

# Sheersense<sup>®</sup> DISTRIBUTOR TERMS AND CONDITIONS

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## **1. BACKGROUND.**

The Distributor has applied to the Supplier for the right to promote and sell the products within the Territory (see Schedule 2) and the Supplier wishes to appoint the Distributor as its non-exclusive distributor on the terms of this Agreement.

The Supplier, in its sole discretion, reserves the right to decline to accept any Agreement.

## **2. DEFINITIONS AND INTERPRETATION.**

The definitions and rules of interpretation in this clause apply in this Agreement and the Background.

**Agreement:** the agreement constituted by the Supplier's acceptance communicated to the Distributor of the Distributor's application to become a distributor of the Products, which agreement shall include the terms and conditions set out herein, and in any document referred to herein, as the same may be altered or amended from time to time.

**Anniversary Date:** twelve months from the Commencement Date.

**Business Day:** a day (other than a Saturday, Sunday or public holiday in England) when banks in London are open for business.

**Commencement Date:** the date of the Distributor's Application being accepted by the Supplier.

**Control:** the ability to direct the affairs of another person, whether by virtue of the ownership of shares, contract or otherwise.

**Distributor:** the person named as the Distributor in the relevant application (including any renewal application).

**Genealogies** are the Lines of Sponsorship of the Supplier's Distributors, including data relating to those Distributors, whether or not they are in the Distributor's upline or downline.

**Language:** Each of the parties acknowledge that this document, and documents referred to herein, be drawn in English.

**Minimum Quantity:** the quantities of the Products as specified in Schedule 4 or such other quantities as may be agreed in writing between the parties in relation to each order.

A Person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors or permitted assigns.

**Products:** the products of the type and specification manufactured and packed under the Trade Marks as in Schedule 1.

The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement.

**Sponsor:** a Distributor that supports the application of another to be a Distributor.

**The Supplier:** Sheersense Limited, c/o Linggard & Thomas, Office Building, Stret Myghtern Arthur, Nansledan, Newquay, Cornwall TR8 4UX.

**Term:** the term of this Agreement, as determined in accordance with Section 15(a).

**Territory:** the areas specified in Schedule 2.

**Trade Marks:** the trade mark registrations and applications listed in Schedule 3 and any further trademarks that the Supplier may permit, or procure permission for, the Distributor to use in the Territory in respect of the Products by express notice in writing or by email.

**VAT:** value added tax chargeable under the Value Added Tax Act 1994 and any similar

replacement or additional tax.

VAT Group: a group for the purposes of sections 43 to 43D (inclusive) of the Value Added Tax Act 1994 and the Value Added Tax (Groups: eligibility) Order 2004 (SI 2004/1931).

Year: the period of 12 months from the Commencement Date.

Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.

Any reference to this Agreement includes the Schedules.

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

Words in the singular shall include the plural and vice versa.

A reference to one gender shall include a reference to the other gender.

A reference to any party shall include that party's personal representatives, successors or permitted assigns.

A reference to a statute, statutory provision or any subordinated legislation made under a statute is a reference to such statute, provision or subordinated legislation as amended or re-enacted from time to time, whether before or after the date of this Agreement and in the case of a reference to a statute is also to all subordinate legislation made under that statute whether before or after the date of this Agreement; provided that, as between the parties, no such amendment or re-enactment shall apply for the purposes of this Agreement to the extent that it would impose any new or extended obligation, liability or restriction on, or otherwise adversely affect the rights of, any party.

A reference to 'writing' or 'written' includes faxes and email. Documents 'in agreed form' are documents in the form agreed by the parties and initialled by or on behalf of them for identification.

Any reference to an English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to what most nearly approximates to the English legal term in that jurisdiction.

A reference to a 'document' is a reference to that document as varied or novated (in each case, other than in breach of the provisions of this Agreement) at any time.

References to 'clauses' and 'schedules' are to the clauses and schedules of this Agreement.

Any phrase introduced by the terms 'including', 'include', 'in particular' or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

Any reference in the Agreement to any person, when construing any provision in relation to VAT, shall (where appropriate and unless the context otherwise requires) be construed, at any time when such person is treated as a member of a VAT Group, to include a reference to the representative member of such group at such time (so that a reference to x, for example, would read "x or the relevant representative member of the VAT Group of which x is a member (as the case may be)") (the term "representative member" to have the same meaning as for the purposes of the VAT Grouping Legislation).

### **3. APPOINTMENT.**

The Supplier appoints the Distributor as its non-exclusive distributor to distribute the Products in accordance with the terms of this Agreement, and to sponsor other willing individuals into distributorships.

The Distributor shall purchase the Products only from the Supplier and shall not for the Term or for the period of two years from the Commencement Date (whichever shall be the longer) distribute or manufacture any goods which compete with the Products.

