

This Distributor Agreement (“**Agreement**”) is made on

2023

Between

- (1) **FELEMENT SDN. BHD. (Registration No. 201901041158 (1350488-V))**, a private limited company duly incorporated under the laws of Malaysia and having its registered address at **13-5, The Boulevard Offices, Mid Valley City, Lingkaran Syed Putra, 59200 Kuala Lumpur** (hereinafter referred to as “**FELEMENT**”); and
- (2) The party whose name and details are described in the **First Schedule** of this Agreement (hereinafter referred to as “**Distributor**”).

(Hereinafter referred each as a “**Party**” and collectively, the “**Parties**”)

RECITALS

- A. FELEMENT is engaged in the business of manufacturing and selling the Products (herein below defined).
- B. The Distributor is desirous and FELEMENT is agreeable to grant to the rights to the Distributor to participate in the multi-level marketing network and direct selling program of FELEMENT subject to the terms and conditions set out in this Agreement and the Policies.

1. DEFINITIONS

1.1 In this Agreement, unless the contrary intention appears:

“**Business Support Materials**” means brochures, booklets, flyers, banners, signage, tools and/or contents in any form whatsoever provided by FELEMENT to the Distributor at the Distributor’s cost.

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

“**Confidential Information**” means the confidential information of FELEMENT which relates to the subject matter of this Agreement and includes:

- (a) confidential information relating to the technology and design of the Products;
- (b) information relating to the personnel, policies, clientele or business strategies of FELEMENT;
- (c) information relating to the terms upon which the Products to be distributed pursuant to this Agreement and/or applicable Policies; and
- (d) Intellectual Properties and IPR.

“**Customers**” means the customers of the Distributor who are the retail consumer and/or consumer of the Products and/or FELEMENT.

“**Intellectual Properties**” means all patents and patent rights, trademarks and trade mark rights, trade names and trade name rights, service marks and service mark rights, service names and service name rights, brand names, processes, copyrights and copyright rights, trade dress, business and product names, logos, slogans, trade secrets, industrial models, processes, designs, methodologies and related documentation, technical information, manufacturing, engineering and technical drawings, know-how and all pending applications for and registrations of patents, trademarks, service marks and copyrights and “**IPR**” shall be construed accordingly;

“**Order**” means a request by the Distributor in writing for the supply and delivery of the Products as in accordance with the terms of this Agreement;

“**Personnel**” means in relation to a body corporate, that body corporate’s directors, officers, employees, agents, contractors and subcontractors and employees of its agents, contractors and

subcontractors;

“**Policies**” means any policies applicable to the Distributor including the Distributors’ Policy and Procedures and/or standard of procedures (“**SOP**”), which may be amended from time to time by FELEMENT and published on FELEMENT’s official website.

“**Products**” means the products under the marks, logos, trade and/or brand name of “**FELEMENT**”.

2. DURATION

- 2.1 This Agreement will commence on the Commencement Date and shall valid, binding and continue for the term of this Agreement unless expired (due to non-renewal), revoked or terminated in accordance with clause 8 of this Agreement.
- 2.2 The Distributor may renew this Agreement in the manner as provided in the Policies.

3. GRANT OF RIGHTS

- 3.1 FELEMENT grants to the Distributor and the Distributor accept the granting of the non-exclusive, limited and non-subcontractable independent distributorship right in Asia or any other countries as may be authorised by FELEMENT to market, promote, sell and distribute the Products for the term of this Agreement.

4. ORDERS, DELIVERY AND PAYMENT

- 4.1 The Distributor or the Customers shall purchase the Products directly from FELEMENT’s Head Quarter(s) (via Pick Up or Online Shopping Services) or from FELEMENT’s Business Centre (via Pick Up) according to the terms provided in the Distributor Application Form, this Agreement and the Policies.
- 4.2 Each Order placed by the Distributor will be formed as a purchase order between the Distributor and FELEMENT (“**Order**”), which is an integrated part of this Agreement.
- 4.3 FELEMENT shall only process the valid and completed Order that was submitted formally by the Distributor in the manner as provided in clause 4.1 above. The Distributor shall ensure the accuracy of the information as maybe required by FELEMENT, including but not limited to code and quantity of the Products ordered, the Distributor’s identity, recipient’s name, delivery address, shipping method, and payment method.
- 4.4 All Orders, including all expenses/costs related to receiving the Products (if any), must be paid in full, processed and accepted by FELEMENT prior to releasing the ordered Products to the Distributor or the Customer(s) via self-pick up, delivery or shipment services, as the case maybe. The Distributor or the Customer(s) may receive the Products at the location stipulated in the Order and FELEMENT may at any time in its sole discretion impose delivery charges or a minimum order amount.
- 4.5 FELEMENT reserves the right for making the final decision to restrain the quantity of the Product(s) being ordered by the Distributor. FELEMENT may at any time, without prior notice, stop, decrease the production or the replenishment or change the Products (the packaging, the name or the Product itself) and sell the Products with their modifications to the Distributor. In this case, FELEMENT shall not assume any legal responsibility in case of losses or damages that the Distributor or anyone else would suffer.
- 4.6 FELEMENT reserves the rights to revise the price of the Products to the extent of any increase in costs which are reasonably incurred by FELEMENT without prior written notice.

