**Vearsa Distribution Agreement**

**SCOPE:**

This Distribution Agreement (“**Agreement**”) is as of the date of electronic or printed signature (the “Commencement Date”) by and between Vearsa US Inc., a New York corporation“(“**Vearsa**”) having its principal place of business at 79 Madison Avenue, New York, 10016 and you the Publisher. (“**Principal**”).

Vearsa has agreed to act as digital distributor on behalf of the Principal in the supply of digital eBook files and metadata (Works) to approved Outlets in all specified territories in accordance with the terms of this agreement and to process the subsequent sales reports from these.

**IT IS AGREED** as follows:

1. **GRANT OF RIGHTS**

The Principal hereby appoints Vearsa as its non-exclusive distributor to resell, distribute and make available the Digital Titles through the Authorised Channels. Vearsa shall also be entitled to exercise such ancillary digital rights as are reasonably necessary to effect the intent of the foregoing and in order to utilise the relevant technology, including the right to reproduce, adapt, convert, cache, encode, encrypt, decrypt, transmit, make available and otherwise utilise the Digital Titles in preparation for distribution.

1. **TERM AND TERMINATION**

This Agreement begins on the Commencement Date and shall, subject to the provisions of sections 2(b) and 2(c), remain in force for a minimum of two years and shall be automatically renewed for further periods of 2 years on the commencement anniversaries unless and until terminated by either party by not less than forty five days' written notice to the other.

If either party commits a material breach of any provision of this Agreement, the non-breaching party may terminate this Agreement provided that the breaching party has not resolved the material breach within thirty (30) days of its receipt of written notice of the breach.

This Agreement may be terminated by notice in writing by a party if any of the following events affect the other party;

1. if it shall present a petition or have a petition presented by a creditor for its winding up or shall enter into liquidation (other than for the purpose of reorganization);
2. shall call any meeting of its creditors, shall have a receiver of all or any of its undertaking or assets appointed;
3. shall have an Trustee appointed over all or any of its undertaking or assets or shall be deemed by virtue of the relevant statutory provisions under the applicable law to be unable to pay its debts, or;
4. shall cease to carry on business or suffer any procedure equivalent to those hereinbefore detailed under any applicable law.

The expiry or termination of this Agreement shall be without prejudice to the rights of the parties accrued up to the date of such expiry or termination and up to that date Vearsa shall be entitled to fulfil all orders for Digital Titles received as at that expiry or termination and all rights granted by Vearsa to other parties, including end users, shall remain in full force and effect. Subject to the foregoing, Vearsa shall have no further or continuing right to resell the Digital Titles after the expiry or termination of this Agreement and the Principal shall be entitled to the removal of all Principal supplied copies of the Digital Titles held by Vearsa and any other materials of any kind whatsoever given to Vearsa during the term of this Agreement. Vearsa will notify the retailers who have been supplied the Principal’s Digital titles to the effect that Vearsa shall have no further or continuing right to distribute the Digital Titles after the date of expiry or termination of this Agreement.

1. **SERVICES AND SERVICES SCHEDULE**

Vearsa may provide additional ancillary services to the Principal, as described in the Services Schedule or separate written agreement. The Services Schedule and the sections of this Agreement shall be construed as mutually explanatory of one another. If any conflict or inconsistency arises between the terms of the Services Schedule and the sections of this Agreement, the terms of the Services Schedule shall prevail, but only to the extent of that inconsistency.

1. **DELIVERY**

The Principal must deliver to Vearsa or its designated sub-contractor all copies of Digital Titles in such format as may be determined by Vearsa. The Principal agrees that title to the electronic file of the Digital Title provided to Vearsa will transfer to Vearsa upon receipt, provided that title to the electronic file and physical printed works does not include any title to the Content thereof, which remains vested in the Principal or its suppliers or licensors.

