

Export Sales Representative Agreement

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THIS EXPORT SALES REPRESENTATIVE 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 _____, ("Representative") having its principal offices at _____ (**complete address of representative's office**).

RECITALS

- A. Manufacturer is in the business of manufacturing and exporting _____;
- B. Representative is in the business of representing manufacturers to sell products; and
- C. Manufacturer desires to retain Representative to act as Manufacturer's sales representative 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 Representative 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 "Commissions" shall mean the commissions to be paid by Manufacturer to Representatives for the Commissionable Orders pursuant to Sections 6.3, 6.4 and 6.5 of this Agreement.
- 1.3 "Commissionable Orders" shall mean any and all Orders for Products: (a) that have been received by Manufacturer through or from the Representative for orders of Products to be delivered to Manufacturer Customers within the Territory; (b) that have been reported by Representative to Manufacturer promptly after the receipt of the order; (c) that have been confirmed in writing signed by the CEO of, or a person designated by, Manufacturer, confirming that such an Order is a Commissionable Order; (d) that disclose the name of the ultimate Manufacturer Customers and the price or prices quoted for payment by such Manufacturer Customers for Products; (e) that have been delivered to Manufacturer's principal office located at ____; and, (f) that have been accepted by the Manufacturer in writing prior to the termination or expiration of the Term. Any Order submitted by Representative not in compliance with Section 1.3 will not be qualified as a Commissionable Order, and Manufacturer shall not be obligated to pay Commissions on such an Order. Commissionable Orders shall not include any Products sold to Manufacturer Customers outside the Territory for delivery outside the Territory or any Products that are incorporated into, and become a component of, goods or items that are

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delivered to or sold within the Territory by a third person. Manufacturer agrees that all bona fide inquiries and Orders received by Manufacturer from persons within the Territory will be referred to Representative and may qualify as Commissionable Orders if other requirements set forth in this Section 1.2 of this Agreement are met. With respect to Orders from Manufacturer Customers within the Territory for delivery outside the Territory or from Manufacturer Customers outside the Territory for delivery within the Territory, if there is no exclusive sales representative for any of the territories involved herein other than the Territory, such orders may qualify as Commissionable Orders if all other requirements set forth in this Section 1.2 of this Agreement are met. If, however, there are one or more exclusive sales representatives for the territories involved other than the Territory, then such orders will not qualify as Commissionable Order, and instead, Manufacturer will divide the commission applicable for such orders equally among the sales representatives involved on a case by case basis.

(The above set forth provision is applicable if the Representative is the exclusive representative for Manufacturer in the Territory. If the Representative is a non-exclusive representative, the following should be used instead.)

- 1.3 "Commissionable Orders" shall mean any and all Orders for Products: (a) that have been received by Manufacturer through or from the Representative for orders of Products to be delivered to Manufacturer Customers within the Territory; (b) that have been reported by Representative to Manufacturer promptly after the receipt of the order; (c) that have been confirmed in writing signed by the CEO of, or a person designated by, Manufacturer, confirming that such an Order is a Commissionable Order; (d) that disclose the name of the ultimate Manufacturer Customers and the price or prices quoted for payment by such Manufacturer Customers for Products; (e) that have been delivered to Manufacturer's principal office located at _____; and, (f) that have been accepted by the Manufacturer in writing prior to the termination or expiration of the Term. Any Order submitted by Representative not in compliance with Section 1.3 will not be qualified as a Commissionable Order, and Manufacturer shall not be obligated to pay Commissions on such an Order. Commissionable Orders shall not include any orders for Products received by Manufacturer not from Representative.
- 1.4. "Confidential Information" shall mean information provided by Manufacturer or Manufacturer Customers to Representative (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 registerable 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 other financial or business information disclosed to Representative by Manufacturer, either directly or indirectly, in writing or orally or by drawings or observation, which has actual or potential economic value to Manufacturer.
- 1.5 "Effective Date" shall mean _____.
- 1.6 "Initial Term" shall mean the initial term of this Agreement from ___ to ___.
- 1.7 "Manufacturer" shall mean _____ and its Affiliates.
- 1.8 "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.
- 1.9 "Net selling price" shall mean the gross amount actually invoiced to Manufacturer Customers, including components, spare parts, accessories and related services, minus any of the following which may have been included in the gross price or contract value, provided that they are stated

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separately on the applicable invoice: (a) shipping, freight and insurance charges, inland, air and ocean; (b) packing, crating or handling charges; (c) sales, use, value added or similar taxes, customs duties, import or export taxes or levies applicable to Products but excluding any income, withholding or other tax or assessment imposed on Manufacturer or Manufacturer Customers in the normal course of business; and (d) discounts, allowances or other special deductions granted Manufacturer Customers.

