

# Foreign Representation Agreement

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THIS DISTRIBUTION AGREEMENT (this "Agreement") is made and entered into on \_\_\_\_\_ (**date**) (the "Effective Date"), by and between \_\_\_\_\_ ("Manufacturer"), a California corporation with principal offices located at \_\_\_\_\_ (**address**), USA, and \_\_\_\_\_, ("Distributor") having its principal offices at \_\_\_\_\_ (**complete address of Distributor's office**).

## RECITALS

- A. Manufacturer is in the business of manufacturing and export \_\_\_\_\_;
- B. Distributor is in the business of importing \_\_\_\_\_ (**types of products**) into \_\_\_\_\_ (**name(s) of country/countries**); and
- C. Manufacturer desires to retain Distributor to sell Manufacturer's \_\_\_\_\_ (**types of products**) in \_\_\_\_\_ (**name(s) of country/countries**) pursuant to the terms and conditions set forth in this Agreement.

## AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, the Manufacturer and Distributor agree as follows:

### 1. DEFINITION

- 1.1 "Affiliate" means an entity which, directly or indirectly, controls, is controlled by, or is under common control of a parent company with a party to this Agreement. For purposes of this paragraph, "control" means owning or controlling at least 30% of the voting stock entitled to vote for elections of the members of the board of directors (or, if none, persons performing similar functions) or, in the case of entities not having voting stock, equivalent ownership or control thereof.
- 1.2 "Confidential Information" shall mean information provided by Manufacturer or Manufacturer Customers to Distributor (i) that is not known by actual or potential competitors of Manufacturer or is generally unavailable to the public, (ii) that has been created, discovered, developed or otherwise become known to Manufacturer or in which property rights have been assigned or otherwise conveyed to Manufacturer, and (iii) that has material economic value or potential material economic value to Manufacturer's present or future business. Confidential Information, subject to exceptions set forth by laws, shall include trade secrets (as defined under California Civil Code section 3426.1) which include all discoveries, developments, designs, improvements, inventions, formulas, software programs, processes, techniques, know-how, negative know-how, data, research, technical data (whether or not patentable or registrable under patent, copyright or similar statutes and including all rights to obtain, register, perfect and enforce those proprietary interests), customer and supplier lists, customer profile and other customer information, customer and price list, business plans, and any modifications or enhancements of any of the foregoing, and all program, marketing, sales, or

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other financial or business information disclosed to Distributor by Manufacturer, either directly or indirectly, in writing or orally or by drawings or observation, which has actual or potential economic value to Manufacturer.

- 1.3 “Distributor” shall mean \_\_\_\_\_ and its Affiliates.
- 1.4 “Effective Date” shall mean \_\_\_\_\_.
- 1.5 “Initial Term” shall mean the initial term of this Agreement from \_\_ to \_\_.
- 1.6 “Manufacturer” shall mean \_\_\_\_\_ and its Affiliates.
- 1.7 “Manufacturer Customers” shall mean any individuals or entities, who are current or potential customers or business prospects of Manufacturer, or who are introduced from or by Manufacturer to Representative.
- 1.8 “Order” shall mean orders placed by Distributor for Products, which are received by Manufacturer and accepted by Manufacturer in writing.
- 1.9 “Party” shall mean Manufacturer or Distributor, individually. “Parties” shall mean Manufacturer and Distributor collectively.
- 1.10 “Products” shall mean the products set forth in Attachment A, which is hereby incorporated by reference as fully set forth in this Agreement.
- 1.11 “Renewal Term” shall mean any renewal term of this Agreement pursuant to Section 8.1 of this Agreement.
- 1.12 “Term” shall mean the term of this Agreement, including the Initial Term and any Renewal Terms, if any.
- 1.13 “Territory” shall mean the following country/countries: \_\_\_\_\_ (or “\_\_\_\_\_ types of customers serviced by Distributor in \_\_\_\_\_”).

## 2. GRANT OF DISTRIBUTORSHIP

- 2.1 Manufacturer hereby grants Distributor, subject to the terms and conditions of this Agreement, the exclusive right to sell, distribute and service Products in Territory during the Term. ***(The word “exclusive” is optional. Also, the right to sell can also be limited to selling Products to specified types of customers.)***

## 3. RELATIONSHIP OF THE PARTIES

- 3.1 Independent Contractor. This Agreement shall not be deemed to create a partnership, joint venture or an agent and principal relationship between the parties, and Distributor or any of Distributor’s directors, officers, employees or agents shall not, by virtue of the performance of their obligations under this Agreement, represent themselves as, or be deemed to be, an agent, partner or employee of Manufacturer. The parties mutually agree that Distributor is an independent contractor, not an employee, of Manufacturer. Neither party is liable for any acts, omissions to act, contracts, promises, commitments or representations made by the other, except as specified in this Agreement.
- 3.2 Exclusivity. Distributor shall be the exclusive distributor for Manufacturer to sell Products in Territory and shall not act as a distributor or a sales representative for, or design, manufacture, sell, distribute, service or market, any products in competition with any products manufactured by Manufacturer. Distributor shall disclose to Manufacturer the identities of all products and manufacturers, which it distributes or represents, and notify, and obtain prior written consent from, Manufacturer of any future products or manufacturers that it will distribute or represent prior to making such commitment to do so. ***(Optional)***
- 3.3 Most Favorable Terms. If Manufacturer enters into any other export distribution agreement for Product with another distributor in a different territory in the future, which provides that new

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distributor more favorable terms, other than pricing for Products, Manufacturer will immediately amend this Agreement to provide Distributor with the benefit of any terms, other than the pricing for Products, in the new agreement more favorable than those included in this Agreement. **(Optional)**