The Distributor shall not do or purport to do any of the following:  
represent itself as an employee or agent of the Supplier for any purpose being an independent operator in business on its own account; or  
pledge the Supplier's credit; or  
give any condition or warranty on the Supplier's behalf; or  
make any representation on the Supplier's behalf; or  
commit the Supplier to any contracts, agreement or obligation.

The Distributor shall not without the Supplier's prior written consent make any promises or guarantees about the Products beyond those contained in the promotional material supplied by the Supplier.

Distributors in the same household or business shall have the same sponsor.

Change of current sponsor is not permitted for the duration of the Distributorship. An exception can be found in the Policies and Procedures Guide, section 3.

As an independent business operator, the Distributor is responsible for its own business activities and acknowledges that the Distributor is not an employee, agent or franchise, joint venture, partner or owner of Sheersense®.

#### **4. COMPENSATION AND SPONSORSHIP.**

Distributor will be compensated by Supplier pursuant to the Sheersense® Compensation Plan, which is incorporated herein by reference.

Distributor understands that any compensation Distributor receives from Supplier is related solely to the sale of products and, that in part, the compensation is payable as the mark-up in buying and reselling products to customers.

No compensation will be earned from the mere act of sponsoring or recruiting but will be earned from the sale of products by those sponsored, directly or indirectly, by the Distributor.

Distributor understands that Distributor is not guaranteed any income, profits or success and certifies that no such representations have been made to Distributor either by Supplier or any distributor.

Distributor agrees that he/she will make no unreasonable, untrue, misleading, or unrepresentative earnings representations or income guarantees of any kind; nor will Distributor display any actual or photocopied commission or other payments in promotional materials, income opportunity advertising, or any other format or forum when presenting the Sales Compensation Plan to prospective distributors.

Further as and if territories are opened for the sale of its products and sponsoring of prospective new distributors, existing Distributors are prohibited from soliciting, recruiting, training, signing or sponsoring new Distributors until the territory is officially notified to all Distributors by Supplier.

## 5. DISTRIBUTOR'S UNDERTAKINGS.

The Distributor undertakes and agrees with the Supplier that at all times during the Term it will:

- a) use its best endeavours to promote the distribution and sale of the Products;
- b) not resell the Products at a price less than the resale price from time to time specified by the Supplier in writing;
- c) not sell online except on websites approved by the Compliance Department;
- d) sell the Products only in the UK, including the Isle of Man and the Channel Isles;
- e) submit written reports at regular intervals as requested to the Supplier, showing details of sales, service stock, outstanding customer orders and orders placed by the Distributor with the Supplier that are still outstanding, and any other information relating to the performance of its obligations under this Agreement that the Supplier may reasonably require from time to time;
- f) maintain, on its own account, an inventory of the Products at levels which are appropriate and adequate for the Distributor to meet all customer delivery requirements for the Products throughout the Territory;
- g) keep full and proper books of account and records clearly showing all enquiries, quotations, transactions and proceedings relating to the Products;
- h) allow the Supplier, on reasonable notice, access to its accounts and records relating to the Products for inspection;
- i) keep all stocks of the Products which it holds in conditions appropriate for their storage, and provide appropriate security for the Products, all at its own cost;
- j) insure at its own cost with a reputable insurance company all stocks of the Products as are held by it against all risks which would normally be insured against by a prudent businessman to at least their full replacement value and produce to the Supplier on demand full particulars of that insurance and the receipt for the then current premium;
- k) inform the Supplier immediately of any changes in Control of the Distributor, and of any change in its organisation or method of doing business that might be expected to affect the performance of the Distributor's duties in this Agreement;
- l) comply with the law and the terms of this Agreement;
- m) be responsible for reporting its income to HMRC and for paying National Insurance and income tax as required by law; and
- n) acting in accordance with the Distributor Terms of Agreement;
- o) Distributors shall at all times act fairly and ethically in their dealings with actual and prospective customers and Distributors and shall undertake no acts or omissions designed to injure the reputation or business of the Supplier, SeneGence® or any Distributor;
- p) Distributor shall be solely responsible for complying with any and all laws or regulations relating to the operation of the Distributor's business and shall obtain at the Distributor's expense any licenses or registrations required to carry on business;
- q) a Distributor may only operate in the Territory in which he/she applied for Distributorship;
- r) in the event Distributor sponsors other distributors (the "Sponsored Distributor"), Distributor agrees to assist the Sponsored Distributor in the operation of his or her business;
- s) by placing any product order, Distributor certifies that he/she has sold over 70% of all previous orders to his/her non-Distributor consumers;
- t) Distributor agrees to place primary emphasis upon the selling of the Company products to ultimate consumers.

Further, Sheersense Limited is not responsible for the use of personal data of customers

and other Distributors obtained by its Independent Distributors. Sheersense Independent Distributors are required to use customer and Distributor personal information in a way which is compatible with the Sheersense Privacy Policy. All Distributors are required to read and comply with the Sheersense Privacy Policy.

If a Distributor's use of such personal information in any respect differs from the Sheersense Privacy Policy then they are required to provide their own Privacy Policy and make it available to their customers and upline and downline Distributors.

