Draft Term Sheet: Simple Pharma Agency Agreement

Please note that standard boilerplate terms are to be inserted, and is subject to review.

Background

[●] ([company registration details]) (“**Principal**”), is [●]. Principal appoints The Simple Pharma Company Limited (“**Simple Pharma**”), as its agent for the supply chain management (including procurement), selling and distribution of the products, and licenses the product intellectual property rights to the products to Simple Pharma.

This term sheet records the proposed terms for the agency agreement between the Parties (the “**Agreement**”). This term sheet does not create any legally binding obligations.

Capitalised terms shall have the meanings given to them in Schedule 1 – Definitions.

Key Terms

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|  | **Parties** | [●] with company number [●] at registered address [●] as the “**Principal**”.  The Simple Pharma Company Limited with company number 661549 at registered address Ground Floor, 71 Lower Baggot St, Dublin D02 P593, Ireland as the “**Agent**”.  Each, a “**Party**” and together, the “**Parties**”. |
|  | **Appointment** | The Principal appoints the Agent to act as its agent under the terms of this Agreement. The Agent shall have the right to negotiate and enter into contracts with third parties on behalf of the Principal, and to duly bind the Principal to the terms of such contracts. The Agent shall not be required to disclose in third party agreements that it is the Agent to the Principal. |
|  | **Intellectual property licence** | The Principal grants a worldwide exclusive, non-royalty bearing licence under the Licensed IP in all territories aside from the Excluded Territories to the Agent for the purposes of fulfilling the Agent Obligations.  The Agent may sublicence the Licensed IP to its Affiliates without consent from the Principal, including to The Simple Pharma Company Ltd.  The Agent may sublicence the Licensed IP to third parties with the consent of the Principal.  Title to any and all New Intellectual Property developed in the course of performing the obligations under this Agency Agreement solely through the efforts of the employees, agents, independent contractors, or joint venture partners of the Agent (or any sub-contractors) shall vest solely and exclusively in the Principal, provided that any such New Intellectual Property will become subject to the licenses granted in this Agreement.  The Principal agrees to maintain the Licensed IP and to indemnify the Agent against any third party claims for IP infringement relating to the Agent’s proper use of the Licensed IP in the fulfilment of the Agent Obligations. |
|  | **Agent Obligations** | The Agent agrees to:   * [undertake the rights and responsibilities associated with applying for and maintaining the Marketing Authorisations for the Licensed Products in all territories aside from the Excluded Territories, including interactions with regulatory authorities, market access activities (including pricing and reimbursement), and conducting pharmacovigilance activities;] * [arrange for the manufacture of the Licensed Products and manage the supply chain established by the Principal, in accordance with GMP and GDP as applicable. For the avoidance of doubt, the Agent Obligations do not include the sourcing and negotiation of contracts with manufacturers; and] * [Commercialise the Licensed Products in all territories aside from the Excluded Territories.]   (“**Agent Obligations**”)  In performing the Agent Obligations, the Agent agrees to look after the interests of the Principal and act dutifully and in good faith. In particular, the Agent must:   * make proper efforts to negotiate and, where appropriate, conclude the transactions it is instructed to take care of; * communicate to the Principal all the necessary information available; * comply with reasonable instructions given by the Principal.   The Agent agrees to bear all liabilities and costs resulting from activities performed by Agent (including subcontracted activities) to fulfil the Agent Obligations.  The Agent agrees to maintain adequate insurance against its liabilities pursuant to this Agreement. |
|  | **Principal Obligations** | The Principal agrees to act dutifully and in good faith in its performance of this Agreement. In particular, the Principal must:   * provide the Agent with the necessary information and documentation for the Agent to fulfil the Agent Obligations; and * provide instructions to the Agent when requested, including instructions regarding the identity and location of the manufacturing site.   The Principal agrees to bear all commercial risks and costs associated with Licensed Product inventory purchased or held in the process of the Agent fulfilling the Agent Obligations, for example relating to the obsolescence of Licensed Product inventory due to failure to sell the Licensed Products. |
|  | **Legal title** | In the course of fulfilling the Agent Obligations, the Agent agrees to hold all property and assets in its (or its subcontractors’ or Affiliates’) possession (including Working Capital) on behalf of and in trust for the Principal (“**Trust Property**”). The Agent shall hold all Trust Property separately from its own assets, as follows:   * Cash collected by the Agent as a result of Commercialising the Licensed Products shall be held in a bank account designated for cash held on trust. * Any receivables due as a result of the Commercialising the Licensed Products shall be recorded as a liability in the Agent’s accounts.   The Principal shall be the beneficial owner of all Licensed Product inventory regardless of whether the legal title in the Licensed Product inventory is held by the Agent.  On a regular basis, the Agent shall transfer the cash earned from Commercialising the Licensed Products to the Principal, net of any Agency Fees and Pass-Through Costs. To the extent possible, the Agent shall itemise Passthrough Costs incurred by product or sub-portfolio of product. |
|  | **Agency fee** | The Agent shall invoice the Principal for the activities conducted in the course of fulfilling the Agent Obligations in accordance with the rate card appended to this Agreement (“**Agency Fees**”). |
|  | **Subcontractors** | The Agent shall be permitted to subcontract any of its obligations to an Affiliate without the consent of the Principal.  The Agent may subcontract their obligations under this Agreement to a third party if the Agent has reviewed and approved the third party in accordance with applicable law and regulation.  If the Agent subcontracts its obligations, the Agent shall continue to be liable for its obligations under the Agreement as if it performed those obligations itself.  Where the Agent subcontracts its obligations under the Agreement, it shall provide the Principal with such information about the subcontracting as it may reasonably require. |
|  | **Limitation of liability** | Except for liability caused by a Party’s negligence, wilful misconduct or bad faith, (i) no Party will have any liability to the other Party for any indirect, consequential or special damages and (ii) neither Party shall be liable to the other Party for more than the previous year’s Agency Fees. |
|  | **Term** | The term of this Agreement will commence on the Effective Date and, unless sooner terminated, shall continue in effect so long as the Agent, its Affiliates or sublicensee are actively Commercialising the Licensed Products.  The Principal shall be permitted to terminate the Agreement upon notice, either for the entire agreement or for a particular country. The period of the notice shall be:   * 1 month for the first year of the Agreement; * 2 months for the second year commenced; * 3 months for the third year commenced and for the subsequent years. |
|  | **Post-termination** | Following termination of this Agreement:   * The Agent shall assign and transfer all Marketing Authorisations it holds to the Principal or its nominee (at the Principal’s election). * Licensee's sublicenses with respect to Licensed Products, if any, shall, at the request of the Licensor, be assigned to the Licensor to the furthest extent possible. In the event the Licensor does not request assignment of any such sublicenses, then the rights of such sublicensees with respect to Licensed Products shall terminate upon termination of Licensee's rights with respect to Licensed Products. * Licensee agrees to fully cooperate, at its own expense, with the Licensor and its designee(s) to facilitate a smooth, orderly and prompt transition of the Marketing Authorizations and Commercialisation of Licensed Products to the Licensor or its designee(s).   The Agent shall invoice the Principal for the activities conducted in the course of fulfilling post-termination activities in accordance with the rate-card appended to this Agreement. The Agent shall not receive any indemnity payments or commission beyond such payments. |
|  | **Insolvency** | In the case of insolvency of the Agent, all Trust Property shall be excluded from its estate and shall be transferred promptly to the Principal or the Principal’s nominee. |