## 4. DUTIES AND RESPONSIBILITIES OF DISTRIBUTOR

4.1 Distributor's duties and responsibilities include but not be limited to:

- (a) Using its best effort to market, offer, sell, promote and develop a market for Products within Territory, referring all inquiries regarding Products or other products manufactured by Manufacturer to Manufacturer and maintaining qualified sales distribution organization and channels within Territory;
- (b) Engaging in sales promotion activities, in which designate Products with its correct name and identify Products as being manufactured by Manufacturer and marketed and sold by Distributor as an independent contractor;
- (c) attached to this Establishing and maintaining place of business in Territory with display of Products for demonstration, a staff of trained technicians and a stock of spare parts and technical literature in order to provide technical support and services to customers; and providing technical support and services to customers;
- (d) Purchasing the minimum dollar amounts of Products as set forth in Attachment A, a copy of which is Agreement and is hereby incorporate by reference as fully set forth herein; and maintaining an inventory of products sufficient to satisfy customer Orders as they are received.
- (e) Providing reports concerning inventory, sales and potential sales with fifteen (15) days from the closing of each calendar \_\_ (month or quarter), or as reasonably requested by Manufacturer, and forecasts of anticipated sales over \_\_ month period on a \_\_ (quarter or yearly) basis to assist Manufacturer in planning production activities; and assisting Manufacturer in assessing customer requirements for Products and developing modifications and improvements of Products;
- (f) Providing logistical and support services in Territory concerning the sale or service of Products, including but not limited to providing assistance necessary to Manufacturer in arranging and providing lodging, office space, equipment, translation, transportation, communications, facilities and other related support activities;
- (g) Conducting its business at all times in a manner, which shall reflect favorably on Manufacturer and Products, and which is not deceptive, misleading, illegal or unethical, and providing advice and assistance concerning compliance of laws, regulations, business and financial practices in Territory, maintenance of contact, communications and liaison with government officials and obtaining necessary licenses, permits and authorizations in compliance with law, regulations and ordinances;
- (h) Obtaining all necessary export and import licenses and permits, paying all customs duty and other charges and fees and taking all other actions required to accomplish the export and import of Products;
- (i) Providing advice and assistance to Manufacturer on compliance of laws, regulations, business and financial practices in Territory, maintenance of contact, communications and liaison with government officials and obtaining necessary licenses, permits and authorizations in compliance with law, regulations and ordinances;
- (j) Providing Manufacturer, upon reasonable notice by Manufacturer and during regular business hours, access to Distributor's place of business and inventory stock to ascertain Distributor's compliance with this Agreement;
- (k) Providing Manufacturer with a copy of all Distributor's sales, advertising and promotion materials mentioned Products, and a copy of any translation of materials relating to Products prior to the use of such materials and translations; and
- (l) Providing other assistance and services as Manufacturer may reasonably request.

***(This is a suggested list and should be revised to meet the needs of the parties.)***

4.2 Distributor shall not advertise, market, sell or distribute Products outside Territory or to establish or maintain a warehouse located outside Territory for the distribution of Products outside Territory.

4.3 Distributor shall have no authorities to make any representations, warranties or guarantees or make or execute any commitment or agreement, accept any Orders or incur any liability on behalf

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of Manufacturer or bind Manufacturer in any way.

4.4 Distributor is responsible for all expenses incurred by Distributor in connection with the implementation and performance of Distributor's duties and obligations under this Agreement, including but not limited to: (a) the expenses incurred in fulfilling its duties and responsibilities as provided in Section 4; (b) costs, expenses and salaries of its personnel associated with establishing and maintaining its sales organization and offices; (c) advertising and promotion expenses; and (e) any and all taxes, duties, tariffs or charges that may be imposed on Distributor in Territory.

4.5 Distributor is solely responsible for the performance of its duties.

## 5. DUTIES AND RESPONSIBILITIES OF MANUFACTURER

5.1 Manufacturer will use its best efforts to deliver Products pursuant to the dates and other requirements stated in Orders delivered to and accepted by Manufacturer, however, Manufacturer is under no obligation to sell or continue to produce any model or type of any Products, whether or not listed on Attachment A beyond \_\_\_ ( ) days of notice of discontinuation sent by Manufacturer to Distributor, and Manufacturer reserves the right to make substitutions and/or modifications to Products if such substitutions or modifications will not materially adversely affect overall performance of Products. In addition, Manufacturer will keep Distributor informed of changes in Products, specifications and deliveries.

5.2 Manufacturer will provide Distributor, from time to time, advertising matter, price lists and technical assistance when Manufacturer deems necessary.

Manufacturer, from time to time, may, at Manufacturer's sole discretion, make special purchase offers and/or quantity discounts available to Distributor.

5.4 Manufacturer may, from time to time, send representatives to consult with Distributor concerning the promotion and increase of market of Products and technical support and service of Products and provide training to Distributor's personnel as reasonably requested by Distributor.

5.5 Manufacturer shall make repair or replacement parts available to Distributor. Further, during the Term and during a period of \_\_\_ (**months, years**) after the expiration or termination of the Agreement, Manufacturer will sell Distributor repair and replacement parts necessary to maintain Products in good and serviceable condition at all times, unless the parts have been discontinued by Manufacturer. Manufacturer shall provide Distributor \_\_\_ ( ) day prior notice of any discontinuance.

5.6 Manufacturer shall not make any direct sales within Territory, except for accommodation sales or as otherwise agreed upon by the parties. In those cases, commissions shall be credited to Distributor on a case by case basis.

5.7 Manufacturer is solely responsible for the performance of its duties.

*(This is a suggested list and should be revised to meet the needs of the parties.)*

## 6. PRICING, ORDER, PAYMENT, SHIPMENT AND ACCOUNTING

6.1 Pricing. The initial pricing for Products is provided in Attachment A. However, the pricing is subject to changed by Manufacturer at its sole discretion at any time. Such changes shall be effective upon sending notice by Manufacturer to Distributor pursuant to Section 15.8 of this Agreement (**or by email, facsimile or other means**). All pricing is quoted FOB \_\_\_\_\_ (*name of city and country.*) and shall include the cost of packaging and crating for export.

6.2 Orders. Any Order placed by Distributor shall be submitted to Manufacturer. An Order shall designate the delivery date for at least \_\_\_ days from the day such Order is submitted to Manufacturer. The Order shall not contain a shipment date fewer than \_\_\_ ( ) days from the date that such Order is submitted to Manufacturer. After receiving the Order, Manufacturer shall either reject or accept the Order in writing within \_\_\_ hours and notify Distributor of its decision pursuant to Section 15.8 of this Agreement. Manufacture has sole discretion to determine if it will accept such an Order. Prior to receiving an acceptance of the Order, Distributor may cancel the Order

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without further obligations. Upon acceptance of any Order, it shall become a binding agreement between Distributor and Manufacturer, wherein Distributor agrees to purchase Products set forth on the Order pursuant to the terms and conditions in this Agreement. Should Distributor intend to either cancel or change an Order after such Order has been accepted by Manufacturer, Manufacturer has the sole discretion to determine if Manufacturer will (1) allow such a cancellation or change, (2) impose a cancellation or change order charge, or (3) declare that Distributor has breached the Agreement and terminate the Agreement pursuant to Section 8.2.1 of this Agreement. Furthermore, Distributor shall meet the minimum dollar amount set forth in Attachment A. Otherwise, Manufacturer may declare that Distributor has breached this Agreement and terminate the Agreement pursuant to Section 8.2.1 of this Agreement.