## **6. SUPPLY OF PRODUCTS.**

The Supplier undertakes to use its best endeavours to meet all orders for the Products forwarded to it by the Distributor in accordance with the Supplier's terms of delivery. The Distributor shall buy the Products for his/her own account for resale under this Agreement. The Supplier may make changes to the specifications of the Products, provided the changes do not adversely affect the quality of the Products.

The Distributor must place orders with the Supplier totalling at least £200 (100PV) in a six-month period.

The Supplier retains the right to supply the Products directly to customers within the Territory.

## **7. SUPPLIER'S UNDERTAKINGS.**

The Supplier undertakes to:

- a) supply the Products to the Distributor only for his/her own use or for resale in the Territory;
- b) provide any information and support that may reasonably be requested by the Distributor;
- c) approve or reject any promotional information or material submitted by the Distributor within 28 days of receipt.

## **8. PRICES AND PAYMENTS.**

- a) The prices applicable as at the Commencement Date are as referred to in Schedule 5.
- b) The prices to be paid by the Distributor to the Supplier for the Products are to be the Supplier's list prices as notified to the Distributor by the Supplier from time to time.
- c) The Supplier shall give the Distributor 14 days' notice of any rises in the prices for the Products.
- d) Any and all expenses, costs and charges incurred by the Distributor in the performance of its obligations under this Agreement shall be paid by the Distributor, unless the Supplier has expressly agreed in advance in writing to pay such expenses, costs and charges.
- e) If payment is requested by the Supplier in advance of supply, the Distributor agrees to make the payment in advance to the Supplier prior to process of any order.
- f) The Distributor may not withhold payment of any amount due to the Supplier because of any set-off, counterclaim, abatement, or other similar deduction.

Sheersense® shall have the right to offset any amounts owed by Distributor to Sheersense® (including, without limitation, the repayment of commissions as a result of product returns) against the amount of any commissions or bonuses owed to the Distributor.

g) Interest shall be chargeable on any amounts overdue at the rate of 3% per annum above the base rate of Lloyds Bank Plc from time to time. The interest period shall run from the due date for payment until receipt of the full amount by the Supplier whether before or after judgement.

h) Distributor is prohibited from undertaking predatory pricing of SeneGence® products. An offer for sale or sale of SeneGence® products at less than 85% of the suggested retail price will be presumed to be predatory pricing.

## **9. INDEMNIFICATION AND LIMITATION.**

Distributor agrees to indemnify and hold harmless the Supplier, its subsidiaries, affiliates and their shareholders, officers, agents, employees and directors from and against any claim, demand, liability, loss, cost or expense, including, but not limited to, court costs or lawyer fees, asserted against or suffered or incurred by any of them by reason of, directly or indirectly, arising out of or in any way relating to or connected with, allegedly or otherwise, the Agreement; or violation or a failure to comply with any applicable law or regulation.

Distributor agrees that the liability of the Supplier and its officers, directors and shareholders to Distributor for any claim whatsoever related to the relationship of the Supplier and Distributor, including any cause of action in contract, tort or strict liability, shall not exceed, and be limited to, the amount of unsold product inventory owned by the Distributor, if any, and commissions at the time of the controversy or termination, if any, owed to the Distributor.

In no event shall the Supplier be liable to Distributor for any incidental, special, exemplary or consequential damages.

## **10. VAT AND TAXES.**

a) All sums payable under this Agreement, or otherwise payable by any party to any other party under this Agreement are inclusive of any VAT (unless stated otherwise) chargeable on the supplies for which such sums (or any part of them) are the whole or part of the consideration for VAT purposes.

b) Where, under this Agreement, any party makes a supply to any other party (Recipient) for VAT purposes and VAT is or becomes chargeable on that supply for which the supplying party is required to account to the relevant tax authority, the Recipient shall, subject to the receipt of a valid VAT invoice, pay the supplying party (in addition to, and at the same time as, any other consideration for that supply) the amount of such VAT.

c) Where any party is required by this Agreement to reimburse or indemnify any other party for any cost or expense, that first party shall reimburse or indemnify the other party for the full amount of the cost or expense, including any VAT on that amount, except to the extent that the other party is entitled to credit or repayment for that VAT from any relevant tax authority.

d) All taxes, charges, levies, assessments and other fees of any kind imposed on the purchase or import of the Products shall be the responsibility of the Distributor.

## **11. ADVERTISING AND PROMOTION.**

The Supplier shall:

- a) provide the Distributor with information on the advertising and promotion carried out by the Supplier.
- b) supply any available promotional and advertising material that the Distributor reasonably requests at the cost of the Distributor.
- c) where the parties agree, participate with the Distributor in fairs and exhibitions in the UK.

