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## DISTRIBUTION AGREEMENT

*State of Alabama*

This Distribution Agreement, hereinafter referred to as "Agreement," is entered into and made effective as of \_\_\_\_\_ (the "Execution Date") by and between the following parties: \_\_\_\_\_ (the "Supplier"), a corporation, incorporated under the laws of the state of Alabama, having its principal place of business at the following address:

\_\_\_\_\_

and \_\_\_\_\_ (the "Distributor"), a corporation, incorporated under the laws of the state of Alabama, having its principal place of business at the following address:

\_\_\_\_\_

The parties may be referred to individually as "Party" and collectively as the "Parties."

### **RECITALS:**

*WHEREAS, the Parties desire to enter into an agreement whereby the Supplier provides certain Products (as defined further below) to the Distributor for distribution;*

*WHEREAS, the Parties wish to establish a written document between them covering the terms and conditions of their agreement;*

*NOW, therefore, in consideration of the promises and covenants contained herein, as well as other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the Parties do hereby agree as follows:*

**ARTICLE 1 - PRODUCTS:**

Supplier hereby agrees to supply and Distributor hereby agrees to distribute the following products (the "Products"):

\_\_\_\_\_

**ARTICLE 2 - TERRITORY:**

The Products will be distributed exclusively in the following geographic territory (the "Territory"):

\_\_\_\_\_

**ARTICLE 3 - DISTRIBUTION TERMS:**

Distributor hereby agrees to exercise its best efforts to obtain and promote the sale of the Products in the Territory. Distributor will maintain adequate staff at all times, including but not limited to adequate sales staff. Distributor further agrees to abide by each of Supplier's policies, procedures or other rules regarding the purchase and sale of the Products. Distributor agrees to conduct its business in a manner that is favorable to and promotional of Supplier and the Products and to not disparage, tarnish, or imply poor favor of the name, reputation or goodwill of Supplier.

No sale, resale, promotion, delivery, installment, service or other distribution of the Products by Distributor shall be permitted outside the Territory. Should Distributor make any significant change to its distribution network, it agrees to notify Supplier as soon as is practicable.

Distributor hereby acknowledges and agrees that its only rights with respect to the Product are the rights specifically outlined in this Agreement and that any and all other rights regarding the Product are specifically reserved to Supplier.

Supplier will exercise its best efforts to fulfill Distributor's orders for the Products.

**ARTICLE 4 - EXCLUSIVITY:**

Supplier agrees not to sell or ship the Products in the Territory to anyone except the Distributor. Supplier further agrees not to sell or ship any similar products or products

with the same or similar trademark or other business identification on the product or package to anyone in the Territory except Distributor. Any inquiries received by Supplier about Products in the Territory shall be directed to Distributor.

#### **ARTICLE 5 - PRICE AND PAYMENT INFORMATION:**

The purchase price for the Products ("Purchase Price") shall be clearly listed on the invoice sent to Distributor per each Product shipment and shall be negotiated by the Parties prior to the first shipment to Distributor. The Purchase Price shall be payable in U.S. Dollars and may be made as follows:

\_\_\_\_\_

The Purchase Price may include any shipping fees, product insurance or other handling costs, which Distributor hereby agrees to pay.

The timing of payment for the Purchase Price shall be as follows:

\_\_\_\_\_

Any material prospective or proposed or otherwise expected increases in the Purchase Price shall be communicated by Supplier to Distributor with as much advance notice as possible but in no event later than 15 days prior to the next ship of Products to Distributor. Distributor may elect to continue this Agreement at the increased Purchase Price or may elect to terminate this Agreement with 10 days' written notice. In the event that Distributor elects to terminate this Agreement, Distributor shall have the right, but not the obligation, to purchase a one-month supply of the Products at the original Purchase Price.

Risk of loss for the Products shall pass when Supplier either completes delivery to the Distributor, if the Products are being personally delivered, or when the Supplier places the Products with the shipping carrier.

#### **ARTICLE 6 - SECURITY INTEREST:**

Title for the Products will pass to Distributor when the Products have been delivered. However, Supplier shall retain a security interest in the Products delivered until payment for the Products has been fully received.

Supplier will have all rights of a secured party.

If Distributor does not pay, Supplier may enter Distributor's property and recover the Products. Supplier shall also be able to pursue any remedy under this Agreement or any remedy existing at law or equity.