- 4.7 The Distributor understands that the delivery of the Product(s) is arranged subject to the availability of the Products in FELEMENT's stock. FELEMENT shall not be liable in any way for any charges, losses or damages which the Distributor may incur as a result of a delivery delay.
- 4.8 The Distributor shall verify that an Order is complete. FELEMENT shall be liable in the event of missing/damaged products prior to handover of the Products to the Distributor. FELEMENT shall not be liable if any claim from the Distributor occurs upon the signature of the invoices and/or the delivery notes with regards to the Order.

5. PARTIES' OBLIGATIONS

5.1 FELEMENT shall at all times:-

- (a) remit commissions payable to the Distributor on a timely basis upon the Distributor's achieving the target in accordance with FELEMENT's remuneration system as maybe determined by FELEMENT from time to time; and
- (b) at the Distributor's cost, to supply the Distributor Business Support Materials.

5.2 The Distributor shall at all times:-

- (a) conduct its independent distributorship business in a professional and ethical manner at all times and shall not engage in any deceptive, misleading or unethical practices or advertising at any time;
- (b) not act in any way, including his/her/its actions outside the scope of his/her/its distributorship, which could be considered detrimental to the business or reputation of FELEMENT or its Distributor. FELEMENT has the right to, in its sole discretion, determine what actions may be considered detrimental and take action against the Distributor;
- (c) not to contact, either directly or indirectly, FELEMENT's vendors, suppliers, advisory board Distributors, basic research partners, universities, or any other advisors or consultants of FELEMENT without the prior written consent of FELEMENT;
- (d) not in any manner whatsoever modify, amend and/or change the Business Support Materials. Any materials prepared by the Distributor including without limitation to PowerPoints, presentation slides pertaining to FELEMENT and/or the Products for marketing purposes by way of Zoom, offline session, any social media live streaming and/or other means shall subject to FELEMENT's approval ("**Presentation Slides**");
- (e) ensure the Presentation Slides shall have minimum **Two (2)** slides incorporating the summary of the following:-
 - (i) FELEMENT'S company profile; and
 - (ii) founder of FELEMENT, Datin Dr. Cherlin Cheah ("**Founder**") in which credit must be given to the Founder on her expertise, particularly her coaching, teaching, training and/or any relevant seminars, talks and/or programs. Distributor shall brief the Customers that the Founder is the creator of such 5 Elements Numerology and/or any other FELEMENT's programs.
- (f) not make any promises, representations, warranties and/or guarantees with reference to the Products except such as are expressly authorised by FELEMENT in writing; and
- (g) comply with any and all applicable laws, rules, regulations, and Policies related to the advertising, sale, distribution and marketing of the Products.

6. INTELLECTUAL PROPERTY

- 6.1 Distributor acknowledges that FELEMENT owns all proprietary rights in and to the Intellectual Property and IPR related to the Products (“**FELEMENT IP**”) and the license in respect of the Distributor’s use of FELEMENT IP will cease upon termination of the status of the Distributor. All goodwill arising from the Distributor’s use of FELEMENT IP shall inure solely to the benefit of FELEMENT.
- 6.2 The Distributor shall not:-
- (a) alter, remove or tamper with any FELEMENT IP used on or in relation to the Products; and
 - (b) use in relation to the Products any trade marks other than the FELEMENT IP attached to the Products without approval in writing from FELEMENT except as expressly provided in clause 6.4 herein below.
- 6.3 FELEMENT agrees that the Distributor’s use of the expression “FELEMENT” in its trade and/or in any marketing, sale and/or distribution of the Products under this Agreement will not constitute a breach of the Distributor’s obligations in clause 6.
- 6.4 Distributor’s use of the FELEMENT IP shall be in accordance with any Policies must be commercially reasonable as to the size, placement, and other manners of use. FELEMENT reserves the right to review and approve, in its sole discretion, Distributor’s use or intended use of the FELEMENT IP at any time.
- 6.5 Distributor shall not create, register, or use any domain name or any mobile application that contains any Products’ name or any trademark owned by or licensed to FELEMENT, nor a misspelling or confusingly similar variation of any Products’ name or any trademark owned by or licensed to FELEMENT.