- 1.10 “Order” shall mean an order placed by a Manufacturer Customer for Products and received by Manufacturer from or through Representative. Only Orders that meet all terms and conditions set forth in Section 1.4 are Commissionable Orders.
- 1.11 “Party” shall mean Manufacturer or Representative, individually. “Parties shall mean Manufacturer and Representative collectively.
- 1.12 “Products” shall mean the products set forth in Attachment A, which is hereby incorporated by reference as fully set forth in this Agreement.
- 1.13 “Renewal Term” shall mean any renewal term of this Agreement pursuant to Section 8.1 of this Agreement.
- 1.14 “Representative” shall mean _____ and its Affiliates.
- 1.15 “Term” shall mean the term of this Agreement, including the Initial Term and any Renewal Terms, if any.
- 1.16 “Territory” shall mean the following country/countries: _____ (or “_____ types of customers serviced by Representative in _____).

2. APPOINTMENT

- 2.1 Manufacturer appoints Representative, and Representative accepts the appointment, to act as Manufacturer's exclusive sales representative in the Territory for the sale of the Products during the Term. ***(The word “exclusive” is optional.)***

3. RELATIONSHIP OF THE PARTIES

- 3.1 Independent Contractor. This Agreement shall not be deemed to create a partnership, joint venture or agent-principal relationship between the parties, and Representative or any of Representative'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 agree that Representative 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: Most Favored Representative. Representative shall be the exclusive representative for Manufacturer to sell Products in the Territory. If Manufacturer enters into any export sales representative agreement for Product with another sales representative in a different territory in the future, providing that new sales representative more favorable terms, other than commission amount, Manufacturer will immediately amend this Agreement to provide Representative with the benefit of any terms, other than the commission amount, in the new agreement more favorable than those included in this Agreement. ***(This Section is optional. Also, the portion after the first sentence is optional, even if this Agreement is an exclusive agreement.)***

4. DUTIES AND RESPONSIBILITIES OF REPRESENTATIVE

- 4.1 Representative's duties and responsibilities include but are not limited to:
- (a) Obtaining and providing Manufacturer with market forecast information regarding the Products, identifying potential business and contacts, investigating inquiries received by Manufacturer and referred to Representative and making introductions to, and arranging meetings with, potential customers;

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- (b) Assisting Manufacturer in preparation and submission of presentations, bids and quotations for Orders and in their negotiation at the time and in the manner reasonably requested by Manufacturer, assisting Manufacturer in arranging and coordinating demonstration of Products, and assisting Manufacturer's installation of Products and the provision of services in connection with the demonstrations;
- (c) Achieving the minimum sales requirements of Products as set forth in Attachment A.
- (d) Providing Manufacturer Customers presales and post-sales customer services, including but not limited to transmitting technical information and providing advice and assistance concerning the implementation of technical and training programs and the provision of Manufacturer's personnel and other assistance;
- (e) Providing logistical and support services in the Territory, 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;
- (f) Providing advice to Manufacturer regarding the probable financing requirements and financing sources for acquisition of Products by potential customers;
- (g) Providing advice and assistance to Manufacturer on compliance with laws, regulations, business and financial practices in the 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) Providing information and recommendations concerning local subcontractors that might be necessary for construction, installation, maintenance or service of Products; and
- (i) 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 With fifteen (15) days from the closing of each calendar ____ (***month or quarter***), or as reasonably requested by Manufacturer, Representative shall submit a written report to Manufacturer setting forth the sales in that quarter, potential sales in the future, information relating to commercial conditions in the Territory, the financial and credit status of Manufacturer Customers and any additional information necessary to enable Manufacturer to manufacture or supply Products to the required specifications, safety codes, regulations and requirements in the Territory. Representative agrees that it is Manufacturer's objective to obtain "sole-source negotiated sales" wherever possible.
- 4.3 Representative shall not make any representations, warranties or guarantees to any person with respect to Products or related services, other than those representations, warranties or guarantees that Manufacturer has specifically authorized in writing to be given to that person. Representative's authority is limited to the solicitation and forwarding or placing of Orders with Manufacturer and the performance of other functions set forth in this Agreement. Representative shall have no authorities to make or execute any commitment or agreement, accept any Orders or incur any liability on behalf of Manufacturer or bind Manufacturer in any way.
- 4.4 Except as specified in Section 5, Representative is responsible for all expenses incurred by Representative in connection with the implementation and performance of Representative'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 (d) any and all taxes, duties, tariffs or charges that may be imposed on Representative in the Territory. Subject to prior written approval by Manufacturer for each specific trip, Manufacturer may reimburse Representative for Representative's actual and reasonable travel, room and board expenses incurred while performing services under this Agreement in a country that is not also the place of Representative's principal business or residence, provided that Representative provides reasonable documentation for those expenses. ***(The last sentence is optional.)***
- 4.5 Representative is solely responsible for the performance of its duties.