The Distributor shall:

- a) be responsible for advertising and promoting the Products (but the Distributor shall not use any advertising materials, promotional literature or film without the Supplier's prior verbal and written consent);
- b) submit an advertising and promotion programme to the Supplier for its prior approval;
- c) arrange advertising at its own expense;
- d) display advertising materials and other signs provided by the Supplier;
- e) observe all directions and instructions given to it by the Supplier for promotion and advertisement of the Products; and
- f) not make any written statement as to the quality or manufacture of the Products without the prior written approval of the Supplier.
- g) Unsolicited email advertisements ("spam") are specifically prohibited and shall be deemed to constitute unethical activity by any participating Distributor. It is the sole responsibility of the Distributor to comply with all local laws relating to email marketing programs. Distributors are strongly encouraged to utilise reputable "opt-in" email address lists exclusively. The use of any trademarked or copyrighted material in an unsolicited email advertisement ("spam") is specifically prohibited. The use of trademarked or copyrighted material may not be made with automatic calling devices, or through unsolicited mass mailings to solicit Distributors and/or retail customers. The Distributor shall ensure that any website that it uses for the sale of the Products complies with the quality standards and criteria that are set out in Schedule 7.

## **12. CONDITIONS OF SALE.**

The Supplier's conditions of sale in force from time to time shall apply to all sales by the Supplier to the Distributor under this Agreement. The conditions of sale that apply at the Commencement Date are as referred to in Schedule 6. If there is any inconsistency between those conditions of sale and the terms of this Agreement, the latter shall prevail. See the document Sheersense® Conditions of Sale for more detail.

## **13. TRADE MARKS.**

- a) The Supplier hereby grants to the Distributor the non-exclusive right, in the UK, to use the Trade Marks in the promotion, advertisement and sale of the Products, subject to, and for the duration of, this Agreement.
- b) All representations of the Trade Marks that the Distributor intends to use shall be submitted to the Supplier for approval before use.
- c) The Distributor shall not, without the prior written consent of the Supplier, alter or



make any addition to the labelling or packaging of the Products displaying the Trade Marks.

d) The Distributor shall not alter, deface or remove any reference to the Trade Marks, any reference to the Supplier or any other name displayed on the Products or their packaging or labelling.

e) The Supplier makes no representation or warranty as to the validity or enforceability of the Trade Marks nor as to whether they infringe any intellectual property rights of third parties in the Territory.

f) The Distributor shall not sub-license, transfer or otherwise deal with the rights of use of the Trade Marks granted under this Agreement.

g) The Distributor shall not do, or omit to do, anything in its use of the Trade Marks that could adversely affect their validity.

h) Each party shall promptly give notice in writing to the other if it becomes aware of:

1) any infringement or suspected infringement of the Trade Marks or any other intellectual property rights relating to the Products within the Territory; or

2) any claim that any Product or the manufacture, use, sale or other disposal of any Product within the Territory, whether or not under the Trade Marks, infringes the rights of any third party.

#### **14. PRODUCT LIABILITY AND INSURANCE.**

a) Subject to the Distributor fulfilling all the conditions in this clause, the Supplier shall indemnify the Distributor against any liability incurred by the Distributor in respect of damage to property, death or personal injury arising from any fault or defect in the materials or workmanship of the Products and any reasonable costs, claims, demands and expenses arising out of or in connection with that liability, except to the extent the liability arises as a result of the action or omission of the Distributor.

b) The Distributor shall, as soon as it becomes aware of a matter which may result in a Relevant Claim:

1) give the Supplier written notice of the details of the matter;

2) give the Supplier access to and allow copies to be taken of any materials, records or documents as the Supplier may require to take action under this section;

3) allow the Supplier the exclusive conduct of any proceedings and take any action that the Supplier requires to defend or resist the matter, including using professional advisers nominated by the Supplier;

4) and not admit liability or settle the matter without the Supplier's written consent.

c) During the Term, the Supplier shall maintain public liability insurance with a reputable insurer for any and all liability however arising.

d) The Supplier shall provide a copy of the insurance policy and proof of payment of the current premium to the Distributor on request.

e) The Distributor undertakes to maintain appropriate, up-to-date and accurate records to enable the immediate recall of any Products or batches of Products from the retail markets. These records shall include records of deliveries to customers (including delivery date, name and address of customer, telephone number and e-mail address). The Distributor shall, at the Supplier's cost, give any assistance that the Supplier shall reasonably require to recall, as a matter of urgency, Products from the retail market.

#### **15. DURATION AND CANCELLATION.**

a) This Agreement begins on the Commencement Date and, subject to other clauses in this Section and the Section of Force Majeure, shall continue for a term of

one year and subject to an annual fee which may be adjusted periodically.

b) The Distributor has the right to cancel this Agreement within 14 days of making it and to recover monies paid by giving written notice to the Supplier at its address below. Such reimbursement being reduced by the retail value of any goods supplied as part of the application process.

c) Upon cancellation the Distributor will be entitled to a complete refund in respect of goods purchased by the Distributor from the Supplier provided that those goods remain unsold by the Distributor, are in the same condition as supplied to the Distributor and are returned to the Supplier within 14 days of the making of the Agreement.

d) Upon cancellation, the Distributor also has the right within 14 days of making the Agreement to cancel any services the Distributor has ordered under the scheme and to recover any monies paid in respect of such services not yet supplied.

