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CENTER FOR  
COMMERCIAL  
DISPUTE  
RESOLUTION

د افغانستان  
د سوداګريزو  
شخړو  
حل مرکز  
مرکز حل  
منزعات  
تجارتی  
افغانستان

## **Commercial Agency Model Contract**

**Afghanistan Center for Commercial Dispute Resolution**



## COMMERCIAL AGENCY AGREEMENT

**THIS COMMERCIAL AGENCY AGREEMENT** (this “**Agreement**”) is dated September 15, 2020 (the “**Closing Date**”) (“**The Effective Date**”)

### BY AND BETWEEN

- **Party (A)** a corporation organized under the laws of Afghanistan, having its registered office ...**Principle**; and
- **Party (B)** a corporation organized under the laws of ..., having its registered office at (“**Agent**”).

Hereinafter individually or collectively referred to as the “**Parties**”.

### RECITALS

- A.** The Agent is qualified, has the necessary infrastructure and has the organization and skills to market and promote the products in the location, as defined below.
- B.** (Party A) wishes to appoint the Agent, and the Agent accepts, as its exclusive commercial agent for the marketing and promotion ... of the ... in the ... (each as defined below), all under the terms and conditions set forth herein.
- C.** However, (...) wants the Agent to assist in the execution of orders from customers in the ...For this service, the Agent will receive a fee, all under the terms and conditions set forth herein.

**NOW, THEREFORE**, in consideration of the foregoing recitals, the mutual covenants and undertakings, the parties hereby mutually agree as follows:

#### 1. SCOPE OF APPOINTMENT

- 1.1** Appointment. (...) hereby appoints Agent, and Agent agrees to act, as (...)’s



exclusive commercial agent in the (location) to promote and market the ... to, and to visit and to prospect and to solicit orders for ... from, clients as defined below, in the ..., for use of such products in the location, all subject to the terms and conditions of this Agreement. For avoidance of doubt, Agent shall not promote or market the ... to, or visit, prospect or solicit orders from, persons or entities, unless otherwise agreed in writing.

**1.2** Products. (...) has the right, at all times, to change, reduce or expand the list, range or portfolio or branding of products and/or to replace previous versions of a product by a newer version of that product, upon communication of the same to the Agent, without this creating any right on behalf of the Agent or any liability on behalf of (...). Whereas the Agent will

automatically become the agent, under the same terms and conditions, for new versions of a product replacing a previous version of a product, it will not become the agent of a new product that (...) adds to the range of Products, e.g. as a result of an internal development by (...) or an acquisition by (...), or of a product differently branded, unless explicitly so communicated to the Agent. (...) shall determine in its reasonable discretion whether a new product replaces a previous version of a Product or adds to the range of products .

**1.3** Sales. During the term of this Agreement, all sales of products solicited by the Agent and accepted by (...) will be invoiced by (...) During the term of this Agreement, the Agent shall not be entitled to make any sales of products on its own behalf or for its own account.

**1.4** Retained Rights. (...) retains the right to enter into such business transactions as it sees fit involving direct sales of products to customers and purchasers.

**1.5** Non-exclusivity. (...) has and retains the right to appoint, at any time, other agents, sub-agents, distributors, sales representatives or any other intermediary person for the promotion, marketing, distribution or sale of the products to any and all customers and purchasers.



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## 2. TERM

This Agreement shall commence on the Effective Date and shall, continue in effect for (...) years until XX X, 202.; provided that the term of this Agreement may be extended beyond such date by the written mutual agreement of the Parties.

## 3. AGENT'S OBLIGATIONS

**3.1** In General. The Agent is free to determine the organization of its time and the performance of its activities under this Agreement. The Agent will, however, apply its best efforts and devote such time, manpower and resources as are required to promote, solicit and maintain for (...), and, where required, cooperate in the conclusion and completion of, sales of products . To that end, the Agent shall:

- (a) Solicitation. Regularly visit clients in a professional manner, actively solicit the business.
- (b) Support. During normal business hours, provide support in accordance with professional and industry standards and, as directed by (...), to other customers and purchasers of the products.
- (c) Reports; Cooperation. Communicate to (...)all information regarding the market, market conditions, existing and potential customers, pricing, competitive activities, reactions and/or complaints from customers of which it will have gained knowledge, formally or informally, and which is useful for (...) and for the performance by the Agent of its activities under this Agreement and shall, if reasonably requested, actively assist (...) in its conduct of such market research.
- (d) Qualified Personnel. Maintain and provide at its own expense, a sufficient number of trained and suitably qualified personnel, administrative support, insurance policies, and other infrastructure



and resources as necessary for the efficient and effective performance of its obligations under this Agreement.