1. **REMOVAL OF TITLES**
2. The Principal may instruct Vearsa to remove titles from distribution at any time, either through the platform or other correspondence. The Principal understands this can take up to 48 hours to effect. Vearsa agrees to use all reasonable endeavours to ensure the titles are taken down as quickly as possible.
3. Vearsa reserves the right to immediately remove Digital Titles and Content from its catalogue if:
4. Vearsa, at its sole discretion, has reason to believe that such Content or any part thereof breaches any of the Principal’s representations and warranties set out in sections 13 and 14 of this Agreement or any additional representations;
5. Vearsa receives a bona fide request from a governmental or regulatory authority, and Principal does not remedy such problem immediately upon Vearsa’s request; or
6. the Content could otherwise cause liability or damage to Vearsa or its Group Companies or any of their respective officers, directors, employees or agents. For the avoidance of doubt, Vearsa and its contracted partners shall be neither responsible nor liable to Principal in any way whatsoever in respect of any retail or end-user customers that fail to remove Digital Titles or Content or that continue to advertise digital material that Vearsa removed from its catalogues or that continue to solicit or to process orders for Content that Vearsa has removed from its catalogues save that any money received from the Authorised Channels by Vearsa shall be accounted to The Principal in accordance with sections 6 and 7 of this Agreement.
7. **PAYMENT**
8. Vearsa reserves the right to automatically deduct fees as described in the service schedule for the provision of services to the Principal and to list the Digital Titles on the “Vearsa” web application and to make available for purchase at agreed discounts by the various Distribution Channels.
9. Net Sales amounts payable by Vearsa to the Principal in respect of Digital Titles sold are set out online within the Principal’s Vearsa account. Each Net Sales amount shall be calculated based on the suggested retail price less the applicable Distribution Channel discount, so that the Principal is entitled to receive the agreed percentage of the Suggested Retail Price less any fees due to Vearsa. For the avoidance of doubt, Distribution Channels may decide to sell Digital Titles at a price below the applicable Suggested Retail Price but any additional discount applied by the Distribution Channel does not affect the Net Sales amounts payable to the Principal.
10. The Principal may also pay Vearsa for additional Services such as , for example, monthly title management fees, electronic file conversion or other Services all provided by Vearsa and pre-agreed with the Principal at agreed charges and these additional Services shall be detailed separately in monthly invoices and payable 30 days from Invoice Date. Monthly or quarterly fees as outlined in the service schedule or separately by agreement will be invoiced from the commencement date and at the regular intervals thereafter.
11. Payment by Vearsa shall occur at regular intervals, normally 90 days after month end unless stated otherwise in the Services Schedule. As Vearsa relies on collecting payment from retailers, the Principal accepts that there may be occasional, reasonable delays in payment, which shall be notified to Principle prior to payment due date.
12. Vearsa reserves the right to automatically set off or deduct overdue amounts or invoices owed by the Principal to Vearsa against any amounts owed by Vearsa to the Principal.
13. **ACCOUNTING**
14. Vearsa agrees to maintain complete and accurate records regarding the resale and distribution of Digital Titles during the term of this Agreement. Vearsa’s “Vearsa” web application may be accessed by the Principal and Vearsa shall provide details of sales of Digital Titles through this or a similar application.
15. For the avoidance of doubt, the Principal shall be entitled to be paid the Net Sales Value in respect of any Digital Title sold in circumstances where a successful order, delivery and receipt of the Digital Title by a retailer or end user has occurred. If a technical malfunction requires multiple deliveries to a single retailer or end user to successfully fulfil an order, such multiple deliveries will be deemed to be a single sale of the Digital Title concerned.
16. A report showing the total of all amounts due for a month in respect of sales by Outlets for whom Vearsa provides a full Service distribution, as shown in the Services schedule, shall be prepared by Vearsa within 30 days of the end of the month of reporting by the Outlets.
17. Some Outlets report on a quarterly basis and therefore the relevant month for that Outlet is the last month of that quarterly period.
18. Vearsa shall be entitled to charge the Fee based on the total of all amounts due from full Service distribution retailers as reported on the report referred to in 7(a)
19. Payment to The Principal shall be due 60 days after the finalised sales reports. (Typically 90 days after the end of the month in which the sale occurred). Payment will be made in USD, GBP or Euro, dependant on the country of sale. Sales in other currencies are converted in to USD.
20. Payments shall be made by Vearsa 3 months in arrears once a £100GBP threshold has been reached. USD & Euro earnings are individually converted to GBP for the purpose of calculating this threshold, but are paidseparately in the currency upon which they were earned.
21. **UNDERTAKINGS BY THE PRINCIPAL**

The Principal undertakes to Vearsa that during the term of this Agreement it shall;

1. provide Vearsa with all relevant information concerning the Digital Titles and Content and provide such other support and assistance to enable Vearsa to effectively distribute the Digital Titles; and
2. inform Vearsa of any conflicts arising in the duplication of distribution Services. Principal will specify the outlets they wish to Vearsa to supply in the services schedule and shall configure same prior to the submission process to the Vearsa application. All existing agreements can be transferred to Vearsa upon instruction from the Principal and prior to the Commencement Date.