7. CONFIDENTIALITY

- 7.1 The Distributor agrees and undertakes to remain discreet and shall not share with or sell to FELEMENT’s competitors any Confidential Information and/or any information in relation to FELEMENT IP and its trade secrets, techniques business of FELEMENT during the continuance of this Agreement and after termination of this Agreement.

8. BREACH & TERMINATION

- 8.1 This Agreement shall continue and remain in full force and effect throughout the Term, unless terminated in the following situations or pursuant to the provisions of this Agreement:
- 8.1.1 FELEMENT may forthwith terminate this Agreement for any reasons the Distributor conducts one of the following activities:-
- i. fails to comply strictly with the provisions of FELEMENT’s Policies and/or the Distributorship Agreement;
 - ii. commit serious breaches of this Agreement and/or any Policies (including but not restricting to non-payment);
 - iii. provide fraudulent information about the benefits from participation in a multi-level marketing network of FELEMENT, or false information about the nature and use of the Products or about FELEMENT activities in order to entice others to participate in multi-level marketing of the Products;
 - iv. Other scenarios as stipulated in Malaysian laws;
 - v. When FELEMENT is in a situation that prevents the fulfillment of its main obligations in accordance with this Agreement for a minimum period of 3 (three) months due to

reasons, not within the control of FELEMENT.

8.1.2 The Distributor may terminate this Agreement by giving at least 7 working days' prior written notice to FELEMENT, with or without any reasons.

8.2 Upon termination of this Agreement:-

8.2.1 Distributor shall immediately stop carrying out his/her/its activities as authorised under this Agreement or relating to FELEMENT's business as well as the use of FELEMENT Intellectual Properties and the Products.

8.2.2 Distributor shall cease to be the distributor of FELEMENT and consequently shall not carry out any actions that would create misunderstandings between FELEMENT and the Distributor.

8.2.3 Each Party shall immediately pay any debts owing to the other Party, if any.

8.2.4 Subject to FELEMENT's sole discretion, FELEMENT shall have the option to buy back (but not obligations) any Products that the Distributor purchased from FELEMENT if the Products satisfy the following conditions:

- (i) In good condition and re-sellable in according to their initial use purpose;
- (ii) Not more than 90 days commencing from the date of the Distributor's receipt of the Products;
- (iii) Products have not expired as at the date of their return within 6 months; and
- (iv) The Products are not seasonal products and/or products used in promotion.

8.2.5 Subject to clause 8.2.4, FELEMENT shall refund the total money which such Distributor paid in order to receive Products after making the deduction of administrative costs, expenses for re-storage and other administrative costs, commissions, bonuses and/or other economic benefits which the Distributor has already received as a result of receipt of such Products.

8.2.6 FELEMENT has no obligation to compensate the Distributor whatever the consequences linked to the end of this Agreement.

8.3 The Distributor shall be deemed to have relinquished his/her/its entitlements and/or rights to return purchased Products as stated above and call for all unsuccessfully paid bonuses and all accumulated unpaid bonuses or rewards in FELEMENT database if these are not claimed within Three (3) months from the date of termination.

8.4 This Agreement shall cease to be applicable or have effect after termination, save for any provisions which are expressed to continue in force after termination.

9. NO ASSIGNMENT

9.1 The Parties agree that the Distributor may not assign its rights under this Agreement without prior written consent of FELEMENT.

9.2 If the Distributor is an individual, upon his/her death, his/her distributorship may be passed on to his/her beneficiaries whether by will, intestate succession, or otherwise. The transfer will be recognized by FELEMENT when a court order or proper legal document addressing the transfer to a qualified transferee is submitted to FELEMENT.

10. GOVERNING LAW

10.1 This Agreement shall be governed and construed in accordance with the laws of Malaysia. In the event of any unresolved dispute, the Parties shall submit such dispute to the inherent jurisdiction of the courts in Malaysia.