5. DUTIES AND RESPONSIBILITIES OF MANUFACTURER

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- 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.
- 5.2 From time to time, Manufacturer will supply Representative with a reasonable amount of descriptive materials and literature, including but not limited to sales brochures, installation, operating and maintenance manuals, technical descriptions and other data and information, to enable Representative to promote the sale of Products and to undertake its duties and responsibilities set forth in this Agreement.
- 5.3 At reasonable requests by Representative, Manufacturer may, at its discretion, make arrangement for meetings to introduce and demonstrate Products to promotion sale and other services performed by Representative, so as to familiarize Representative with the use and applications of Products and to facilitate Representative's performance of its duties under this Agreement. The locations for such meetings shall be determined by Manufacturer. Except as otherwise agreed by the parties in writing, each party shall bear its own costs and expenses for such meetings, including but not limited to costs for its personnel and travel and lodging expenses.
- 5.4 Manufacturer will provide, or make available, expert personnel and technical assistance, in the manner and at the time Manufacturer considers reasonable and appropriate, to follow up Representative's promotion and sales activities and to fulfill Manufacturer Customer's Order or requirements received and accepted by Manufacturer. Manufacturer is solely responsible for the design, development, supply and production of Products, the performance of its personnel and the furnishing of technical assistance. In no event is Representative entitled to, nor does Representative have any right to, claim any compensation or loss for clientele or sales or for other reason arising from Manufacturer's performance or failure to perform any of its above-stated functions.

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

- 5.5 Manufacturer is solely responsible for the performance of its duties.

6. PRICING, COMMISSIONS AND ACCOUNTING

- 6.1 Pricing. Manufacturer has the sole right to establish and control over all prices, discounts, extension of credit, allowances, refunds, specifications, delivery and other terms governing the sale of Products. Representative shall only quote to Manufacturer Customers the prices and terms of sale for Products provided by Manufacturer and will in no event alter or change the prices or terms of sale unless authorized by Manufacturer in writing. Prices and terms of sale are subject to change by Manufacturer at any time without advance notice. Manufacturer reserves the right to grant or not to grant any discount or allowance, to accept a return or make a refund, or to extend credit, as Manufacturer in its discretion deems advisable. However, after making any change in prices or terms or cancelling any approved Order, Manufacturer shall immediately notify Representative of the changes and/or cancellations.
- 6.2 Acceptance and Cancellation of Orders. No Order is binding on Manufacturer until accepted in writing by Manufacturer. Manufacturer reserves the right to accept, reject, modify or cancel, in whole or in part, any or all Orders received or accepted by Manufacturer. Manufacturer will bill Manufacturer Customers and carry accounts in its own name as creditor, except in cases where a different procedure is agreed upon by the parties in advance in writing. Following Product shipment, Manufacturer will furnish Representative with a copy of Manufacturer's approval of the Order and the invoice or invoices included in the shipping documents. Notwithstanding Manufacturer's acceptance of an Order, Manufacturer has the absolute right to modify or cancel the Order or to consent to Manufacturer Customer's modification or cancellation of the Order at any time for any reason. Manufacturer is not liable to Representative for a cancellation or modification or Manufacturer's failure to deliver any Product.
- 6.3 Commissions. Manufacturer will pay Representative Commissions at the rates set forth in Attachment B, which is hereby incorporated by reference as fully set forth in this Agreement, of the Net Selling Price of all Products sold pursuant to Commissionable Orders accepted by Manufacturer under, and during the term of, this Agreement. Unless otherwise agreed by the parties in writing, Commissions for a particular Commissionable Order are deemed earned and

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payable, pro rata, within fifteen (15) days of Manufacturer's receipt of payment from Manufacturer Customer placing the Commissionable Order. In the event of nonpayment by such Customer for any reason, no Commissions may arise or be deemed to be earned with respect to the unpaid amount, and Representative agrees to relinquish and waive any claims against Manufacturer for all of these Orders. ***(Commissions can also be paid on a monthly basis.)***