#### **ARTICLE 7 - PROMOTIONAL MATERIALS:**

Supplier may furnish promotional material to Distributor from time to time to assist in the sale of the Products. Distributor may use such materials but acknowledges and agrees that Supplier retains ownership of all proprietary rights, including intellectual property rights in and to the materials.

#### **ARTICLE 8 - INTELLECTUAL PROPERTY:**

Distributor hereby acknowledges and agrees that Supplier retains all rights in and to Supplier's intellectual property, including all patents, trademarks, service marks, trade secrets, copyrights or other intellectual property ("Supplier IP"). Distributor may, however, receive a limited license while this Agreement is in force and effect to the Supplier IP in order to use any promotional materials or trademarks or service marks on the Products specifically as Supplier shipped them. Distributor may not add any Supplier IP to any product or other material.

#### **ARTICLE 9 - COMPLIANCE:**

Distributor hereby agrees to comply with all federal, state, local and foreign laws and rules, including all applicable export control laws and regulations.

#### **ARTICLE 10 - CONFIDENTIALITY:**

Each Party hereby acknowledges and agrees that they and the other Party each possess certain non-public Confidential Information (as hereinafter defined) and may also possess Trade Secret Information (as hereinafter defined) (collectively the "Proprietary Information") regarding their business operations and development. The Parties agree that the Proprietary Information is secret and valuable to each of their respective businesses and the Parties have entered into a business relationship, through which they will each have access to the other Party's Proprietary Information. Each of the Parties desires to maintain the secret and private nature of any Proprietary Information given. "Receiving Party" refers to the Party that is receiving the Proprietary Information and "Disclosing Party" refers to the Party that is disclosing the Proprietary

Information.

A) Confidential Information refers to any information which is confidential and commercially valuable to either of the Parties. The Confidential Information may be in the form of documents, techniques, methods, practices, tools, specifications, inventions, patents, trademarks, copyrights, equipment, algorithms, models, samples, software, drawings, sketches, plans, programs or other oral or written knowledge and/or secrets and may pertain to, but is not limited to, the fields of research and development, forecasting, marketing, personnel, customers, suppliers, intellectual property and/or finance or any other information which is confidential and commercially valuable to either of the Parties.

Confidential Information may or may not be disclosed as such, through labeling, but is to be considered any information which ought to be treated as confidential under the circumstances through which it was disclosed.

Confidential Information shall not mean any information which:

I) is known or available to the public at the time of disclosure or became known or available after disclosure through no fault of the Receiving Party;

II) is already known, through legal means, to the Receiving Party;

III) is given by the Disclosing Party to third parties, other than the Receiving Party, without any restrictions;

IV) is given to the Receiving Party by any third party who legally had the Confidential Information and the right to disclose it; or

V) is developed independently by the Receiving Party and the Receiving Party can show such independent development.

B) "Trade Secret Information" shall be defined specifically as any formula, process, method, pattern, design or other information that is not known or reasonably ascertainable by the public, consumers, or competitors through which, and because of such secrecy, an economic or commercial advantage can be achieved.

C) Both Parties hereby agree they shall:

I) Not disclose the Proprietary Information via any unauthorized means to any third parties throughout the duration of this Agreement and the Parties' relationship with each other;

II) Not disclose the Confidential Information via any unauthorized means to any third parties for a period of 3 (three) years following the termination of this Agreement;

III) Not disclose the Trade Secret Information forever, or for as long as such information remains a trade secret under applicable law, whichever occurs first, to any third party at any time;

IV) Not use the Confidential Information or the Trade Secret Information for any purpose except those contemplated herein or expressly authorized by the Disclosing Party.

#### **ARTICLE 11 - WARRANTIES:**

The following specific warranties are applicable to the Products:

\_\_\_\_\_

Except as provided herein, Supplier makes no other warranties, express or implied, or promises or obligations with respect to the Products. Supplier disclaims any and all other warranties, including the warranties of fitness for a particular purpose.

#### **ARTICLE 12 - TERM & TERMINATION:**

This Agreement shall be commenced as of the Execution Date and shall continue for a period of 2 years.

The Agreement will automatically renew and shall continue in full force and effect until either Party submits a Notice of Termination to the other Party in writing.

Either Party may terminate this Agreement for any reason or no reason at all prior to the natural expiration of the term upon the following notice: \_\_\_\_\_.