11. INDEMNITY

- 11.1 The Distributor shall indemnify and hold FELEMENT and each of its respective directors, officers, employees, consultants, agents, permitted assignees and affiliates (collectively “**FELEMENT Personnel**”) harmless from any damages, loss, cost, penalties, fines, or liability, including reasonable legal fees and the cost of enforcing this indemnity, which results from, is related to or arises out of:
- (a) any material misrepresentation, breach of warranty or nonfulfillment of any provision or terms on the part of the Distributor or its respective directors, officers, employees, consultants, agents, permitted assignees and affiliates (collectively “**Distributor Personnel**”) under this Agreement or from any misrepresentation in or omission from any warranty, schedule, statement, document or instrument furnished pursuant hereto or in connection with the negotiation, execution or performance of this Agreement;
 - (b) any deliberate or negligent act, error or omission by the Distributor or the Distributor Personnel; and
 - (c) failure to comply with or contravention of any laws, applicable present and future authorisations, registrations, duties of care, codes of conduct, regulations, notices, permits, consents, approvals and licenses issued, imposed or directly by any relevant body, including but without limitation any matter relating to the protection of the environment, damage to or use of any property or harm to human health.
- 11.2 FELEMENT and FELEMENT Personnel shall not be liable for any special, indirect, direct, incidental, punitive, or consequential damages, including loss of profits, arising from or related to the breach of this Agreement. Distributor agrees that the entire liability of FELEMENT for any claim whatsoever related to Distributor’s relationship with FELEMENT, including but not limited to any cause of action arising in this Agreement, tort, or equity, will be limited to the cost of FELEMENT Products that Distributor has purchased from FELEMENT.
- 11.3 The provisions of this Clause 11 shall survive the termination of this Agreement.

12. STATUTORY OBLIGATIONS

- 12.1 Distributor shall be responsible with regards to the payment of personal income tax and other taxes in accordance with the laws in Malaysia. Distributor shall maintain a proper set of books and records for the business of the Distributor and FELEMENT has the right to request the Distributor to provide such documents for justification of payment of taxes and other statutory financial obligations by the Distributor.
- 12.2 Distributor agrees that FELEMENT has the rights:-
- (a) to declare to the local competent authorities in Malaysia the transaction records and/or details between FELEMENT and the Distributor;
 - (b) to withhold personal income tax from commission, bonuses and other economic benefits payable to the Distributor and pay such tax amount to local taxation offices in accordance with the applicable laws;
 - (c) to request the Distributor to provide proper name, permanent address and taxpayer identification number or other necessary information for the purposes of the administration system or for reporting reasons; and
 - (d) to share/disclose Distributor’s personal information including but not limited to Distributor income/earnings under the requirement of local competent authorities if requested.

13. GENERAL

13.1 Notices

Any notice or other communication given to a Party under or in connection with this Agreement shall be in writing and shall be deemed to be served and received by the addressee:-

- (i) if delivered by hand, at the time of delivery; or
- (ii) if sent by registered post, courier or other postal service, within five (5) days of despatch or posting; or
- (iii) if sent by email or facsimile, upon completion of transmission.

13.2 Force Majeure: Neither Party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control (including, without limitation, any strike, lockout, industrial disputes, riots, war, Act of God, pandemic, epidemic, lockdown, partial lockdown, any form of movement control order and impediment by government regulations). In such circumstances the affected Party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for thirty (30) days, the Party not affected may terminate this Agreement by giving fourteen (14) days' written notice to the affected Party.

13.3 Costs and Expenses: Except as otherwise provided in this Agreement, each Party shall be responsible for its own costs, charges and expenses incurred in connection with the negotiation, preparation entering into and completion of this Agreement. The stamp duty payable for this Agreement shall however be borne by the Distributor.

13.4 Act of Principal: The relationship between FELEMENT and the Distributor under this Agreement is that of an independent distributor and the Distributor will not assume any obligations or make any representations on behalf of FELEMENT or any company related to FELEMENT except to state that it is FELEMENT's independent Distributor.

13.5 Entire Agreement: This Agreement and the Policies shall constitute the entire agreement and understanding of the Parties. This Agreement and the Policies shall supersede any prior written or oral communications, negotiations, understandings and agreements between the Parties.

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EXECUTED as an Agreement.

FELEMENT

DISTRIBUTOR

.....
Authorized Signatory
for and on behalf of
FELEMENT SDN. BHD.
Name:
NRIC No.:
Designation: Director

.....
Name:
NRIC No.:

FIRST SCHEDULE

DETAILS OF THE DISTRIBUTOR

Distributor Name:	
Registration No./NRIC No.:	
Postal Address	
Email Address:	
Contact No.:	