- 6.4 **Payments of Commissions.** Any payment of Commissions will be made in U.S. Dollars, unless the parties agree otherwise in writing, and will be made by check or bank transfer to the order of Representative or by any other means as the parties may agree otherwise in writing prior to such payment. No payment of Commissions may be made to any person or entity other than Representative, except pursuant to a written assignment by Representative approved in advance in writing by Manufacturer. No Commission will be paid for any Commissionable Orders placed with Manufacturer for the specific purpose of repairing or replacing defective or damaged Products. If a Product ordered by a Manufacturer Customer is returned by that Customer, Commissions paid by Manufacturer to Representative for such Products will be deducted from future Commissions to be paid by Manufacturer to Representative until the amount is deducted in full. If no future Commissions will be paid to Representative, then Representative shall immediately pay the unpaid balance of such amount to Manufacturer in full.
- 6.5 **Payment of Commissions Following Termination or Expiration.** Subject to Sections 6.2 and 6.4, following termination or expiration of this Agreement, within thirty (30) days from the date of termination or expiration, Manufacturer will pay Representative Commissions on Products under Commissionable Orders accepted by Manufacturer and paid by Manufacturer Customers on or before the date of termination or expiration. No Commissions will be paid with respect to any Orders accepted after the termination or expiration date, except that Manufacturer will pay Commissions on the following Order: (a) Any Orders received by Manufacturer prior to the date of termination or expiration but accepted and paid in whole or in part thereafter; and (b) any Order received and accepted by Manufacturer and paid by Manufacturer Customers within ___ days of the termination or expiration date if the Term is ___ years or less at the time of termination or expiration; or within ___ days of its termination or expiration date, if the Term is ___ year or less; or within ___ days of the termination or expiration date if the Term is ___ or more. ***(The second half of Section 6.6, starting from "except, (a) . . ." to the end of the Section is optional – the parties can use (a), (b) or both.)***
- 6.6 **Audit Rights.** During the Term and for a period of one (1) year following the termination 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 Representative agrees that in rendering services and in carrying out its duties under this Agreement, Representative will neither undertake nor cause or permit to be undertaken any activity which to Representative's knowledge is illegal under the laws of the Territory or of the U.S. It is a condition of this Agreement that, within ___ ***(specify number, such as: 30)*** days from execution of this Agreement and prior to the initiation of any activities with respect to any Order, Representative will submit to Manufacturer an opinion of Representative'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 Representative from carrying out its duties in accordance with laws, decrees, rules and regulations of the Territory, and that Representative may act as representative and sales agent 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. In addition to this opinion, or as an alternative, Manufacturer may require Representative to disclose this relationship to any Manufacturer Customer and, either to provide satisfactory evidence of the disclosure or to

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secure, prior to, and as a condition of, any Order being accepted pursuant to Section 1.3, Manufacturer Customer's authorization or acknowledgment in writing, in a form acceptable to Manufacturer, of this relationship as to the specific Products involved. If Manufacturer, at its own discretion, considers that Representative fails to do so within a reasonable period of time, Manufacturer may conclude such Order for its own account, and Representative shall not be entitled to any Commissions for such an Order.

7.2 Representative 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 Representative, as well as the identities of Representative's principal and the amount of any payment made or to be made to Representative 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 8.2. 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 15.4 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 term.)***

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 Representative's obligations under Sections 7, 11, 12, 13 and 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 situation in the U.S. or Territory, or if the trade between the U.S. and Territory becomes impracticable

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because of the change in the currency exchange, then either party may terminate this Agreement by given the other party a _ () days' prior written notice. **(Optional.)**

8.2.7 Either party may terminate this Agreement without cause upon __ () days' prior written notice to the other party. **(Optional.)**

8.3 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, Representative shall return Manufacturer the Confidential Information as provided in Section 12.4 **(or 12.1)** of this Agreement, and Representative'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 trade names with respect to Products. In the event that any action, claim or suit is brought against Representative 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 Representative pursuant to Section 10.1 of this Agreement, provided that Representative gives written notice of such actions or claims brought against Representative within five (5) days from the receipt of notice of such actions or claims, and that Representative 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 Representative represents and warrants that any fees or Commissions paid or to be paid to Representative under this Agreement are for Representative's own account, and that except as appropriate to carry out Representative's duties in this Agreement, Representative has not, has no obligation to and will not, directly or indirectly, give, offer, pay, promise to pay or authorize the payment of money or thing of value to any other person in connection with transactions for which Commissions under this Agreement are to be paid. Representative 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). Representative 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 Representative employ an "official" of that government.