- 6.3 Payments. For each Order, Distributor shall establish an applicable irrevocable letter of credit in favor of Manufacturer's bank within \_\_ days after receipt of the acceptance of the Order from Manufacturer. The letter of credit must be confirmed by a United States bank and for the entire amount of each shipment of the Order when made. The letter of credit shall allow negotiation time of \_\_ days from the day of the Order's confirmed shipment date. The Order shall be paid, upon presentation of shipping documents to Distributor's bank in \_\_ **(name of city, country)**, net cash in U.S. currency.
- 6.4 Shipment. Distributor is liable to pay for all costs and expenses associated with the shipment of Products. At Distributor's request, Manufacturer may arrange for shipment of Products, with all costs and expenses associated with the shipment paid by Distributor in accordance with Section 6.3 of this Agreement. Title and risk of loss or damage of Products shall pass from Manufacturer to Distributor upon delivery of Product to the shipping company or Distributor's representative for shipment, regardless of which party makes the shipping arrangements. After the acceptance of an Order by Manufacturer, if Distributor requests delay in shipment, any storage, insurance or other costs incurred because of the delay shall be paid by Distributor pursuant to Section 6.3 of this Agreement. If any Product is not correctly shipped due an error by Manufacturer, Manufacturer will replace such Product as promptly as possible free of charge and freight prepaid to Distributor's destination.  
**(Last sentence is optional.)**
- 6.5 Inspection of Products. Manufacturer shall inspect all Products prior to shipment to confirm that such Products are in first-class condition. Distributor shall have the right to inspect the Products dockside in \_\_ **(name of city, country)**. Manufacturer has the right to appoint a third party for inspection purpose. If Distributor discovers any damaged or defective Products, Distributor shall notify Manufacturer within \_\_ (\_\_) days of such discovery. Upon a written confirmation of an independent merchandise surveyor and a written confirmation from Manufacturer, Distributor shall have damaged and defective merchandise repaired in \_\_ **(name of city, country)** at Manufacturer's expense.
- 6.6 Payments Following Termination or Expiration. Following termination or expiration of this Agreement, Distributor shall pay Manufacturer for Products ordered by Distributor and accepted by Manufacturer prior to the termination or expiration within \_\_ (\_\_) from the date of termination or expiration, even though such Products have not been shipped by Manufacturer.
- 6.7 Audit Rights. During the Term and for a period of one (1) year following the termination or expiration of the Agreement, each party shall maintain complete, accurate and detailed books and records with respect to the determination of its revenues and other matters associated with the performance of this Agreement. Each Party (the "requesting party") shall have the right, at its expense and upon prior written notice given to the other party (the "responding party") at least fifteen (15) days prior to the inspection date requested by the requesting party, to inspect and audit all of the responding party's records associated with the performance of this Agreement, and the responding party agrees to reasonably cooperate with and provide access to the requesting party and its financial advisors as may be necessary and appropriate for such inspection and audit.

## 7. COMPLIANCE WITH LAW

- 7.1 Distributor agrees that in carrying out its duties under this Agreement, Distributor will neither undertake nor cause or permit to be undertaken any activity which to Distributor's knowledge is illegal under the laws of the Territory or of the United States. It is a condition of this Agreement that, within \_\_ **(specify number, such as: 30)** days from execution of this Agreement and prior to

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the initiation of any activities with respect to any Order, Distributor will submit to Manufacturer an opinion of Distributor's counsel, provided that such counsel and the form and substance of the opinion shall be to Manufacturer's satisfaction, that nothing in this Agreement prevents Distributor from carrying out its duties in accordance with laws, decrees, rules and regulations of the Territory, and that Distributor may act as Distributor for all Products to any government ministries, agencies and departments, including the armed forces. The submission of this opinion is a condition precedent to the effectiveness of this Agreement.

- 7.2 Distributor understands and agrees that Manufacturer may comply with any legal provision requiring disclosure, or any request from the U.S. Government or the Government of the Territory to disclose, by affidavit or otherwise, the identity of Distributor, as well as the identities of Distributor's principal and the amount of any payment made or to be made to Distributor under this Agreement.

## 8. TERM AND TERMINATION

- 8.1 **Term.** The term of this Agreement will commence on the effective date of this Agreement and will continue for a period of \_\_ (\_\_) years unless earlier terminated by either party accordance with Section \_\_. At the end of each Term, including at the end of the Initial Term and the Renewal Terms, this Agreement will be automatically renewed for an additional \_\_ (\_\_) year period, unless either party give the other party a written notice \_\_ (\_\_) days prior to the expiration of the Initial Term or any Renewal Term. All the terms and conditions contained in this Agreement will remain the same during any renewals beyond the Initial Term, unless this Agreement is amended or modified in written pursuant to Section \_\_ of this Agreement. ***(The automatic renewal portion of the provision is optional. Also, restrictions or conditions may be required, such as sales quota, before there will be a renewal.)***
- 8.2 **Termination.** In the event of any of the following, this Agreement, and the rights and licenses granted hereunder, will terminate.
- 8.2.1 If either party defaults in the performance of or compliance with any provision contained in this Agreement or breach any provisions set forth in this Agreement (except as otherwise provided in this Section 8) and such default or breach is not cured within fifteen (15) days after written notice thereof is received by the defaulting party, the party giving such notice may then give further written notice to the defaulting party terminating this Agreement, in which event this Agreement, and the rights and licenses granted hereunder, will terminate on the date specified in such further notice.
- 8.2.2 If either party discontinues its primary business for more than fifteen (15) days, either party may terminate this Agreement upon fifteen (15) days' prior written notice to the other party. If the primary business is continued by an Affiliate, the primary business will be deemed continued by the party for purposes of Section 8.2.2.
- 8.2.3 Either party may terminate this Agreement by written notice to the other party and may regard the other party as in default of this Agreement, if the other party becomes insolvent, makes a general assignment for the benefit of creditors, files a voluntary petition of bankruptcy, suffers or permits the appointment of a receiver for its business or assets, or becomes subject to any proceedings under any bankruptcy or insolvency law, which is not dismissed within ninety (90) days, or has wound up or entered liquidation, voluntarily or otherwise. In the event that any of the above events occur, the defaulting party will immediately notify the other party of its occurrence.
- 8.2.4 In the event of a breach of Distributor's obligations under Sections 7, 11, 12, 13 and/or 14, Manufacturer may immediately terminate this Agreement in writing without providing any cure period.
- 8.2.5 If one party is unable to perform its obligations under the Agreement by reason of any law, rule, regulation or order of any municipal, state or federal or foreign authority, including, but not limited to any regulatory authority that has jurisdiction over that party's business, then the either party may terminate this Agreement by given the other party a thirty (30) day written notice.
- 8.2.6 If the performance of this Agreement becomes impracticable because of the change of the situation of the U.S., or if the trade between the U.S. and the Territory becomes impracticable because of the change in the currency controls renders, then either party may terminate this Agreement by