(c) (i) The Principal will, at its sole cost and expense, cover Vearsa with respect to lawsuits arising from the distribution of Works under Principals” liability insurance policy carried by the Principal (i.e., a policy covering such risks as defamation, invasion of privacy and copyright and trademark infringement) that covers the lawsuit (the “Policy”). Coverage will extend only to such publication of the Work or and will be subject to the terms and conditions of the Policy and to the Policy’s deductible and coverage limits (which may be reduced or exhausted by claims relating to other works).

 (ii) The Principal will have the right to select counsel to represent any or all of the defendants in any lawsuit and to control the defense. Vearsa agrees to cooperate fully with the counsel selected by the Principal in the defense of the lawsuit. Failure to cooperate will be a material breach of this Agreement and may result in loss of insurance coverage.

1. **GEOGRAPHIC RESTRICTIONS**

Vearsa agrees to use all reasonable endeavours to ensure that, in its dealings with retailers and other distributors, any geographic restrictions which have been notified to Vearsa by the Principal within Principal’s Metadata are enforced by Distribution Channel so as to limit the distribution of the Digital Titles or Content concerned to particular territories as defined in Principals Metadata. However, the Principal acknowledges that, due to the nature of the Internet, Digital Titles and/or Content may be sold or available for sale in geographic territories in respect of which the Principal does not have territorial rights and, accordingly, the Principal waives any claim for damages against Vearsa for sales of its Digital Titles and Content in territories in respect of which the Principal does not have the right to sell or distribute the same.

1. **DIGITAL RIGHTS MANAGEMENT**

Vearsa agrees to incorporate into the Principal’s digital files the third party digital rights management system (“DRM”) protection as specified in the Services Schedule or otherwise agreed by Vearsa and the Principal; The Principal shall specify this at title level within the title Metadata provided to Vearsa. Vearsa intends to use the latest DRM technologies and the Principal acknowledges that all DRM technologies are owned and maintained by third party vendors. Vearsa use of any DRM format is subject to the terms and conditions of any applicable licence agreement with the relevant third party vendor. The Principal acknowledges that Vearsa has no control over the functionality or effectiveness of such DRM technologies and accordingly waives any claims against Vearsa from any and all liability resulting from a failure of the DRM technology, unless such failure was directly caused by gross negligence or wilful misconduct on the part of Vearsa.

1. **LICENCE; INTELLECTUAL PROPERTY**
2. Except with respect to the limited licence granted to Vearsa under this Agreement, the Content shall at all times remain the property of Principal and, if applicable, Principal’s licensors. Vearsa and its contracted partners are granted a limited, non-exclusive and non-transferable right and licence to use the Content, including cover, marketing images and first chapter material, to exercise its rights hereunder, including without limitation the right and licence to display, distribute, reproduce and store the Content on Vearsa’ on-premises systems and off-site systems operated by third party service providers.
3. The Principal is solely responsible and liable for all royalty or other compensation payments due to the authors or owners of the Digital Titles and Content.
4. Principal does not have and shall not acquire pursuant to this Agreement any right, title or interest in or to Vearsa’ trade names, trademarks, service marks, copyright, trade secrets, patents or any other of Vearsa’ intellectual or proprietary rights. Vearsa does not have and shall not acquire pursuant to this Agreement any right, title or interest in or to Principal’s trade names, trademarks, service marks, copyright, trade secrets, patents or any other of Principal’s intellectual or proprietary rights (including any such rights comprised in or relating in any way to the Vearsa web application or any other web application operated by Vearsa).
5. The Principal shall, while this Agreement remains in force, be entitled to access and use the Vearsa web application solely for the purposes set out in this Agreement and subject to any separate terms and conditions of use that may be in force from time to time and shall use all reasonable endeavours to keep all access to said platform secure and safe from harm.
6. Any files created by Vearsa at its own expense remain the property of Vearsa. Any such files will be maintained securely or destroyed upon the cessation or termination of this Agreement and the usage of such files is governed by the terms of this Agreement. All Content remains the property of the Principal at all times.
7. **CONFIDENTIALITY**