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- 9.4 Representative 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 Representative under this Agreement and the dispositions of the Commissions paid Representative pursuant to this Agreement. Representative specifically agrees that Manufacturer may inspect such books, records and accounts upon reasonable requests made by Manufacturer to Representative.

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 COMMISSIONS PAID BY MANUFACTURER TO REPRESENTATIVE 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 REPRESENTATIVE'S BREACH OF SECTIONS 11, 12, 13 AND 14 OF THIS AGREEMENT BY REPRESENTATIVE. **(Optional.)**

- 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

- 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

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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. Representative 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 Representative to use the names and trademarks of Manufacturer and Product and manuals in order to market and sell Product in strict conformity with this Agreement; and (c) Representative 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, Representative shall assist Manufacturer or Manufacturer's designees at Manufacturer's expense to file any application for registration of a patent, trademark, trade-name, 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, trade-name, service mark or other symbol under the laws of the Territory. Upon expiration or sooner termination of this Agreement, Representative'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 Representative. Any use of Confidential Information is at Representative'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, Representative become aware of any unauthorized access, use, possession or knowledge of any Confidential Information, or if Representative receives any request of a governmental agency or third party pursuant to operation of law, regulation or court order, Representative 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 Representative 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, Representative shall provide all reasonable assistance to Manufacturer to protect the confidentiality of any such Confidential Information that Representative 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. Representative: (1) shall hold and maintain the 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 the Confidential Information; and (3) shall only disclose the 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, Representative 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. Representative 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 Representative, Representative shall delete such undeliverable files and data items transferred from Manufacturer.

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- 12.5 Injunctive Relief. Representative 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 Representative 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 Representative. Manufacturer is the sole owner of the Confidential Information. Representative 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 Representative's employees and/or consultants shall be on a need to know basis. If, at any time, Representative becomes aware of any unauthorized access, use, possession or knowledge of any Confidential Information, or if Representative receives any request of disclosure by a governmental agency or third party pursuant to operation of law, regulation or court order, Representative 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. Representative 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, Representative 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. Representative shall not reproduce or permit the reproduction of any such Confidential Information, nor circulate such to any individual or entity. Representative 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 Representative 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.

13. NO CONFLICT DURING TERM

- 13.1 No Representation of Competitor. During the Term, Representative shall not act as a representative 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. Representative 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 Representative's other principals.

14. NO UNFAIR COMPETITION AND NON-INTERFERENCE WITH BUSINESS *(These subsections are optional and should be revised to fit the specific situation for each matter.)*

- 14.1 General. Representative understands that during the Term, Representative 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 Representative from continuing to undertake and perform all activities and functions, which

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Representative is undertaking and performing as of the execution of this Agreement. Representative 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. Representative 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 Representative 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, Representative agrees to be bound by Section 14.

- 14.2 No Unfair Competition. Representative 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 Representative 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, Representative 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, representatives 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. Representative acknowledges and agrees that Manufacturer has made a substantial investment in bringing qualified and professional employees, contractors, agents and/or representatives and would suffer a loss if they are hired by others due to the conduct by Representative. Representative 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. Representative 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. Representative agrees that Section 15.6 shall apply to any transaction between the parties and/or between Representatives and any and all Manufacturer Customers, which makes use of, or involves, Confidential Information, or relates to any sources, introduced by, or disclosed by or from, Manufacturer.
- 14.7 Injunctive Relief. Representative agrees that a breach of Representative's obligations under this Agreement shall result from any efforts of the Representative or its associates, including but not limited to any of Representative's agents, representatives, employees, affiliates, solicitors, bankers, buyers or sellers, who directly or indirectly, attempt to conduct business of or in any

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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 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 arbitrator 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.

15.3.2 The parties agree that the following claims may be excluded from this arbitration provision: (1) claims relating to Representative'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*). (*This Section is optional.*)

(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 **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.

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**

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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 accepted except in the presence of both parties. 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 an award issued in ____ (**specify nation**).
- 15.3.5 **Enforcement.** The award is final and enforceable and may be confirmed by the judgment of, or enforced by, 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 Representative'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. This Agreement may be amended, modified, and supplemented only by 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

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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 Representative.
- 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, Representative: _____. 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 (3rd) day after mailing as to communications which are sent by overnight courier; and on the seventh (7th) 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, 6.5, 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: _____

ATTACHMENT A

LIST OF PRODUCTS

(Manufacturer may retain the right to change Products during the Term. Manufacturer may grant the right of approval or first right of refusal to Distributor for such change of Products during the Term.)

ATTCHMENT B

COMMISSION RATES