EXCLUSIVE DISTRIBUTION AGREEMENT FOR THE EUROPEAN UNION

Our client, a Spanish medical research startup, developed a unique product based on stem cells. As a result, a large international pharmaceutical company approached our client to roll out the product across Europe through an exclusive distribution agreement.

Exclusive distribution is a common practice given the efficiency it provides, but there are often challenges related to the implementation of such exclusivity.

For our client, granting exclusivity for all Europe to one pharmaceutical company had many advantages.

- First, the distribution of the product could be carried out through a single point of contact and in a very easy manner for our client.
- In addition, it was important that the distributor had experience in handling a product that required conservation at a certain temperature.
- Finally, the stem cells product had a very short expiry term and the distribution process had to be carried out very efficiently to avoid reaching the expiration date before the product was delivered to the final client.

The distribution of a stem cells product is specially challenging due to the need of manufacturing the product almost upon demand and sending it to the final customer within a short period of time after manufacture. In other words, there is no option to storage the product in a warehouse like in long lasting products and no return policy for the distributor (unless the distributor can prove that the product was damaged at the time of delivery to the distributor). For this reason, the parties agreed to a rolling monthly forecast detailed by countries and updated constantly which anticipated the distribution needs for the next twelve months.

By granting exclusivity rights for several years our client was relying all of its sales to one distributor only and, therefore, was concentrating all the risk on one distribution company. It was paramount to ensure an exit option for our client in the case of underperformance by the distributor, and our client set a minimum annual sales threshold under which the agreement could be terminated unless the distributor paid a pre-agreed compensation to our client to continue with the agreement. In addition, our client had the option to review and update the price of the product each year.

As a particularity, the agreement between our client (the manufacturer) and the distributor (the pharmaceutical company) went beyond the distribution rights of the current product and both parties agreed that, if during the term of the agreement our client was interested in developing any other product based on stem cells technologies, the distributor would have a right of first refusal to participate in the new product and finance such new development contributing substantial funds.

A great opportunity for a start-up company to work alongside a large international pharmaceutical company for the distribution of its current stem cells product and obtain financial support for further product development.