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given the other party a \_ ( ) days' prior written notice. *(Optional)*

- 8.3 Either party may terminate this Agreement without cause upon \_ ( ) days' prior written notice to the other party. *(Optional)*

Termination of the Agreement for any reason does not affect (a) obligations that have accrued as of the date of termination; and (b) the obligations under those sections identified in Section 15.12 of this Agreement. Further, in the event of termination, Distributor shall return Manufacturer the Confidential Information as provided in Section 12.4 *(or 12.1)* of this Agreement, and Distributor's limited license to use Manufacturer' intellectual property shall cease immediately.

## 9. REPRESENTATIONS AND WARRANTIES

- 9.1 Each party represents and warrants that:

- 9.1.1 It has the authority to enter into this Agreement and the rights and license necessary to enter into, and perform its obligations under, this Agreement.

- 9.1.2 It is free to enter into this Agreement and is not bound by any agreements, including but not limited to nondisclosure agreement, noncompetition agreement, documents or obligation that may infringe on its ability or in any manner prevent it from performing any of the duties that may be required of it during the Term, or that may result in liability to it in any manner, action, or proceeding.

- 9.1.3 It has full power and authority to execute and deliver this Agreement, and this Agreement has been duly executed and delivered by or on behalf of itself and constitutes a legal, valid and binding obligation enforceable against it in accordance with its respective terms. Neither the execution, delivery, nor performance of this Agreement violates or conflicts with any applicable laws, decrees, rules, regulations, requires any notice, consent or other action by a third party or creates a default or breach or give rise to any right of termination, cancellation or acceleration of any right or obligation or to lose any benefit to which it is entitled under any agreement or other instrument binding upon it. It will not take any action that would have the effect of causing the other to be in violation of any laws, decrees, rules or regulations.

- 9.2 Manufacturer represents and warrants that it has all rights, title and interest in and to all copyrights, patents, trademarks and other intellectual property rights associated with Products or otherwise has the right to allow the use thereof which are necessary to use, sell, market and distribute Products, and to manufacture and sell Products without infringing any rights; and that, as of the Effective Date, Manufacturer is not aware of any basis for third party claims of infringement of any patents, trademarks, or tradenames with respect to Products. In the event that any action, claim or suit is brought against Distributor alleging that the manufacture, use, sale or transfer of any Product or the use of the trademarks or trade-names constitutes infringement of any proprietary rights of any third party, Manufacturer shall indemnify Distributor pursuant to Section 10.1 of this Agreement, provided that Distributor gives written notice of such actions or claims brought against Distributor within five (5) days from the receipt of notice of such actions or claims, and that Distributor takes reasonable steps as may be requested by Manufacturer to assist in the defense of such action. *(The last sentence, starting with "In the event that . . ." is optional.)*

- 9.3 Manufacturer further represents and warrants that Products shall conform in all material aspects with Manufacturer's written specifications for Products and are free of defects in material or workmanship. This representation and warranty will extend for \_\_ *(months or years)* from the shipment date of Products. Manufacturer's obligations for breaching this representation and warranty shall be limited to replacing or repairing defective Products at Manufacturer's choice. However, Manufacturer is not liable for any defects in Products, if Products were used to operate in manner inconsistent with use intended by Manufacturer, or if there were modifications or repairs made to Products by party other than Manufacturer's personnel in manner that adversely affects Products' operation or reliability, or if Products were damaged because of accident, neglect or misuse by party other than Manufacturer's personnel.

- 9.4 Distributor represents and warrants that except as appropriate to carry out Distributor's duties in this Agreement, Distributor has not, has no obligation to and will not, directly or indirectly, give,

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offer, pay, promise to pay or authorize the payment of money or thing of value to any other person in connection with transactions under this Agreement are to be paid. Distributor agrees not to take any actions that would cause Manufacturer to violate section 103 of the Foreign Corrupt Practices Act of 1977 (15 U.S.C.A. § 78dd-l). Distributor warrants that none of its officer, director, employee or agent is an "official" of \_\_\_\_ (**name of country**) Government as that term is defined in section 103, nor will Distributor employ an "official" of that government.

- 9.5 Distributor represents and warrants that it will make and keep books, records and accounts that, in reasonable detail, accurately and fairly reflect the transactions performed by Distributor under this Agreement and the dispositions of Products. Distributor specifically agrees that Manufacturer may inspect such books, records and accounts upon reasonable requests made by Manufacturer to Distributor.

## 10. INDEMNIFICATION AND LIMITATION OF LIABILITY

- 10.1 Indemnification. Each party (the "First Party") hereby indemnifies and agrees to hold the other party (the "Second Party") and its affiliates, and its and their successors and assigns, and its and their directors, officers and employees harmless against any and all claims, causes of actions, loss, demands, penalties, damages, costs, judgments, attorney's fees or any other expenses incurred in connection with, caused by or relating to the First Party's actions or failure to act or any breach by the First Party of the terms, covenants, representations or warranties set forth in this Agreement.