## **16. TERMINATION.**

a) The Supplier reserves the right, for any reason, to terminate this Agreement immediately by giving the Distributor written notice within 14 days of the date of this Agreement.

b) At any time after 14 days from the making of this Agreement, either party in its sole and unfettered discretion, with or without reason, shall have the right to terminate this Agreement by giving to the other not less than 14 days written notice. Which notice can be delivered and acknowledged by email.

c) Six (6) months of continuous inactivity as a Distributor by virtue of no personal sales cumulative to £200 retail (100PV) may result in automatic termination of Distributor status.

d) If the contract is terminated by the Supplier or, after the first 14 days, by the Distributor, the Distributor has the following rights:  
the Distributor will incur no future contractual obligations under the Agreement;  
the Distributor will have the right, within 21 days of the termination, to return to the Supplier at its latest address all products purchased by the Distributor from the Supplier within the 90 days prior to the termination and to recover from the Supplier the (VAT inclusive) price paid by the Distributor for them, less a reasonable handling charge and, in the case of goods which have deteriorated because of the Distributor's own fault, less an amount to reflect their resulting diminution in value (these deductions will not be made where the Supplier terminates the contract);

e) Without affecting any other rights that it may be entitled to, either party may give notice in writing to the other terminating this Agreement immediately if:

the other party fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment; or

the other party commits a material breach of any material term of this Agreement (other than failure to pay any amounts due under this Agreement) and (if such breach is remediable) fails to remedy that breach within a period of 14 days of being notified in writing to do so; or

the other party repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement; or

the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being a natural person) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of

section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply; or

the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party; or

a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party [other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party]; or

an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party; or

a floating charge holder over the assets of that other party has become entitled to appoint or has appointed an administrative receiver; or

a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party; or

the other party, being an individual, is the subject of a bankruptcy petition or order; or a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days; or

any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in above clauses in this Section;

the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or

the other party, being an individual, dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation; or

there is a change of Control of the other party; or

the other party purports to assign its rights or obligations under this Agreement (except in accordance with the Section on Variations).

f) For the avoidance of doubt, a breach of any of the clauses under the Section of Force Majeure is a material breach for the purposes of this clause.

## **17. EFFECTS OF TERMINATION.**

a) Termination of this Agreement for any reason shall not affect any rights or liabilities accrued at the date of termination.

b) The Supplier may reclaim commissions and bonuses paid to the Distributor in respect of contracts cancelled or goods returned to the Supplier, except that after termination of the Agreement, no commission or bonus will be reclaimable by the Supplier more than 120 days after it was paid.

c) The Distributor shall have the right to be released from all future contractual obligations and to return to the Supplier any goods the Distributor has purchased within a period of 90 days prior to such termination and which remain unsold and to recover from the Supplier –

(a) where the Distributor has terminated the agreement, the price (inclusive of Value Added Tax) which the Distributor paid for them less:

(i) in the case of any goods the condition of which has deteriorated due

- to an act or default on the part of the Distributor, an amount equal to the diminution in their value resulting from such deterioration; and
- (ii) a reasonable handling charge;
  - (b) where the Supplier has terminated the agreement the price (inclusive of Value Added Tax) which the Distributor paid for them;
  - (c) on terms whereby the purchase price is payable upon delivery of the goods or, if the goods are already held by the Supplier or any of the Suppliers, forthwith, and
  - (d) on terms whereby the goods not already held by the Supplier will be delivered within 21 days of such termination to the address stated in the agreement.
- d) Immediately upon termination of this Agreement Distributor shall
- a) lose all rights to purchase products from Sheersense® at Distributor cost;
  - b) cease from representing himself or herself as a Distributor;
  - c) forfeit all rights to his/her participation in the Compensation Plan, including all future commissions and earnings resulting there from;
  - d) be prevented from soliciting, recruiting or sponsoring prospective Sheersense® Distributors.
- e) The Distributor agrees that both during the Agreement and for a period of 2 years after its termination, the Distributor will not compete with the Supplier's business (whether by selling, promoting or distributing competing products or otherwise), will not work as a direct seller for any organisation competing with the Supplier and will not recruit Distributors away from Sheersense®.
- f) An application from a terminated Distributor for a new or reinstated Distributorship will be rejected or accepted solely at the Supplier's discretion. In the event of an application fee being paid and the application rejected then the fee will be reimbursed. Such reimbursement being reduced by the retail value of any goods supplied as part of the application process.