# Schedule 1 – Definitions

“**Affiliate**” shall mean, with respect to a specified person or entity, any other person or entity that controls, is controlled by, or is under common control (whether through equity ownership, contract, or otherwise) the specified person or entity.

“**Commercialise**” means to import, export, distribute, offer for sale, sell, market and promote the Licensed Products.

“**Effective Date**” means the date on which the Services Agreement is signed.

“**Excluded Territories**” means the countries in which a third party has been granted exclusive licence to Commercialise the Licensed Products, as recorded at the Effective Date in an appendix and as notified to the other Party from time to time.

“**Licensed Products**” means the products listed in Schedule 2 and any other products to be notified to the Licensee from time to time.

“**Licensed IP**” means the knowhow, trademarks and patents associated with the Licensed Products.

**“New Intellectual Property**” means any and all inventions, know-how, developments, methods, processes, improvements, and other information relating to the Licensed IP or Licensed Products in any form, technical or economic, patentable or unpatentable, confidential or otherwise to the extent they are first conceived or developed by either Party or by both Parties after the date of this Agreement.

“**Pass-Through Costs**” means documented direct costs incurred by the Agent in the [management of the Licensed Products], including necessary fees payable to local health authorities to maintain the Licensed Products.

“**Working Capital**” means inventory, cash, accounts receivable and accounts payable.