The parties may exchange information that is of a confidential and proprietary nature, both technical and commercial (collectively, the “***Confidential Information***”). Each party agrees not to disclose to any third parties any Confidential Information received from the other and agrees not to use any Confidential Information received from the other for any purpose other than performance under this Agreement. The parties acknowledge and agree that their respective remedy at law for any actual or threatened breach of this provision would be inadequate and that each party shall be entitled to specific performance or injunctive relief, or both, in addition to any damages otherwise recoverable in law. The confidentiality provisions of this section 12 will not apply to information that: (a) is not in fact kept as confidential by the disclosing party: (b) was known to the receiving party prior to its disclosure by the disclosing party, or is received by the receiving party, other than from a source that the receiving party knows is subject to a confidentiality agreement with the disclosing party: (c) is developed by the receiving party independently of its disclosure by the disclosing party, without use of the confidential or proprietary information, by one or more person(s) who do not have access to the confidential or proprietary information: or (d) is, or becomes other than by reason of a breach of this Agreement, generally known to the public.

1. **LIMITATION OF LIABILITY**
2. This section prevails over all other clauses and sets forth the entire liability of Vearsa and the sole and exclusive remedies of the Principal in respect of: (i) the performance, non-performance, the purported performance or delay in performance of this Agreement; and (ii) otherwise in relation to this Agreement or the entering into or performance of this Agreements.
3. Vearsa does not purport to limit or exclude any liability which may not be excluded or limited by applicable law.
4. Vearsa does not accept and hereby excludes any liability for breach of duty other than any such liability arising pursuant to the terms of this Agreement.
5. Vearsa hereby expressly excludes and shall have no liability for any indirect or consequential loss and such liability is excluded whether it is foreseeable, known, foreseen or otherwise.
6. To the fullest extent permitted by law, the total liability of Vearsa under or in any way connected with this Agreement and whether in contract, tort (including negligence) or otherwise, including (without limitation), liability expressly provided for under this Agreement or arising by reason of the invalidity or enforceability of any term of this Agreement, shall in no circumstances exceed a sum equal to the aggregate sums paid by Vearsa to the Principal during the six month period preceding the date upon which any such liability is agreed or determined.
7. The terms of this Agreement are in lieu of all other conditions, warranties or other terms concerning the appointment of Vearsa and the performance by Vearsa of its obligations hereunder which might but for this paragraph have effect between the Principal and Vearsa or would otherwise be implied into or incorporated into this Agreement or any collateral contract, whether by statute, common law or otherwise all of which are hereby excluded (including, without limitation, the implied conditions, warranties or other terms as to merchantability, fitness for purpose or as to the use of reasonable skill and care).
8. **WARRANTIES; INDEMNITY**

The Principal represents and warrants to Vearsa that:

1. it has the full, right, power and authority to enter into and fully perform this Agreement;
2. prior to delivery to Vearsa of any Digital Titles or Content, it has obtained all rights that are necessary for Vearsa or its Group Companies to exercise the rights granted under this Agreement and it is solely responsible for and must account for and pay owners, licensors, publishers, co-owners or co-administrators of any Digital Titles or Content any royalties with respect to the sale exploitation or use of such Digital Titles or Content and their respective shares, if any, of any monies payable under his Agreement;

1. it is the owner or authorised licensee of all geographic rights necessary and appropriate to enable Vearsa to exercise its rights hereunder;
2. the Digital Content does not and shall not infringe any copyright, trade mark, trade secret, patent or other intellectual property or proprietary right, or violate any right of privacy, publicity or other right of any person;
3. the Digital Content does not and shall not violate any applicable laws or regulations, including without limitation any export controls;
4. the Digital Content is not and shall not be libelous, slanderous, defamatory, obscene or indecent;
5. the Digital Content does not and shall not contain any recipes, formulae or instructions that, if implemented, might be injurious to end users, retailers or others; and
6. they have used their best endeavours to ensure that the Digital Content does not and shall not contain any viruses, Trojan horses, trap doors, worms or any other malicious computer programming routines that might damage a computer system.

Except to the extent caused by the gross negligence or wilful misconduct of Vearsa, the Principal shall defend, indemnify and hold harmless Vearsa, its parent, subsidiaries and Group Companies, and their respective officers, directors, employees and agents from and against any and all third-party claims, actions, proceedings, damages and expenses (including reasonable legal fees and costs), including but not limited to a breach of the representations and warranties set forth above.

