn't prevent you, as the principal, from operating in the same area or from reserving certain activities to yourself.

You will just need to make this clear in the wording of what's agreed – our template gives you this drafting option later on, don't worry!

**Non-exclusive agent**: these agents have the least rights.

A non-exclusive agent is one who will operate alongside other agents representing you in potentially the same territory. You may also continue to sell alongside them.

#### The rights to sell your goods

Double check that nobody else has any rights already to sell your goods anywhere where your exclusive agent will operate – this includes other resellers or distributors of them.

If you don't want to bring any such conflicting arrangements to a close, you'll either need to carve them out of this agreement or consider an alternative form of agency relationship for your intended agent here.

If you already have, or intend to have, any other exclusive agents in other territories, then to keep commercial peace and achieve focused productivity, you'll probably need to ensure that they derive the same benefits and operate on a level playing field with your proposed agent here and vice versa.

To achieve this, you should include appropriate restrictions in this contract and others, preventing your exclusive agents from actively seeking orders from customers outside of their given territories or customer groups. If they do this actively, then they will be in breach of your contract terms and you can do something about it.

What you cannot lawfully prevent, however, is a direct and unprompted approach to an exclusive agent from a customer who is situated in a territory that is allocated to another agent (called a 'passive sale').

That customer must remain free to choose an alternative supplier outside your territorial structures – and this is the case whether the customer's approach and any subsequent sale is made physically or online.

#### Reserved customers

This can be deleted if there are no reserved customers.

#### Acting in good faith

'Acting in good faith' generally means that the agent will not deceive you as the principal or act in any manner that would clearly damage your business interests.

**What does 'using reasonable endeavours' mean?**

This is a very common contractual term, generally considered to be sensible and uncontroversial, and it essentially sets a standard by which you agree to behave.

If you agree to use 'reasonable endeavours', it means that you are entitled to treat your own business interests as paramount in any activity that you undertake which is subject to this standard.

So, in fulfilling an obligation to use 'reasonable endeavours', you'd be required to carry out one reasonable course of action (what someone else similarly positioned could be expected to do), with limited expenditure and not to sacrifice your own reasonable commercial interests in the performance of this activity.

By contrast, 'best endeavours' is a much more onerous contractual commitment.

**What does 'using best endeavours' mean?**

This is a much heavier commitment: here, the agent agrees to subordinate their own commercial interests in favour of your interests.

It's not unusual to find this requirement in an agency relationship as the circumstances justify it.

The agent would be required to carry out not just one but all reasonable courses of action to achieve the objectives and/or obligations imposed on it by the agreement.

This could be at financial cost to the agent, though they may halt before it becomes ruinous. At all times, however, your interest as the principal in receiving the benefit of the action is paramount.

#### Specific reports and deadlines

If you want to specify the production of specific reports and or require them in a particular format, you may want to consider making ‘Reports’ one of the definitions, elaborating further on them in Annex 1 and possibly also attaching the required report template as a further Annex to the agreement.

If there are deadlines for these reports then it may also be advisable to specify these deadlines in the definitions section within Annex 1 too.

#### Minimum sales targets

These targets have their own section at Annex 3.

Minimum sales targets can be a very useful means to protect you if the agent is not selling well and you have given them exclusivity.

Rather than terminating the contract for failing to achieve a target, you can consider reducing the area of the territory allocated to the agent or reducing the size of the customer group to whom they have been allowed to sell exclusively.

You can do this temporarily, to give the agent time to make good on the target (which is a sensible approach if you want to maintain this commercial relationship longer term), or you can permanently make these alterations.

And of course, you’ve hopefully not restricted yourself completely from being able to sell in the same territory as well.

These are not measures to be invoked lightly and certainly not for any trivial shortfalls, or legally, you may find yourself on the end of a complaint by the agent that you’ve not acted in line with your general legal duty of good faith towards the agent.

A proven breach of this duty carries a requirement to terminate the agreement and to pay damages and indemnities to the agent – so not a decision to be taken lightly and it would be wise to get advice from an expert before you taken any action to change the agent’s terms.