- (e) Business Practices. Conduct its business in accordance with professional and industry standards, in good faith and not commit any act which would adversely reflect upon (...) or its Products, business, integrity or reputation.
- (f) Compliance with Applicable Law. Comply with all laws and regulations to which it is subject.

**3.3** Price List. The Agent shall solicit the products for sale in accordance with the price list set forth on Schedule 6 (“**Price List**”), the general terms and conditions of sale of (...) set forth on Schedule () and the terms of this Agreement. From time to time, (...), in its sole discretion, may amend, change, or otherwise modify the price list and/or (...) general terms and conditions of sale, such modifications to be effective upon notice thereof to Agent, unless a later effective date is otherwise specified by (...) in such notice.

**3.4** Warranties. The Agent shall have no authority to make any representation or offer any warranties or guarantees concerning the products or their delivery other than those expressly offered by (...) in its then current sales materials or otherwise authorized by (...) in writing.

**3.6** Credit Information. The Agent shall not be authorized to collect or accept payments on behalf of (...), but shall, when so requested by (...).

**3.7** Handling fee. For the handling of each and any order, the Agent receives



the following handling fee:

- (a) ....
- (b) ....

**3.8 (...) Participation.** The Agent agrees that:

- (a) Upon reasonable notice, one or more (...) delegates can join each of the Agent's sales;
- (b) (...) can be present and assist at all sales meetings, organized by the Agent, in order development of advertising and promotional campaigns, display area evolutions and th objectives; and
- (c) any sales promotional materials in relation to the products shall be used and displayed in accordance with (...) instructions.

**3.9 Indemnification.** The Agent shall be responsible for, and shall indemnify and hold harmless (...) from and against, any damage, losses, costs or expenses relating to third party claims or suits arising from or in connection with the handling, storage, distribution, promotion or sale of the products by Agent or its personnel; (b) the gross negligence or willful misconduct of Agent or its personnel; or (c) Agent's breach of this Agreement, in each case except to the extent such damage, loss, cost or expense is attributable (...) gross negligence or willful misconduct.

**4.(...) OBLIGATIONS**

- 4.1 (...) shall act in a loyal manner and in good faith in its relations with the Agent, subject to the terms and conditions of this Agreement, including without limitation, (...) retained rights hereunder.



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- 4.2 (...) shall react promptly to the Agent's request in general and is obliged to confirm its agreement with the proposed marketing plan including budget, forecast, exhibition and training planning without any undue delay but in no case later than four (4) weeks.
- 4.3 (...) shall provide the Agent with all documents and information necessary for the Agent with respect to the calculation of the commission and/or other fees if requested by the Agent.
- 4.4 All invoices in connection with orders for products solicited by the Agent shall be rendered by (...) directly to the customers and all payments in respect of such invoices shall be made direct to and/or collected by (...).
- 4.5 Recalls. If either Party determines that an event, incident or circumstance has occurred which may result in the need for a recall or market withdrawal (collectively referred to as "**Recall**") of any Product sold by (...) in the location, such Party shall advise and consult with the other Party regarding such event as set forth below:

(a) Recall due to a breach by the Agent:

To the extent that the recall of the product is due to the Agent's breach of its obligations under this Agreement, the Agent shall bear all costs and expenses of such recall, including costs incurred by third parties, the costs of notifying customers and the costs related to the shipment of such recalled products and the costs and expenses of the necessary replacement and destruction of such product which is removed from the market.

(b) Recall due to a breach by (...):

To the extent that the Recall is due to a breach by (...) of its obligations under this Agreement, (...) shall be responsible for the Recall Expenses.

## 5. TRADEMARKS AND INTELLECTUAL PROPERTY RIGHTS



- 5.1 In General. Agent acknowledges that it does not and will not acquire any rights, title, goodwill or interest in the trade name, Trademarks or other Intellectual Property Rights of (...). Agent shall not at any time do or permit any act to be done which may in any way impair the rights of (...) in the Trademarks or Intellectual Property Rights. Agent shall not at any time register or attempt to register the (...) Intellectual Property Rights, the Trademarks or marks similar thereto with any authorities (including trademark authorities).
- 5.2 (...) Rights. Agent acknowledges that, as between the Parties, MOTIVA owns the copyright and goodwill in all advertising, marketing and promotional materials provided to Agent by (...).
- 5.3 Trademark License. (...) grants to Agent the non-exclusive right to use the Trademarks in advertising and commercial communications related to promotion of sales of the Products in accordance with the terms of this Agreement. Agent may only use the trademarks and trade names and logos of (...) in accordance with the guidelines and instructions communicated by (...) to Agent from time to time.
- 5.5 Notification and Assistance. Agent undertakes to promptly notify MOTIVA of any act of unfair competition, illegal trade practices or piracy, or infringement of intellectual property rights relating to the Products that the Agent may discover. The Agent shall not take any action with regard to such acts without the prior written consent of MOTIVA, but shall reasonably assist MOTIVA in any actions if and when requested by MOTIVA.