## **18. ANNUAL DISTRIBUTORSHIP RENEWAL.**

- a) At Distributor's Anniversary Date, Distributor acknowledges that this Agreement then in effect will be applicable to any such annual renewal period.
- b) Sheersense®, in its sole and unfettered discretion, with or without reason, shall have the right to refuse to renew this Agreement at any Anniversary Date.
- c) If the Agreement is not renewed, the Distributor understands that all right to the Distributor's Distributorship, bonuses and commissions and the ability to purchase products from Sheersense® at wholesale prices shall terminate.
- d) The right to renew this Agreement is subject to the terms and provisions of the Agreement, Sheersense Ltd Policies & Procedures Guide and Compensation Plan in effect at the time of renewal, and as may be amended by Sheersense® from time to time.

## **19. CONFIDENTIALITY.**

- a) Each party undertakes that it shall not at any time or at any time during this Agreement and for a period of two years after termination of this Agreement, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs.
- b) The Distributor agrees that information held by the Supplier relating to its

genealogies is and shall at all times remain the intellectual property of the Supplier. The Distributor will at all times treat such information as confidential and will use such information only to the extent necessary to operate the distributorship under this Agreement and only so long as the Distributor remains active as a distributor under this Agreement. Upon termination of this Agreement, the Distributor will destroy any copies of it that are in your possession. The obligations in this paragraph shall survive the termination of this Agreement.

c) The Supplier will use the Distributor's personal data only for the purposes of its business. This may include the transmission of information to other companies in the Supplier's group which are outside the European Union in countries which may not have the same level of data protection legislation as the EU. The Supplier will take all reasonable steps to keep such personal data secure and confidential.

d) The Distributor agrees to the use of the Distributor's personal data as set out above. The Distributor agrees to take all reasonable steps to protect personal data of others which the Distributor obtains operating the distributorship (including that of customers and other direct sellers) and to use such information only as necessary in the course of the distributorship and to destroy all such information upon termination of this Agreement.

e) Each party may disclose the other party's confidential information to those of its employees, officers, representatives or advisers who need to know such information for the purpose of carrying out the party's obligations under this Agreement.

f) Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this Section, and as may be required by law, court order or any governmental or regulatory authority.

g) No party shall use any other party's confidential information for any purpose other than to perform its obligations under this Agreement.

h) Distributor agrees to take all other actions reasonably required by Sheersense® relating to protection of Sheersense's confidential information, including discontinuing the use of trademarks of Sheersense® and SeneGence®.

## **20. FORCE MAJEURE ("UNSEEN EVENTS").**

a) A party, provided that it has complied with the provisions of the next sentence, shall not be in breach of this Agreement, nor liable for any failure or delay in performance of its obligations under this Agreement arising from or attributable to acts, events, omissions or accidents beyond its reasonable control ("Unforeseen Events"), including any of the following:

a. Acts of God, including flood, earthquake, windstorm or other natural disaster;

b. epidemic or pandemic;

c. war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, breaking off of diplomatic relations or similar actions;

d. terrorist attack, civil war, civil commotion or riots;

e. nuclear, chemical or biological contamination or sonic boom;

f. any law or government order, rule, regulation or direction, or any action taken by a government or public authority, including but not limited to imposing an embargo, export or import restriction, quota or other restriction or prohibition, or failing to grant a necessary licence or consent;

g. fire, explosion (other than in each case one caused by a breach of contract by, or assistance of, the party seeking to rely on this clause or companies in the same group as such party) or accidental damage;

h. loss at sea;

i. adverse weather conditions;

- j. collapse of building structures, failure of plant machinery, machinery, computers or vehicles;
- k. any labour dispute, including strikes, industrial action or lockouts (other than in each case by the party seeking to rely on this clause, or companies in the same group as such party);
- l. non-performance by suppliers or subcontractors (other than by companies in the same group as the party seeking to rely on this clause);
- m. interruption or failure of utility service, including but not limited to electric power, gas or water.

b) A party that is subject to a Force Majeure Event shall not be in breach of this Agreement provided that:

- a. it promptly notifies the other parties in writing of the nature and extent of the Force Majeure Event causing its failure or delay in performance; and
- b. it could not have avoided the effect of the Force Majeure Event by taking precautions which, having regard to all the matters known to it before the Force Majeure Event, it ought reasonably to have taken, but did not; and
- c. it has used all reasonable endeavours to mitigate the effect of the Force Majeure Event to carry out its obligations under this Agreement in any way that is reasonably practicable and to resume the performance of its obligations as soon as reasonably possible.

c) If the Force Majeure Event continues for a continuous period of more than six months, any party may terminate this Agreement by giving 14 days' written notice to all the other parties. On the expiry of this notice period, this Agreement will terminate. Such termination shall be without prejudice to the rights of the parties in respect of any breach of this Agreement occurring prior to such termination.

## **21. ENTIRE AGREEMENT.**

This Agreement (and any document referred to in it) constitutes the whole Agreement between the parties and supersedes all previous Agreements between the parties relating to its subject matter. Each party acknowledges that, in entering into this Agreement (and any document referred to in it), it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in this Agreement. Nothing in this clause shall limit or exclude any liability for fraud.