#### Credit checking

If the Principal has particular requirements for credit checking etc. that they want the agent to conform to, these should be spelt out here/included in the definitions.

#### Invoicing customers

Often, the agent will invoice customers on behalf of the principal, but that needn’t always be the case.

Whether you include this wording comes down to how much authority you want to give your agent.

You might be happy for the agent to sign sales contracts (on standard terms and agreed pricing).

But you might want to retain the invoicing function, so that you have better visibility of the sales, can do the accounting and the credit control aspects yourself.

And of course, if the agency relationship breaks down, you will still have good means of contact with the customer, hopefully enabling you to keep the arrangements going.

#### Directions from the principal

Sometimes, a principal may wish to restrict an agent from also acting for a competitor to the principal or from otherwise selling, in any capacity, a competitor’s products or services.

If you’d like to do the same with your arrangement, we advise taking some expert advice, since any restrictions like this must comply with the relevant competition laws (in the UK or beyond) and these rules can be quite exacting and not always favourable to you as a principal.

#### "Sales agent"

This wording ensures clarity, so that the customer always knows that the agent is working for someone else your name, as the principal, is always prominent in the sales relationship created by the agent.

Additionally, if the agent does not make clear that it is an agent, it could risk being legally treated as a principal – which has all sorts of ramifications that both you and the agent will want to avoid.

#### 'Good faith'

Acting in ‘good faith’ essentially means behaving honestly and transparently, dealing fairly in business relations.

Where matters have been expressly written or have been otherwise clearly evidenced as deliberately agreed ‘in good faith’ between two parties, UK courts have generally considered them to be enforceable under UK contract law.

**Commission paid to the agent**

Usually, commission will be paid by the principal to the agent where a sale has taken place and that sale

* Results from the agent’s sales activity
* Results from a customer relationship that the agent had previously procured for the principal and relates to the same goods and is of the same nature as the earlier sale
* Is made from a customer who has been identified as within a specific customer group/territory that the agent has the exclusive right to sell to

So, when setting the terms of this agreement, make sure that it is really clear what the agent will do, when and with whom. You should have covered this already in the drafting at Clause 3.

#### Establishing the amount of commission due

The aim here in (a) and (b) is for you and the agent to promptly compare your tally of goods sold and to agree that the basis on which you will calculate the agent’s commission is correct.

This means that by the time the agent invoices you for the commission that you owe (see clause 6.5), the commission figure should be uncontroversial.

The drafting here is in favour of you, as the principal. The agent is only entitled to payment of its commission once you have been paid by the customer for that month’s goods.

#### Term

How long you want the agency relationship to last is up to you.

Most relationships take account of the fact that the agent may need time to build sales and to recoup any investment it has to make in starting up sales on your behalf.

Annual renewals of the agreement could be made to fit in with your financial year/annual budgeting process.

It is often advisable to select a termination clause which includes a general right to give a reasonable period of notice.

The Commercial Agents Regulations contain rules about the length of notice periods that must legally apply to any agreements that are drafted to continue for an indefinite period (See Regulation 15) and shorter periods of notice are not permitted to be agreed.

Our template does not include wording that envisages an indefinite relationship, but if you’re unsure about what will be appropriate in your particular circumstances, just contact us and our experts can recommend what’s best for you.

#### The boilerplate

Much of the content here is typical of most contracts and is often called ‘the boilerplate’, meaning the stuff that always wraps around the substance of what’s under negotiation.

While you would expect to see these clauses in most contracts, do pay attention to any edits to them that we have not flagged for your consideration, as these other edits may well indicate that something out of the ordinary – perhaps even unreasonable – is being proposed.

#### Importance of definitions

Definitions matter, so please do ensure that they are accurate and cover everything you need them to.

In the event of a disagreement, debate around what the parties really intended to agree can often shine an intense spotlight on the precise wording of these definitions.

#### Alter to describe services

If the agent is selling services instead of products, or a combination of both, this definition will need to change to describe the services.

References to products within the agreement remainder of the agreement will also need to be converted to references to services, including at Annex 2 below.

#### Grace period

We recommend a 10-day grace period, but you can change it if you want to.