1. **FORCE MAJEURE**

Any delay or failure of Vearsa or the Principal to perform its respective obligations under this Agreement (but excluding obligations to make payment of money due) shall be excused if and to the extent that such delay or failure is caused by an event beyond the reasonable control of the non-performing party, including without limitation, any act of God, actions by any government authority, fires, floods, natural disasters, riots, wars, labour problems (including lockouts, strikes, and slowdowns), failure of or interruptions in telecommunications or data transmission systems, or the inability to obtain materials, labour, equipment or transportation.

1. **ASSIGNMENT/SUB-CONTRACTORS**

Neither party may assign or otherwise transfer this Agreement or any of its rights and obligations hereunder or any portion thereof without prior written approval of the other, which will not be unreasonably withheld; provided, however, that Vearsa may, without the prior written approval of the Principal, assign or otherwise transfer this Agreement or any of its rights or obligations hereunder, or any portion thereof, to any Group Company. This Agreement will be binding on and inure to the benefit of the Principal and Vearsa and their respective permitted successors and assigns. Vearsa is entitled to appoint sub-contractors to fulfil its obligations under this Agreement. Vearsa shall remain responsible for ensuring that its sub-contractors comply with the applicable provisions of this Agreement when performing services for or on behalf of Vearsa.

1. **NO PARTNERSHIP**

Nothing contained in this Agreement shall be deemed to create any partnership, agency, joint venture or fiduciary relationship between Vearsa and the Principal for any purpose.

1. **GOVERNING LAW AND JURISDICTION**

This Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with the laws of New York and the parties hereby submit to the exclusive jurisdiction of the courts of New York as regards any dispute or proceedings arising out of or in connection with this Agreement.

1. **ENTIRE AGREEMENT**

Each party acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms, and further agrees that this is the complete and exclusive statement of the Agreement between the parties with respect to the subject matter herein and supersedes all prior proposals, understandings and all other agreements, oral and written. This Agreement may not be modified or altered except by a written instrument duly executed by both parties.

1. **NOTICES**

Any notice required or permitted under the terms of this Agreement shall (unless otherwise provided) be in writing and shall be delivered in person, sent by registered post, properly posted and fully prepaid in an envelope properly addressed or sent by fax and confirmed by post to the respective parties at their address as set out above or to such other address or facsimile number as may from time to time be designated by notice hereunder. Any such notice shall be in the English language and shall be considered to have been given at the time when actually delivered, sent by facsimile or in any other event within five days after it was mailed in the manner hereinbefore provided.

1. **HEADINGS**

The headings of the sections of this Agreement are inserted for convenience of reference only and are not intended to be part of or affect the meaning or interpretation of this Agreement.

1. **SEVERABILITY**

In the event that any of these terms, conditions or provisions shall be determined by any competent authority to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall to that extent be severed from the remaining terms, conditions and provisions which will continue to be valid to the fullest extent permitted by law.

**DEFINITIONS**

For the purposes of this Agreement, the following terms shall have the following respective meanings:

“**Authorised Channels**” means all means of online and electronic distribution, including online or remote access and electronic download via the Internet, cellular networks and wireless networks, whether existing now or invented in the future;

 **“Commencement Date”** means the date of this contract;

“**Content**” means all content comprised in Digital Titles;

“**Digital Titles**” means such eBook titles as are agreed from time to time between the Principal and Vearsa;

**“Distribution Channel(s)”** means all retail or library or other 3rd party reseller of Content as contracted with Vearsa;

“**Group Company**” means, with respect to Vearsa or any corporation which controls, is controlled by or is under common control with Vearsa and for this purpose “control” means direct or indirect beneficial ownership of more than fifty per cent (50%) of the voting share capital of the body corporate concerned;

**“Metadata”** means the specific information about each title which determines how and where it can be sold. Such information includes, but is not limited to, ISBN, genre, title, publisher, publication date, territories rights.

**“Net Sales /Net Sales Value”** means the Suggested Retail Price less the applicable individual Distribution Channel discount.

**“Principal”** means The Publisher of Content

**“Service”** means all services undertaken on behalf of the Principal

**“Suggested Retail Price”** means the current suggested retail price in varying currencies for the Content as provided to Vearsa in Principal’s Metadata and as amended from time to time;

“**Services Schedule**” means the Services Schedule above, which forms an integral part of this Agreement.

 “**Suggested Retail Price”** means the price the Principal sets for retailers for sale to customers exclusive of VAT or sales tax