## **22. VARIATION.**

This Agreement and the Sheersense® Distributor Terms of Agreement, together with Sheersense® Policies and Procedures Guide and the Privacy Policy, as amended from time to time together comprise the entire Agreement between the parties.

In order to maintain a viable Marketing Program and to comply with changes to laws or economic conditions, Distributor understands that Sheersense® may amend this Agreement at any time. Such modifications and all changes thereto, shall become a binding part of this agreement upon publication in the official Sheersense® website. Any such change which is to the detriment of the Distributor will take effect no earlier than fourteen days after the date of such publication unless the Distributor has previously indicated acceptance of the change in any manner.

In the event of any conflict between the terms of this Agreement, the Sheersense®

Policies & Procedures Guide or any other document and such amendment, the amendment shall control.

### **23. ASSIGNMENT AND OTHER DEALINGS PROHIBITED.**

This Agreement is personal to the parties and no party shall, without the prior written consent of the other party (such consent not to be unreasonably conditioned, withheld or delayed), assign, transfer, mortgage, charge, declare a trust of or deal in any other manner with this Agreement or any of its rights and obligations under or arising out of this Agreement (or any document referred to in it), or purport to do any of the same. The Distributor may not sub-contract any or all of its obligations under this Agreement to any third party or agent. Each party that has rights under this Agreement is acting on its own behalf and not for the benefit of another person.

Distributor understands and agrees that Distributor's position can be inherited or bequeathed, but cannot be transferred or assigned, in whole or in part, during the Distributor's lifetime without the express prior written approval of Sheersense®, which approval may be withheld with or without reason or explanation, in the sole discretion of Sheersense®.

### **24. FREEDOM TO CONTRACT.**

The parties declare that they each have the right, power and authority and have taken all action necessary to execute and deliver and to exercise their rights and perform their obligations under this Agreement.

### **25. WAIVER.**

No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

All rights, powers and remedies given to Sheersense® are cumulative, not exclusive and in addition to any and all other remedies provided by law.

Waiver by Sheersense® can be effective only in writing by an authorised officer of Sheersense®.

### **26. SEVERANCE.**

If any provision of this Agreement (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of this Agreement, and the validity and enforceability of the other provisions of this Agreement shall not be affected.

If under any applicable and binding law or rule of any applicable jurisdiction, any provision of the Agreement or any specification, standard or operating procedure which

Sheersense® has prescribed is held to be invalid or unenforceable, such provision, specification, standard or operating procedure shall be deemed amended to the extent required to be valid and enforceable.

Distributor shall be bound by any such modification, which shall be effective only in the jurisdiction in which it is required.

To the extent permitted by law, Sheersense® shall not be liable for and Distributor releases Sheersense® from, and waives all claims for any loss of profits, indirect, direct, special or consequential damages or any other loss incurred or suffered by Distributor as a result of

- (a) the breach by Sheersense® of the terms of this Agreement,
- (b) the operation of Distributor's business,
- (c) any incorrect or wrong data or information provided by Sheersense®, or
- (d) the failure to provide any information or data necessary for Distributor to operate its business, including without limitation, the enrolment and acceptance of Distributor or the payment of commissions and bonuses.

Distributor agrees that the remedy at law or in arbitration for any breach of any provision of this Agreement shall be inadequate and that, in addition to any other remedies it may have, Sheersense shall be entitled, without necessity of proving actual damages, to temporary and permanent injunctive relief to prevent the breach or further the breach of any provisions of this Agreement.

## **27. NOTICES.**

Any notice or other communication required to be given under this Agreement, unless indicated that delivery by email is acceptable, shall be in writing and shall be delivered personally, or sent by pre-paid first-class post or recorded delivery or by commercial courier, to each party required to receive the notice or communication at its address as set out here:

Supplier: Sheersense Limited, c/o Linggard & Thomas, Office Building, Stret Myghtern Arthur, Nansledan, Newquay, Cornwall TR8 4UX,

the Distributor's Address being that notified to Sheersense Ltd at the time of initial registration or subsequently amended by the Distributor, or as otherwise specified by the relevant party by notice in writing to each other party.

Any notice or other communication shall be deemed to have been duly received:

if delivered personally, when left at the address and for the contact referred to in this clause; or

if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting; or

if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

The provisions of this Section shall not apply to the service of any proceedings or other documents in any legal action.

## **28. THIRD PARTIES.**

A person who is not a party to this Agreement shall not have any rights under or in connection with it by virtue of the Contracts (Rights of Third Parties) Act 1999 but this does not affect any right or remedy of a third party which exists, or is available, apart from that Act. The rights of the parties to terminate, rescind or agree any variation,



waiver or settlement under this Agreement are not subject to the consent of any person that is not a party to this Agreement.

## **29. NO PARTNERSHIP OR AGENCY.**

Except as expressly provided, nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, nor authorise a party to make or enter into any commitments for or on behalf of the other party.