- 10.2 Limitation of Liability. REGARDLESS OF THE BASIS ON WHICH ANY PARTY (THE "FIRST PARTY") MAY BE ENTITLED TO RECOVER DAMAGES FROM THE OTHER PARTY (THE "SECOND PARTY"), INCLUDING BUT NOT LIMITED TO, BREACH OF WARRANTY, CONTRACT OR FIDUCIARY DUTY, FRAUD, NEGLIGENCE, MISREPRESENTATION, OTHER TORT OR INDEMNITY, THE SECOND PARTY'S AGGREGATE LIABILITY UNDER THIS AGREEMENT OR RELATED TO PRODUCTS OR THE USE THEREOF IS LIMITED TO ACTUAL, DIRECT DAMAGES THAT CAN BE PROVEN UP TO AN AMOUNT NOT TO EXCEED THE AGGREGATE OF AMOUNT PAID BY MANUFACTURER TO DISTRIBUTOR FOR THE SIX-MONTH PERIOD PRIOR TO THE DATE WHEN SUCH PROBLEM OCCURRED. THE PARTY SUFFERING SUCH DAMAGES OR LOSSES MUST FIRST EXHAUST ANY AVAILABLE LEGAL AND EQUITABLE REMEDIES AGAINST PARTIES OTHER THAN THE SECOND PARTY. THE SECOND PARTY SHALL IN NO EVENT BE LIABLE TO THE FIRST PARTY OR ANY THIRD PARTY FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFITS, SAVINGS, REVENUES, BUSINESS OPPORTUNITIES OR BUSINESS ADVANTAGES) UNDER THIS AGREEMENT OR IN ANY WAY IN CONNECTION WITH PRODUCTS OR THE USE THEREOF WHATSOEVER, EVEN IF SECOND PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING THE FOREGOING, THE LIMITATIONS OF LIABILITY SET FORTH ABOVE IN THIS SECTION 10.2 SHALL NOT APPLY TO LOSSES AGAINST WHICH THE PARTIES HAVE AGREED TO INDEMNIFY EACH OTHER PURSUANT TO THE TERMS AND PROVISIONS OF THIS AGREEMENT OR THE DAMAGES INCURRED BY MANUFACTURER BECAUSE OF THE BREACH OF SECTIONS 11, 12, 13 AND 14 OF THIS AGREEMENT BY DISTRIBUTOR.

- 10.3 Disclaimer. EXCEPT OR AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT, EACH PARTY DISCLAIMS ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OF THE SERVICES OR PRODUCTS, QUIET ENJOYMENT, AS WELL AS IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE.

- 10.4 Some jurisdictions do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusion may not apply.

*(The sections on limitation of liability will limit the liability for both parties. If the parties or either party does not want to set a limitation on liability, then please delete Sections 10.2 to 10.4 and delete the reference of limitation of liability in the header. If the limitation is applicable as to one party only, then revise these sections accordingly.)*

## 11. OWNERSHIP OF INTELLECTUAL PROPERTY



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11.1 Manufacturer shall at all times own and retain all respective right, title and interest in and to, and is the sole and exclusive owner of, any intellectual property rights in Products. Such right, title and interest include, but are not limited to, all patents, copyrights, trademarks, trade names, trade dress and trade secrets, names and marks now and subsequently used to identify Products, any proprietary information used in or applying to Products, rights of privacy or publicity, rights to the graphical user interface, source code, object code and other intellectual property rights. Distributor agrees that (a) the intellectual property rights in Products are Manufacturer' property and contain valuable proprietary materials of Manufacturer; (b) Manufacturer hereby grants a limited license to Distributor to use the name of Product to market and sell Product in strict conformity with this Agreement; and (c) Distributor shall not have any rights in and to the intellectual property rights in Products, except as otherwise explicitly stated in this Agreement. If requested by Manufacturer, Distributor shall assist Manufacturer or Manufacturer's designees at Manufacturer's expense to file any application for registration of a patent, trademark, tradename, service mark or other trade-identifying symbol used in connection with the Products and to establish any right of prior use by Manufacturer that may be required for the registration or protection of the patent, trademark, tradename, service mark or other symbol under the laws of the Territory. Upon expiration or sooner termination of this Agreement, Distributor's limited license to use Manufacturer' intellectual property shall cease immediately.

## 12. CONFIDENTIALITY

12.1 Confidential Information. In the course of performing its obligations hereunder, it may be necessary for Manufacturer or Manufacturer Customers to disclose Confidential Information. Manufacturer shall be the sole owner of the Confidential Information. Such Confidential Information is considered by Manufacturer to be commercially valuable, confidential and proprietary including information furnished by a third party. Manufacturer makes no representations or warranties, express or implied, with respect to any Confidential Information. Manufacturer will not be liable for any damages arising out of use of Confidential Information by Distributor. Any use of Confidential Information is at Distributor's own risk. Also, nothing in this Agreement will be construed as granting or conferring any rights by license or otherwise in Confidential Information, except for the use as expressly provided in this Agreement.

12.2 Notice to Manufacturer re Disclosure. If, at any time, Distributor become aware of any unauthorized access, use, possession or knowledge of any Confidential Information, or if Distributor receives any request of a governmental agency or third party pursuant to operation of law, regulation or court order, Distributor shall (1) give Manufacturer sufficient prior written notice of such proposed disclosure to enable Manufacturer to obtain an appropriate protective order, if it so desires; and (2) take such reasonable steps as are available to Distributor to prevent disclosure of such Confidential Information until the Manufacturer has been informed of such requested disclosure and Manufacturer has an opportunity to take any necessary action to respond to such requested disclosure. In addition, Distributor shall provide all reasonable assistance to Manufacturer to protect the confidentiality of any such Confidential Information that Distributor may have directly or indirectly disclosed, published, or made available to third parties in breach of this Agreement, including reimbursement for any and all attorney fees and costs that Manufacturer may incur to protect the rights in such Confidential Information.

12.3 Nondisclosure. Distributor: (1) shall hold and maintain Confidential Information in strictest confidence and in trust for the sole and exclusive benefit of Manufacturer; (2) shall not, without the prior written approval of Manufacturer, use for it own benefit, publish or otherwise disclose to others, or permit the use by others for their benefit or to the detriment of Manufacturer, any of Confidential Information; and (3) shall only disclose Confidential Information to its employees and/or consultants with a need to know, and only if such employees and/or consultants have executed agreements that impose on them substantially the same duty with respect to confidentiality as is imposed hereunder.

12.4 Effect of Termination. Upon the expiration or termination of this Agreement, Distributor shall immediately cease the use of the Confidential Information and shall have thirty (30) days from the expiration or termination date of this Agreement to return any Confidential Information received from Manufacturer. Distributor shall not reproduce or permit the reproduction of any such Confidential Information, nor circulate such to any individual or entity. If it is physically impossible to return any Confidential Information received by Distributor, Distributor shall delete such undeliverable files and data items transferred from Manufacturer.