The purpose of the grace period is to avoid a right to terminate being triggered by an aggressive creditor, when the business on the receiving end of the petition is in fact perfectly solvent and can comfortably continue to perform its duties.

If, however, the business has not managed to stand down the aggressive creditor within 10 days, the right for the other party to terminate the agreement will ‘go live’ and become enforceable.

#### Jurisdiction

This wording will only be needed if, for example, your agent is based outside the Republic of Ireland.

#### Change of control

If the agent is a company or a partnership and someone new acquires the power to control it, then you have the right to end the relationship, although you don’t have to do so.

‘Control’, for these purposes typically means that someone new has gained over 50% of the voting shares in the agent’s business or has the distinct ability to influence the outcome of votes in respect of over 50% of the agent’s shares.

#### Consequences of termination

Depending on the nature of your agency relationship, you may want the agent immediately to cease promoting, marketing and advertising the products, but you might want to set a reasonable transition period (e.g. 7-10 days) for sales that are mid-agreement to be completed.

If that is the case, you’ll need to adapt the wording of this clause to properly describe your intentions.

#### Conclusion of sale

Conclusion of the sale should be taken to mean where the sale has been expressly agreed and confirmed with the relevant customer and is in the Agent and Principal’s normal process of fulfilment.

#### Trademark protection

Make sure that you have the relevant trademark protections for your products or services within the relevant territories where the agent is going to operate.

Take a look at our **guide to registering a trademark** for more information about why you should have trademark protection and how easily you can ensure that you’re protected. It’s amazing how far and how fast trademark infringements can take place.

Trademark registration is seen as a simple and affordable step that business owners and managers would be expected to take, as a matter of general good business practice.

#### Goodwill

Goodwill, along with items called ‘custom’ and ‘connection’, is one of the hardest-to-value assets of a business. And yet, it can be one of the most valuable – especially when it comes to selling that business or valuing it for investment purposes.

Goodwill basically includes the intangible items that add to a company’s value, but which cannot be easily identified or valued. These intangible items could include trademarks, and the reputation of the company.

They may also take into account factors such as brand identity, customer relations, customer loyalty, and staff satisfaction.

However, goodwill won’t cover identifiable assets such as contracts or legal rights, or assets that can be separated, divided, transferred, or sold.

These intangible assets are notoriously difficult to value, and in many cases, their ultimate value will come down to how keen a potential buyer is to acquire the business in question or an investor to invest in it – and the competition they may face.

You’re unlikely to need to calculate the value of goodwill often, typically, it only arises in situations where the value of your business is being assessed. But perhaps frustratingly, it isn’t something that typically gets listed out in your annual accounts or book-keeping practices each year – so it generally has to be calculated from scratch, when the need arises.

And you’ll need expert tax and accountancy advice to get it right for your particular circumstances – not least because different parties will potentially want a different result from the calculation. For example, a seller will want to drive the price up (pointing to a higher goodwill figure), and potential buyers might well want the opposite.

There are a number of ways to approach valuing goodwill. One of the most popular methods is to measure it by reference to how much extra a business is able to charge for what it does – in other words, the profit it can achieve above the usual return you’d expect from the business.

This is sometimes called the ability to make a ‘super profit’.

This relies on there being some kind of industry benchmark or measurable comparator, which isn’t available for the more unique and disruptive business models – but it’s generally broadly calculable (with a bit of expert help from an accountant!), for most of the rest of us.

Just remember that while the valuation needs to be credible and expertly validated, in the end, a business is only worth what an investor or buyer is prepared to commit.

#### Trademark enforcement

If you ever find you need to take enforcement action because someone is using your trademark, or something confusingly similar to it, without your permission, the key is to move fast. It’s amazing how far and how fast trademark infringements can take place.

If you don’t have control of your branding, it’s not just your reputation and customer confusion leading to loss of business that you should be worried about – shareholders, any future investors and other business partners are likely to have something to say about the value of your business and the competence of its management going forward.

Trademark registration is, after all, seen as a simple and affordable step that business owners and managers would be expected to take as a matter of general good business practice.