## **30. GOVERNING LAW AND JURISDICTION.**

This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non- contractual disputes or claims) shall be governed by and construed in accordance with English law. The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

## **31. SURVIVAL.**

The covenants and obligations of Distributor to protect the trade Secrets, confidential information and intellectual property of Sheersense® and SeneGence®, including, without limitation, those obligations and covenants contained in Sections 13, 16, 17 and 19, shall survive termination of this Agreement.

## **32. MINISITES**

For Distributors that make use of a Sheersense "MiniSite", we ask those Distributors for their PayPal API Client ID, API Secret and Webhook ID.  
We use this information to connect to your PayPal account on an ad-hoc basis to enable us to perform various tasks required to keep your mini site running.  
We save this information in an encrypted format in our database.

## SCHEDULES

Schedule 1. The Products: The products available for purchase will be the Supplier's entire range of cosmetic and other products and services as published by the Supplier for the time being. The Supplier may vary the products as it thinks fit to exclude one or more of the products from this Agreement if the availability of such products is permanently or temporarily discontinued for any reason. The Supplier shall give notice of any changes to Product specifications to the Distributor as soon as reasonably practicable.

Schedule 2. Territory is the United Kingdom, Channel Islands and the Isle of Man. If a distributor is known to reside outside of the Territory for more than 28 days of the year and places orders whilst outside the territory, Sheersense Ltd maintains the right to hold all orders until notification of the distributor residing at an address within the Territory.

Schedule 3. The Trade Marks: Current Trade mark information can be obtained on request.

Schedule 4. Minimum Quantity: The Distributor must place orders with the Supplier totalling at least £200 (100PV) in a six-month period.

Schedule 5. Prices and Commission: Prices and Distributor's Commission will be as published by the Supplier for the time being. Commission payments do not attract VAT and do not apply to Registration fees or Lips Kit purchase. Distributor Commission cannot be paid if annual Registration Fees are unpaid.

Schedule 6. Supplier's conditions of sale: The Conditions of Sale document can be found on the website at [www.Sheersense.com](http://www.Sheersense.com). The statutory rights of any purchaser as a consumer will not be affected.

Schedule 7. Supplier's Quality Standards and Criteria for Internet Sales: If the Distributor uses a third-party website to distribute the Products, that website shall comply with these quality standards and conditions.

In particular, if the Distributor's website is hosted by a third-party platform, the Distributor shall ensure that customers do not visit its website through a site carrying the name or logo of the third-party platform. The use on the Internet of any Sheersense® or SeneGence® trademarked or copyrighted material, including but not limited to Sheersense® and SeneGence® trade names, logos, artwork, and anything that is similar to Sheersense® or SeneGence® trademarked or copyrighted material, shall be subject at all times to the general requirement that such use be specifically approved in writing by Sheersense Limited. Any use on the Internet of trademarked or copyrighted material must identify the Distributor boldly, clearly, and prominently as an Independent Distributor of Sheersense Limited. When included in listings of any kind, Distributor websites must appear under the most appropriate topical heading available through that service. Where available, such listings can appear only in "Independent Distributor," "Independent Contractor," or "Distributor" categories, and the Distributor must list him or herself as an Independent Distributor rather than as "Sheersense" or "SeneGence" or anything that could cause consumers to believe that the Distributor is the corporate office or anything other than an Independent Distributor. The use on the Internet of any trademarked or copyrighted material shall be specifically limited as follows. Prohibited Uses: Trademarked or copyrighted material shall not be used as any part of a domain name or URL (Internet address) (This policy applies to all domain names and URLs, regardless of the universal domain extension utilized. For example,

www.ILoveSeneGence.com, www.ILoveSeneGence.biz, and <http://store.yahoo.com/LipSense.html> are all prohibited uses of trademarked or copyrighted material); Trademarked or copyrighted material shall not be used as any part of a meta tag or website description of a Distributor's website (such material shall not be used anywhere in the HTML source code of a Distributor's website (except as otherwise specifically authorized herein); Distributors may not place buttons, pop-up ads, banners, or any other type of Internet advertisement on any website, or anywhere on the Internet, using trademarked or copyrighted material; Distributors may not offer any SeneGence® product for sale on any unauthorised internet site, including any auction site or other website where sale of product is conducted through the solicitation of offers on the Internet (refer to the Policies and Procedures Guide particularly sections 4 and 5 for relevant requirements);

Distributors may not in any way purposely direct Internet traffic to unapproved websites or allow Internet traffic to be directed to unapproved websites using trademarked or copyrighted material. Limited Uses: Trademarked or copyrighted material shall not be used as part of the content of any website or webpage, except on a Company-approved website or if specifically approved by Sheersense Limited or as provided to the Distributors by Sheersense® as a website page referencing the product and the Distributor's Site; Trademarked or copyrighted material shall not be used by Distributors to register for any Internet search engine or other information retrieval system on the Internet, except as approved in writing by Sheersense Limited.