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- 12.5 Injunctive Relief. Distributor understands and acknowledges that any disclosure or misappropriation of any Confidential Information in violation of this Agreement may cause Manufacturer irreparable harm, the amount of which may be difficult to ascertain, and agrees that Manufacturer shall have the right to apply to a court of competent jurisdiction for an order restraining any such further disclosure or misappropriation and for such other relief as Manufacturer shall deem appropriate, and Distributor expressly agrees that Manufacturer shall be entitled, in addition to any other remedy provided by law, to obtain an injunction or other equitable remedy respecting such violation or continued violation. Such right is to be in addition to the remedies otherwise available to Manufacturer at law or in equity.

***(This section is a long version with complete protection of intellectual property rights. Below is a shorter version of "Confidentiality.")***

- 12.1 In the course of performing its obligations hereunder, it may be necessary for Manufacturer or Manufacturer Customers to disclose Confidential Information to Distributor. Manufacturer is the sole owner of the Confidential Information. Distributor shall hold and maintain Confidential Information in strictest confidence and in trust for the sole and exclusive benefit of Manufacturer and shall not, without the prior written approval of Manufacturer, use for its own benefit, publish or otherwise disclose to others or permit the use by others for their benefit or to the detriment of Manufacturer, any of Confidential Information. Any disclosure of Confidential Information to Distributor's employees and/or consultants shall be on a need to know basis. If, at any time, Distributor becomes aware of any unauthorized access, use, possession or knowledge of any Confidential Information, or if Distributor receives any request of disclosure by a governmental agency or third party pursuant to operation of law, regulation or court order, Distributor shall (1) give Manufacturer sufficient prior written notice of such proposed disclosure to enable Manufacturer to obtain an appropriate protective order, if it so desires; and (2) prevent disclosure of such Confidential Information until Manufacturer has an opportunity to take any necessary action to respond to such requested disclosure. Distributor shall also provide all reasonable assistance to Manufacturer to protect the confidentiality of such Confidential Information. Upon the expiration or sooner termination of this Agreement, Distributor shall have thirty (30) days from the expiration or termination date of this Agreement to return Confidential Information received from Manufacturer or delete Confidential Information, which cannot be returned physically. Distributor shall not reproduce or permit the reproduction of any such Confidential Information, nor circulate such to any individual or entity. Distributor understands and acknowledges that any disclosure or misappropriation of any Confidential Information in violation of this Agreement may cause Manufacturer irreparable harm, the amount of which may be difficult to ascertain, and agrees that Manufacturer shall have the right to apply to a court of competent jurisdiction for an order restraining any such further disclosure or misappropriation and for such other relief as Manufacturer shall deem appropriate, and Distributor agrees that Manufacturer shall be entitled, in addition to any other remedy provided by law, to obtain an injunction or other equitable remedy respecting such violation or continued violation. Such right is to be in addition to the remedies otherwise available to Manufacturer at law or in equity.

### 13. NO CONFLICT DURING TERM

- 13.1 No Representation of Competitor. During the Term, Distributor shall not act as a distributor for products competitive in substantial respects, or bearing substantial similarities with Products or other products produced by Manufacturer, except as otherwise agreed upon by the parties in writing. Distributor agrees that at the end of each calendar year, or from time to time at Manufacturer's reasonable requests, it will provide Manufacturer, in writing, with the identity of other manufacturers for whom Distributor has been granted distributorship.

***(This Section is optional. If the parties agree that Distributor may represent other manufacturer, then use the following Section instead.)***

### 13. NON-EXCLUSIVITY

- 13.1 Non-Exclusivity. The parties agree that Distributor is not the exclusive distributor for Manufacturer in the Territory, that Distributor is free to act as a distributor for other manufacturers, and that Manufacturer may retain other distributor to distribute Products in the Territory.

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## 14. NO UNFAIR COMPETITION AND NON-INTERFERENCE WITH BUSINESS

*(NOTE: These subsections are optional.)*

General. Distributor understands that during the Term, Distributor will receive from the Manufacturer or Manufacturer Customers Confidential Information belongs to Manufacturer and/or Manufacturer Customers. This Section 14 in no way unnecessarily restricts Distributor from continuing to undertake and perform all activities and functions, which Distributor is undertaking and performing as of the execution of this Agreement. Distributor specifically agrees that this Section 14 is an essential incentive to induce Manufacturer to enter into this Agreement, and that this Section 14 shall be specifically enforceable by Manufacturer, its related entities and its and their successors and assigns. Distributor acknowledges that the limitations as to time, geographical area and scope of activity restrained as set forth herein are reasonable and do not impose a greater restraint on Distributor than is necessary to protect the integrity of the Confidential Information, the goodwill and other business interests of Manufacturer, as well as the competitive benefit of Manufacturer. As one of the considerations for Manufacturer to enter into this Agreement and without in any way limiting any other provisions herein, Distributor agrees to be bound by this Section 14.

- 14.2 No Unfair Competition. Distributor shall not (1) during the Term and for one (1) year after the expiration or termination of this Agreement, including but not limited to using Confidential Information, directly or indirectly engage or participate in services for, work for, involved in, engaged in, own, manage or operate any business competitive with, or similar to, that of the Manufacturer in the Territory, so long as the Manufacturer carries on a like business in the Territory; (2) engage in unfair competition with Manufacturer, including but not limited to doing so by using Confidential Information; (3) aid others in any unfair competition with Manufacturer, including but not limited to doing so by using Confidential Information; (4) in any way breach the confidence that Manufacturer placed in Distributor during the Term; (5) misappropriate any Confidential Information; or (6) breach any of the provisions of this Section 14 of the Agreement.
- 14.3 Non-Interference with Business. During the Term of this Agreement and for one (1) year after the expiration of the Agreement, Distributor shall not, including but not limited to by using Confidential Information, (1) influence or attempt to influence any Manufacturer Customers to divert their business to any individual or entity then in competition with Manufacturer; (2) disrupt, damage, impair or interfere with the business of Manufacturer by disrupting its relationships with Manufacturer Customers or prospects or Manufacturer's Customers' agents, Distributors or vendors; or (3) solicit, contract with or join in with any Manufacturer Customers or prospects without the involvement of Manufacturer for any purpose without first applying for and receiving the express written consent of Manufacturer.
- 14.4 Non-Solicitation of Employees. Distributor acknowledges and agrees that Manufacturer has made a substantial investment in bringing qualified and professional employees, contractors, agents and/or Distributors and would suffer a loss if they are hired by others due to the conduct by Distributor. Distributor agrees that, during the Term of this Agreement and for one (1) year after the expiration or sooner termination of the Agreement, Manufacturer shall not disrupt, damage, impair or interfere with the business of Manufacturer by interfering with Manufacturer's relationship with its employees by directly or indirectly soliciting Manufacturer's employees who earned \_\_\_\_ (\$\_\_\_) or more on an annual basis to work for any individual or entity then in competition with Manufacturer.
- 14.5 Non-Circumvention. Distributor agrees that it shall not, directly or indirectly, circumvent, avoid, bypass or obviate Manufacturer in any way, including but not limited to entering into any separate business transactions in any manner with Manufacturer Customers without first applying for and receiving the express written consent of Manufacturer. Such "business transactions" shall include, but not be limited to any transactions, purchases, sales, manufacturing, joint ventures, investment, mergers, acquisitions, projects, any loans or collateral, or other transaction involving any products, transfers or services or addition, renewal extension, rollover, amendment, renegotiations, new contracts, parallel contracts/agreements or third party assignments thereof.
- 14.6 Application of this Section. Distributor agrees that Section 15.6 shall apply to any transaction between the parties and/or between Distributors and any and all Manufacturer Customers, which makes use of, or involves, Confidential Information, or relates to any sources, introduced by, or