#### Uplift on the Central Bank rate

This is another very standard clause within Irish contracts.

4% is the standard percentage level that is used in most contracts and considered to be a reasonable uplift on the Central Bank rate. It can of course be edited by the parties if they wish to negotiate something different.

#### What is a force majeure event?

‘Force majeure’ is an old and long-used contract term, but every bit as relevant to modern contracts.

It stands for the events that are not foreseeable and over which any business party cannot reasonably be expected to have any influence or control over.

If one of these events happens and one or both of the parties to an agreement simply cannot continue to fulfil their side of the bargain, then the clause essentially protects them from being sued by the other party and allows the agreement to be ended (terminated).

You’d expect to have one of these clauses in a good contract. Some parties like to spell out what is included as a ‘force majeure’ in the text of their agreement. If you would also like to do so, you can use the suggested wording, otherwise remove the full 6.2 clause.

#### Confidentiality

Confidentiality is a big consideration in relationships like these.

The Agent will potentially have a lot of access to proprietary data belonging to the Principal. These data could include customer and sales information, product/service development information, knowledge of the Principal’s strategic plans and territorial allocations.

If the Agent is not an exclusive agent and/or is not restricted from selling the goods or services of other potential rivals to the Principal, there is always a considerably increased risk that the Agent could divulge competitively sensitive confidential information to others.

This clause is a firm reminder that there is an expectation of confidentiality between the parties and that there will be consequences if this obligation of confidentiality is breached.

You can find out more on what’s considered confidential and how best to protect it in our guide **what’s the point of a non-disclosure.**

#### Notice by email

Some businesses are nervous about including email as a relevant form of service, even though it has become a very common and convenient method of communicating in business.

That nervousness comes from a legitimate concern that if an individual’s email address is given here, that individual may in fact be on holiday, or perhaps have left the company, at the point where the notice is given.

The notice is valid, once it arrives in the inbox of that individual, irrespective of whether anyone actually opened and read it.

If you don’t want to include email as an option for the service of official notices between you and your agent, simply delete clause 9.1(a) and 9.2(a).

Then insert a new, additional clause 9.4 that says:

9.4 A notice given under this agreement is not valid if sent by e-mail.

#### Severance clauses

Severance clauses have been around for a long while and most people don’t pay them a lot of attention, largely because they are very rarely needed.

What they set out to do is rescue the substance of a contractual agreement if the law subsequently intervenes, by for example, changing its position on what’s lawful or enforceable and rendering a provision within the contract suddenly not lawful.

They are very useful in cases where for example, competitors may be collaborating on a project or where one party to an agreement accepts very onerous restrictions on its activities.

However, it’s good practice to have one of these included in your agreement and most agreements keep them ‘just in case’.

They’re not something you should reasonably expect to be revisiting once the agreement is signed in these circumstances.

#### What is a waiver of a right or remedy under a contract and when might you want to exercise one?

A ‘waiver’ is a well-recognised legal term that means a person or contract party voluntarily giving up or choosing not to enforce, a legal right that they otherwise have under the contract terms.

It’s worth including this clause as drafted, since waivers can be both deliberate and – crucially, unintentional or accidental.

If you expressly and deliberately choose not to exercise or enforce a legal right that you otherwise have, that’s fine.

You don’t technically need to do so in writing, but it’s often a good idea to do so, so that there can be no misunderstanding about your intentions or your future intentions.

For example, you might be happy not to enforce a right on one occasion, but if the same thing happens again, you might very well want to do so.

Putting your intention in writing really helps to prevent any misunderstandings or unwelcome assumptions on the part of any other party to your agreement.

Our drafting here also reinforces this by pointing out that just because you decided not to exercise a legal right in the contract on one occasion, that doesn’t mean you’ve lost the right to do so in future if the same trigger event happens again.

It also makes clear that if you don’t take immediate action to enforce your contractual right(s), that doesn’t mean you’ve implicitly agreed to surrender them.

Finally, and equally importantly, it covers the position where, if you didn’t have the requirement for a waiver to be in writing, you might otherwise accidentally surrender one or more of your contractual rights.

