

2 Non-exclusive agency

- 2.1 The Supplier grants the Dealer the non-exclusive right to solicit orders for the use of the Products in the Territory from customers who carry on business in the Territory.
- 2.2 The Dealer must use its best efforts to promote and solicit orders for the Products within the Territory. The Dealer must periodically prepare and forward to the Supplier such reports as the Supplier reasonably requires.
- 2.3 The term of this Agreement is for one year from the commencement date. After the expiry or termination of this Agreement, the Dealer will not solicit orders for the Products or in any manner avail itself of the privileges granted in this Agreement unless this Agreement has been renewed by agreement between the parties in writing.

3 Orders and sales of products

- 3.1 The Dealer must transmit orders for the Products to the Supplier confirmed by e-mail and must give to the Supplier reasonable advance notice of all orders.
- 3.2 All orders accepted by the Supplier will be subject to the Supplier's standard Supply Agreement.
- 3.3.1 The Supplier may inform the Dealer of all information it acquires as to potential customers for the Agent in the Territory.
- 3.3.2 The Dealer will report to the Supplier monthly and inform the Supplier of all information it acquires as to all potential customers

4 Costs and payments

- 4.1 The Dealer must, in respect of all Products ensure that the then current supply agreement of the Supplier is executed by the Customer and forwarded to the Supplier for execution.
- 4.2 The Invoiced Cost will be paid in USA currency to the bank account of the Supplier in New Zealand OR Paypal in terms of the executed Supply Agreement on the dates set out in the Supply Agreement. The Dealer must use reasonable endeavours to ensure that the Sale Price is so paid.

5 Commission

- 5.1 The Dealer will be paid the Commission by the Supplier for Products sold by Supplier to customers introduced by the Dealer in the Territory during the term of this Agreement.
- 5.2 The commission is payable by the Supplier to the Dealer upon receipt of the first instalment of the sale price under the Supply Agreement.
- 5.3 On expiry or termination of this Agreement, the Dealer will be entitled to the commission on all sales concluded during the term. The Dealer will not be entitled to a commission on any conditional sales which are not made unconditional and concluded until after expiry or termination.

6 Advertising material

- 6.1 The Supplier must make available to the Dealer without charge and as promptly as possible following the signing of this Agreement, [one] copy of all information and marketing materials possessed by the Supplier with respect to the Products that may be necessary to enable the Dealer to promote sales of the Products effectively. The Supplier will forward to the Dealer all enquiries received by the Supplier from potential customers in the Territory.

6.2 The Supplier agrees to make its advertising copy available for use by the Dealer free of charge. The Dealer, at its own discretion, may develop and use advertising and promotional material consistent with the best interests of the Supplier.

7 Assignment

The Dealer may not assign or delegate its rights or obligations under this Agreement.

8. Termination

8.1 The Supplier shall have the right to terminate this agreement forthwith by written notice to the Dealer if the Dealer:

- (a) Fails to remedy any default of the agreement within 14 days of receiving written notice from the Supplier detailing that default;
- (b) Becomes insolvent or unable to pay its debts in the ordinary course of operation;
- (c) Suffers or permits an order to be made or a resolution to be passed for the winding up of the Dealer or is placed under official management or a meeting is called for that purpose or (being an individual) becomes bankrupt; or
- (d) Suffers or permits a compromise or arrangement to be made or proposed between the Dealer and any of its creditors; or
- (e) At any time after the third anniversary of this agreement, the Supplier gives the Dealer six months notice in writing prior to the expiration of the Term of this agreement, that this agreement or any renewed agreement shall not be renewed for another Renewal Term.
- (f) The Dealer fails to meet any sales target set in consultation with the Supplier for any completed calendar year to which it may be relevant

8.2 The Dealer shall have the right to terminate this agreement forthwith by written notice to the Supplier if the Supplier:

- (a) Fails to remedy any default of the agreement within 14 days of receiving written notice from the Dealer detailing the default;
- (b) Becomes insolvent or unable to pay its debts in the ordinary course of the operation; or
- (c) Suffers or permits an order to be made or a resolution to be passed for the winding up of the Supplier or is placed under official management or a meeting is called for that purpose.

9.0 Consequences of termination

9.1 Upon the termination of this agreement by the Supplier due to an unremedied default by the Dealer under this agreement, the Dealer will:

- (a) Immediately discontinue the use of the Trade Name, the Software and Intellectual Property signs and manuals and other display or advertising matter indicative of the Supplier or of any association with the Supplier or of the Operation, Services or products of the Supplier.
- (b) Pay to the Supplier (without any deduction or right of set-off) all sums of money which may be due or owing from the Dealer to the Supplier.

- (c) Cease to use all Intellectual Property whereof is vested in the Supplier or where the continued use thereof would in any way infringe the Intellectual Property of the Supplier.

10 Records

The Dealer must maintain complete and accurate records and accounts for all of its activities under this Agreement and all transactions relating to the Products. The Supplier may inspect such records and accounts upon reasonable notice during regular business hours.

11 Confidentiality

The Dealer acknowledges that all intellectual property rights in the Products belong to the Supplier. The Dealer will keep in strictest confidence the Products, all technical information and marketing materials pertaining to them and all information and materials identified by the Supplier to be confidential or proprietary in nature. The Dealer will also keep in strictest confidence any information that, from the circumstances in which it is made available to the Agent, ought reasonably to be treated as confidential or proprietary. The Dealer will not use or disclose, and will not suffer or permit its employees, customers or agents to use or disclose, any such confidential or proprietary information without the prior written consent of the Supplier, except as may be necessary in conjunction with the Dealers marketing of the Products or as otherwise expressly provided for in this Agreement.

12 Competition

During the term of this Agreement, and for a period of two (2) years after expiry or termination of this Agreement, the Dealer, its officers, directors, employees or affiliates must not by themselves or in conjunction with any other person manufacture, supply or sell any goods that are competitive with the Products in the Territory without the prior written consent of the Supplier.

13 Dispute Resolution

If there is dispute between the parties arising out of, or in connection with, this Agreement, neither of the parties is to commence any proceedings relating to that dispute until the following procedure has been complied with:

- (a) The party claiming a dispute has arisen must give written notice to the other party specifying the nature of the dispute.
- (b) The parties will endeavour, in good faith, to resolve the dispute referred to in the notice by using informal dispute resolution techniques.
- (c) If the parties do not agree on a dispute resolution technique within 14 days after the date notice of a dispute was given, the dispute is to be mediated according to the standard mediation agreement of LEADR New Zealand Incorporated (Lawyers Engaged in Alternative Dispute Resolution), and the Chair of LEADR (or the Chair's nominee) will select the mediator and determine the mediator's remuneration.
- (d) A party seeking urgent interlocutory relief may, by notice to the other party, elect not to comply with the provisions of this clause, but only to the extent of the relief sought, and only for the period required to dispose of the application for interlocutory relief.
- (e) Pending resolution of the dispute, this Agreement will remain in full effect without prejudicing the parties' respective rights and remedies.

SIGNED on behalf of
SMART TRAINER LIMITED:

Director:

Director:

SIGNED by the said)

in the presence of:)

Witness:

Witness name:

Address:

Occupation:

DATED

BETWEEN SMART TRAINER LIMITED

A N D

AGREEMENT TO APPOINT SELLING DEALER

**BEATTIE RICKMAN LEGAL
SOLICITORS
MANUKAU CITY**