# Foreign Representation Agreement

disclosed by or from, Manufacturer.

**Injunctive Relief.** Distributor agrees that a breach of Distributor's obligations under this Agreement shall result from any efforts of the Distributor or its associates, including but not limited to any of Distributor's agents, Distributors, employees, affiliates, solicitors, bankers, buyers or sellers, who directly or indirectly, attempt to conduct business of or in any manner, to the exclusion of Manufacturer based upon, or pertaining to, Confidential Information or relating to Manufacturer Customers.

## 15. MISCELLANEOUS

15.1 **Binding Effect.** This Agreement shall be binding upon both parties and their permitted successors and assigns from the Effective Date.

15.2 **Governing Law.** This Agreement shall be construed, interpreted and governed as to procedural and substantive matters according to the laws of \_\_\_\_\_ (***such as the State of California, United States of America,***) without regard to its choice of law, conflict of laws provisions.

15.3 **Arbitration; Choice of Forum.**

15.3.1 **Arbitration.** All claims, disputes, controversies, or disagreements of any kind whatsoever ("claims"), including any claims arising out of, relating to or in connection with this Agreement, shall be submitted to final and binding arbitration before \_\_\_\_\_ (***name of an arbitration agency***) in \_\_\_\_\_ (***name of location***) in accordance with the rules and procedures of \_\_\_\_\_ (***specify governing rules and provider such as American Arbitration Association***) then existing. The arbitration shall be held before one arbitrator mutually agreed by the parties. Either party may request to submit any claims to arbitration and make a written request to the other party to select an arbitrator within \_\_\_\_ (\_\_) days. If the parties cannot agree on one arbitrator within \_\_\_\_ (\_\_) days from the first written request to select an arbitrator by either party, then each party shall select one arbitrator, those two arbitrators shall select a third mutual arbitrator, and the arbitration shall be held before these three arbitrators. If parties fail to select any arbitrator within \_\_\_\_ (\_\_) days from the first written request to select an arbitrator by either party, then an arbitrator shall be appointed by \_\_\_\_\_ (***specify governing rules and provider such as American Arbitration Association***), and the arbitration shall proceed in \_\_\_\_\_ (***name of location***) before the arbitrator so appointed. The arbitration must be conducted in the English language. The parties agree that the arbitration award is final and binding, and that the judgment on any arbitration award may be entered in any court of competent jurisdiction, and either party may file an action to compel arbitration with any court of competent jurisdiction. This Agreement is a waiver of all rights the parties may have to a civil court action on any dispute outlined by this Agreement. The fees and costs of the arbitration shall be borne equally by the parties, except that each party shall each pay for their own attorney fees or costs of representation for purposes of the arbitration unless otherwise provided by law.

The parties agree that the following claims may be excluded from this arbitration provision: (1) claims relating to Distributor's violations or breach of Sections \_\_\_\_ of this Agreement; and (2) claims that are expressly excluded by applicable laws. Either party may choose to file any actions concerning disputes or controversies arising out of such claims or the interpretation of any provisions contained therein with \_\_\_\_\_ (***specify name of court, such as the Los Angeles County Superior Court in Los Angeles, California***).

***(The parties may choose to use the following arbitration clause instead.)***

15.3 **Arbitration; Choice of Forum.**

15.3.1 **Arbitration.** All claims, disputes, controversies, or disagreements of any kind whatsoever ("claims"), including any claims arising out of or in connection with this Agreement, shall be submitted to final and binding arbitration before \_\_\_\_\_ (***name of an arbitration agency***) in \_\_\_\_\_ (***name of location***) in accordance with the rules and procedures of ***(if applicable, add: the supervision of \_\_\_\_\_ (specify appointing authority) and)*** the Rules of the United Nations Commission on International Trade Law ("UNCITRAL") in effect on the date of this contract (the "Rules"). In the event of any conflict between the Rules and this Section, the provisions of this Section govern. Arbitration under this Agreement is the parties' exclusive remedy, and no party to any arbitration is required to exhaust any local administrative or judicial remedy first.