This is a significant protection. In some situations, it might otherwise be reasonable for your counterparty to assume that you have surrendered contractual rights (e.g. to be paid on time or in a particular way or to allocate territorial protections etc.) and/or for the law to support an argument by your counterparty that you have waived those rights.

Meaning that key terms of importance to you might become undermined or unenforceable.

So, this short little clause actually packs quite a powerful protective punch for both parties to an agreement.

#### Variation

A simple clause with some helpful power here. This removes any accidental or inadvertent revisions to the contract terms, which can otherwise happen.

After all, a contract doesn’t need to be written to be enforceable and it is possible to agreed additional terms or to have a waiver or side agreement alter it.

Similar to an entire agreement clause, this clause makes sure that there is only one agreement, these are its terms and it cannot be varied by accident.

#### Implied Right

Sometimes, someone who is not part of your agreement could be given an implied right under it. You probably don’t want this to happen, but the law makes this possible in some circumstances.

The only way to avoid this is to include this simple exclusion clause in your agreement.

#### Data Protection

See our **guide to successful data handling by small businesses** for more information on Ireland’s existing data handling and data protection regime, as well as fundamental changes affecting all Irish and EU businesses, that are imminently coming into force

#### Law and jurisdiction

This is a very standard clause in Irish agreements, and you should expect to see it included.

Be wary of anyone making amends to this type of clause as it may well indicate an intention to have any dispute or interpretation of the agreed terms presided over by a foreign court, using a law that may be less protective of your interests.

You may sometimes see arbitration and mediation clauses accompanying this section too. It’s up to you whether you also want to include these further dispute resolution options in your drafting.

In these particular circumstances, however, it wouldn’t make a lot of sense to include them.

#### Products or Services

If the agent is selling services instead of products, or a combination of both, this annex will need to make that clear. You may want to break it into sections.

Make sure you also have a clear definition of services in the definitions section in Annex 1. References to products within the agreement will need to be converted to references to services.

#### Products or Services explanation

Be as detailed as you’re able in this section, so that there can be no misunderstandings about the products or services that are on offer.

With products especially, you may wish to include visuals, product/brand names, metrics and measures relevant to the product, batch identity codes, etc.

Don’t worry about volumes or minimum targets though, as you get to cover them in Annex 3 below.

#### Minimum Sales Target

If you intend to include this schedule, make sure you’re clear about whether the targets will be monthly, quarterly or annual, for example.

If you want to include any additional information or requirements about how these targets will be confirmed or validated, you should also include these details within the relevant clauses within the main body of the agreement, clauses 5.4 and 5.5 for example.

Minimum sales targets can be a very useful means to protect you if the agent is not selling well and you have given them exclusivity.

Rather than terminating the contract for failing to achieve a target, you can consider reducing the area of the territory allocated to the agent or reducing the size of the customer group to whom they have been allowed to sell exclusively.

You can do this temporarily, to give the agent time to make good on the target (which is a sensible approach if you want to maintain this commercial relationship longer term), or you can permanently make these alterations.

And of course, you’ve hopefully not restricted yourself completely from being able to sell in the same territory as well.

These are not measures to be invoked lightly and certainly not for any trivial shortfalls, or legally, you may find yourself on the end of a complaint by the agent that you’ve not acted in line with your general legal duty of good faith towards the agent.

A proven breach of this duty carries a requirement to terminate the agreement and to pay damages and indemnities to the agent – so not a decision to be taken lightly and it would be wise to get a quick view from an expert before you taken any action to change the agent’s terms.

#### Reserved customers

This can be deleted if there are no reserved customers.

#### Trademarks

We recommend that you include both the registered number of the trademark(s) as well as a description of what they are e.g. word mark, logo, strapline… you may want to include a visual too, though this isn’t vital.

If you don’t have any trademarks, you can remove this annex. Every business does have trademarks, however, even if they are not currently protected.

Brand profile and reputation are at risk of infringement and damage where the logos, trading and brand names, etc. are not protected.

It is easy and relatively cheap to protect a trademark. If you want to know more about how to get one registered, take a look at our **guide to registering a trademark**.

**End of Notes**