## 6. CONFIDENTIALITY

- 6.1 Non-disclosure and Non-use. Each Party covenants to the other Party that,





except with the consent in writing of the other Party:

- (a) it will not at any time hereafter disclose or divulge to any person any confidential information of the other Party nor use such Confidential Information other than for purposes of exercising rights or performing obligations under this Agreement; and
- (b) if, in connection with the business or affairs of the other Party, it shall have obtained Confidential Information belonging to any third party under an agreement purporting to bind that Party which contained restrictions on disclosure, it will not without the prior written consent of that Party at any time infringe such restrictions.

## 7. MISCELLANEOUS

7.1 Independent Contractors. The Agent is solely liable for its operating costs and bears alone the risks inherent in its business. The Agent's relationship with (...) is that of an independent contractor and none of the provisions of this Agreement can be interpreted to mean that the Parties have agreed to form a company, an association or a joint venture or so as to render the Agent an employee of (...). The Agent shall be solely responsible for the employment, control and direction of its employees. The Agent shall have no power or authority to conclude

any contract or make any representation, promise, statement or guarantee on behalf of (...) or to bind (...) in any other way unless otherwise agreed.

7.2 Entire Agreement. This Agreement, together with the Asset Purchase Agreement, contains the entire agreement and understanding between the Parties with respect to the subject matter hereof and supersedes and replaces all prior agreements and understandings, whether written or oral, with respect to the same subject matter.

7.3 Amendment. Any amendment to this Agreement, as well as any additions



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or omissions, can only be agreed in writing with the mutual consent of the Parties.

- 7.4 Assignment and Subcontracting. Agent cannot delegate, assign, subcontract or transfer any of its rights or obligations under this Agreement, either in whole or in part, to any third party or any Affiliate(s) without the prior written consent of (...). (...) can delegate, assign, subcontract or transfer any of its rights or obligations under this Agreement, either in whole or in part, to any third party or any Affiliate(s) without Agent's consent upon notice to Agent. In case of assignment by (...) in accordance with the foregoing, such assignment shall release (...) from all its obligations under this Agreement as from the date of notice of assignment to Agent.
- 7.6 Force Majeure. Neither Party shall be liable for any failure to perform this Agreement if such failure is due to causes beyond its reasonable control, such as, but not limited to, fire, flood, strike, labor dispute or other industrial disturbance, declared or undeclared war, embargo, blockade, legal restriction, riot, insurrection, governmental regulation and the unavailability of means of transportation.
- 7.8 Notices. All notices and other forms of communication required under this Agreement shall be in writing and must be delivered or sent to the recipient (i) in person through a reputable courier service, (ii) by registered mail (with an acknowledgement of receipt)

to the address indicated hereunder:



(a) To (...):

e-mail:

(b) To Agent:

e-mail:

Without prejudice to each Party's right to evidence the date of actual delivery by all legal means, any notice shall be deemed to have been delivered to the recipient's address (i) on the date of delivery if delivered by hand, (ii) xxx (x) working days following the mailing date if sent by registered mail, and (iii) on the date of dispatch of the e-mail if sent by e-mail .

Any Party may change the address to which notices are to be delivered or transmitted by giving the other Party written notice in the manner set forth herein.

16.9 Costs. Each Party shall bear its own costs (including legal fees and other expenses) incurred in the preparation and negotiation of this Agreement.

## 8. APPLICABLE LAW AND ARBITRATION

### Applicable Laws:

This Contract, including any non-contractual obligations arising out or in connection with this Contract shall be governed by and shall be construed in accordance with the laws of Afghanistan

### Arbitration

(a) Any dispute arising out of or in connection with the Contract, including the validity, existence, performance, interpretation or termination thereof shall be referred to and finally resolved by arbitration administered by the Afghanistan Center for Commercial Dispute Resolution according to ACDR Arbitration Rules, which rules are deemed to be incorporated by reference into this clause.

The seat or legal place of the arbitration shall be [●]

The number of arbitrators shall be [●]



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The language of the arbitration shall be [●]

This Agreement has been executed as of the Closing Date by authorized representatives of the Parties.

[name]  
[title]  
[signature]

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[name]  
[title]  
[signature]

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## Schedules

### **SCHEDULE 5 Price List**

Prices are per unit.



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## EXHIBIT A

### THE PRODUCTS

Product Name	Price



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