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- 15.3.2 **Arbitrator.** Each party must appoint one arbitrator within \_\_\_\_ (*specify time period, such as: 30 days*) after receipt by the respondent of the notice of arbitration. The two arbitrators appointed by the parties must, within \_\_\_\_ (*specify time period, such as: 30 days*) after their appointment, appoint a third, presiding arbitrator, who may not be a citizen or resident of \_\_\_\_ (*specify country*) or \_\_\_\_ (*specify country*). If either party fails to nominate an arbitrator, or the two arbitrators appointed by the parties are unable to appoint a presiding arbitrator within the stated periods, the arbitrator or arbitrators will be appointed by the \_\_\_\_ (*appointing authority*) according to the Rules. All arbitrators must be fluent in \_\_\_\_ (*specify language, such as: English*) and must \_\_\_\_ (*specify desired expertise, if any*).
- 15.3.3 **Procedure.** The arbitrators will hold hearings where written, documentary and oral evidence may be presented. Evidence may not be taken except in the presence of both parties, and all witnesses may be questioned by both parties. Unless the parties otherwise agree, or a witness is dead, ill, or unavailable for other good reasons, the arbitrators may not accept a witness' written statement unless the other party has an opportunity to question the witness in the arbitrators' presence. All proceedings must be conducted in the \_\_\_\_ (*specify language, such as: English*) language.
- 15.3.4 **Award.** The arbitrators must, by majority vote, render a written decision, stating reasons for their decision, within \_\_\_\_ (*specify number*) months after the respondent receives the request for arbitration. Any cash award must be payable in U.S. Dollars through a bank in the US and determined, to the extent necessary, on the basis of the rate of exchange in effect at the time the claim arose, as published in the Wall Street Journal. Each party must bear its own costs and attorney's fees or the prevailing party is entitled to recover its costs of arbitration and reasonable attorney's fees, as determined by the arbitrators. The award is deemed a \_\_\_\_ (*specify nationality*) award.
- 15.3.5 **Enforcement.** The award is final and enforceable and may be confirmed by the judgment of a court of competent jurisdiction. To the extent that an award or confirming judgment is unsatisfied, it may be enforced in the manner provided by law in all countries. The prevailing party is entitled to recover its costs and attorney's fees in any proceedings to enforce the award or confirming judgment.
- 15.3.6 **Reservation of Rights.** The right to refer a claim or dispute to arbitration under this Agreement is not affected by the fact that a claimant or respondent has received full or partial compensation from a third party for the loss or injury that is the object of the claim or dispute, and any third party may participate in these proceedings by right of subrogation.
- 15.3.7 The parties agree that the following claims may be excluded from this arbitration provision: (1) claims relating to Distributor's violations or breach of Sections 11, 12, 13 and 14 of this Agreement; and (2) claims that are expressly excluded by applicable laws. Either party may choose to file an action concerning disputes or controversies arising out of such claims or the interpretation of any provisions contained therein with \_\_\_\_ (*specify name of court, such as the Los Angeles County Superior Court in Los Angeles, California*).
- (The parties may choose to use the following "Choice of Forum" clause instead.)**
- 15.3 **Choice of Forum.** The parties further agree that any actions concerning disputes or controversies arising out of this Agreement or the interpretation of any provisions contained therein shall be filed with the \_\_\_\_ Court in \_\_\_\_ (*specify location*).
- 15.4 **Entire Agreement; Language; Amendments.** This Agreement constitutes the entire Agreement between the parties hereto with respect to the subject matter of this Agreement and supersedes and cancels any other prior agreements or understandings whether written, oral or implied relating to the subject of this Agreement. There are no restrictions, promises, representations, warranties covenants or undertakings other than those expressly set forth or referred to in this Agreement. The parties further agree that neither they nor anyone acting on their behalf made any inducements, agreements, promises, or representations other than those set forth in this Agreement. This Agreement is written in English only, which is the controlling language in all respects. Any version in any other language is for accommodation only and is not binding upon the parties. All formal notices given pursuant to this Agreement must be in English. Except as provided in Section 6.1, this Agreement may be amended, modified, and supplemented only by

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written agreement signed by the parties' authorized personnel hereto.

- 15.5 Waiver of Breach. The waiver by either party of a breach or violation of any provision of the Agreement shall not operate as, or be construed to be, a waiver of any prior, concurrent or subsequent breach hereof. No waiver or purported waiver will be valid or enforceable unless it is in writing and signed by the party against whom it is sought to be enforced.
- 15.6 Assignment. No portion of this Agreement or any right or obligation under this Agreement can be transferred or assigned, in whole or in part, whether by operation of law or otherwise, by either party without the prior written consent of the other party, except that Manufacturer may freely transfer and assign its rights and obligations under this Agreement to any of Manufacturer's wholly owned subsidiaries, provided that Manufacturer provides guarantees of the obligations of the wholly owned subsidiaries in form and substance satisfactory to Distributor.
- 15.7 Force Majeure. If either party fails to perform its obligations hereunder (except for the obligation to pay money) because of fires, floods, earthquakes, riots, civil unrest, war, epidemics, shortages, labor unrest, strikes, accidents, acts of God, weather conditions, or action or inaction of any government body or other proper authority, delays caused beyond its reasonable control, then such failure to perform will not be deemed a default hereunder and will be excused without penalty until such time as such party is capable of performing and will not be liable to the other party for any loss, cost or damages arising out of, or resulting from, such failure to perform.
- 15.8 Notice. All notices which are required or permitted to be given pursuant to this Agreement shall be in writing and shall be sufficient in all respects if delivered personally, by facsimile, by email, by overnight courier using a nationally recognized courier company, or by registered or certified mail, postage prepaid, addressed to a party as indicated below: Manufacturer: \_\_\_\_\_; and, Distributor: \_\_\_\_\_. Notice shall be deemed to have been received upon delivery thereof as to communications which are personally delivered, are sent by facsimile or by email; on the third (3<sup>rd</sup>) day after mailing as to communications which are sent by overnight courier; and on the seventh (7<sup>th</sup>) day after mailing as to communications made by mail. The above addresses may be changed by giving written notice of such change in the manner provided above for giving notice.
- 15.9 Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction will, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction will not invalidate or render unenforceable such provision or other provision hereof in any other jurisdiction.
- 15.10 Attorney's Fees. The prevailing party in any arbitration or litigation brought by either party to this Agreement in connection with this Agreement will be entitled to recover from the other party all reasonable costs, attorney's fees, and other expenses incurred by the prevailing party in such arbitration or litigation.
- 15.11 Third Parties. Nothing herein expressed or implied is intended or will be construed to confer upon or give to any person or entity other than the parties hereto and their successors or permitted assigns, any rights or remedies under or by reason of this Agreement.
- 15.12 Survival. The provisions of Sections 1, 6.6, 7, 8.2, 9, 10, 11, 12, 13, 14 and 15 of this Agreement will survive any expiration or termination of this Agreement.
- 15.13 Headings. The headings of the Sections of this Agreement are inserted for convenience of reference only and do not constitute a part hereof or affect in any way the meaning or interpretation of this Agreement.
- 15.14 Dollar Amount. Any dollar amount in the Agreement is in U.S. dollars.
- 15.15 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. Each party hereto acknowledges and agrees that the other party may rely on electronic facsimile signatures as conclusive evidence of the valid and binding execution of this Agreement.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth in the first paragraph hereof.

**MANUFACTURER**

**DISTRIBUTOR**

Date: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_