In the event that proper notice has not been submitted for termination, either Party may still terminate this Agreement but hereby agrees to pay a monetary penalty for such termination. The monetary penalty for early termination shall be as follows: \$2.

The Parties may also terminate this Agreement in the event of a breach. If either Party breaches this Agreement, the other Party may terminate upon 60 days' written notice. Such notice shall contain any and all information about the breach and shall provide the breaching Party the opportunity to cure the breach within 60 days'. If the breach has not

been cured within such time, the Agreement will terminate. If the breach has been cured, this Agreement will continue in full force and effect.

Supplier may also terminate this Agreement in case of any of the following:

- a.) Distributor declares bankruptcy, requires a guardianship, or enters into another financial compromise agreement;
- b.) Distributor fails to maintain required Federal and state licenses
- c.) Distributor fails to maintain required insurance
- d.) Distributor has a material change in the structure of its business, including a change in ownership
- e.) Distributor fails to meet any of the Performance Metrics outlined below

In the event of a termination of this Agreement prior to its natural expiration, Supplier may repurchase the existing Products in Distributor's inventory from Distributor or may require Distributor to sell the Product to another distributor at Supplier's sole and exclusive discretion. The purchase price of the sale back to Supplier or another Distributor shall be the cost Distributor paid. The sale shall only take place if Distributor has maintained the products in good and saleable condition according to Supplier's examination.

#### **ARTICLE 13 - PERFORMANCE METRICS:**

Distributor shall be required to use reasonable commercial efforts to meet the following performance metrics (the "Performance Metrics"):

\_\_\_\_\_

#### **ARTICLE 14 - OUTSIDE TERRITORY TRANSACTIONS:**

Distributor shall not sell, attempt to sell, promote, advertise, or otherwise solicit orders for any Products outside of the Territory. If Distributor receives any inquiries for Products outside the Territory, Distributor shall contact Supplier to determine how Supplier would like to proceed.

#### **ARTICLE 15 - GENERAL PROVISIONS:**

A) GOVERNING LAW: This Agreement shall be governed in all respects by the laws of the state of Alabama and any applicable federal law. Both Parties consent to jurisdiction under the state and federal courts within the state of Alabama. The Parties agree that this choice of law, venue, and jurisdiction provision is not permissive, but rather mandatory in nature.

B) LANGUAGE: All communications made or notices given pursuant to this Agreement shall be in the English language.

C) ASSIGNMENT: This Agreement, or the rights granted hereunder, may not be assigned, sold, leased or otherwise transferred in whole or part by either Party.

D) AMENDMENTS: This Agreement may only be amended in writing signed by both Parties.

E) NO WAIVER: None of the terms of this Agreement shall be deemed to have been waived by any act or acquiescence of either Party. Only an additional written agreement can constitute waiver of any of the terms of this Agreement between the Parties. No waiver of any term or provision of this Agreement shall constitute a waiver of any other term or provision or of the same provision on a future date. Failure of either Party to enforce any term of this Agreement shall not constitute waiver of such term or any other term.

F) ENTIRE AGREEMENT: This Agreement constitutes the entire agreement between the Parties and supersedes any prior or contemporaneous understandings, whether written or oral.

G) HEADINGS: Headings to this Agreement are for convenience only and shall not be construed to limit or otherwise affect the terms of this Agreement.

H) COUNTERPARTS: This Agreement may be executed in counterparts, all of which shall constitute a single agreement. If the dates set forth at the end of this document are different, this Agreement is to be considered effective as of the date that both Parties have signed the agreement, which may be the later date.

I) FORCE MAJEURE: Supplier is not liable for any failure to perform due to causes beyond its reasonable control including, but not limited to, acts of God, acts of civil authorities, acts of military authorities, riots, embargoes, acts of nature and natural disasters, and other acts which may be due to unforeseen circumstances.

J) NOTICES ELECTRONIC COMMUNICATIONS PERMITTED: i) Any notice to be given under this Agreement shall be in writing and shall be sent by first-class mail,



airmail, or email, to the address of the relevant Party set out at the head of this Agreement, or to the relevant email address set out below or other email address as that Party may from time to time notify the other Party in accordance with this clause. The relevant contact information for the Parties is as follows:

Supplier:

\_\_\_\_\_

Distributor:

\_\_\_\_\_

Notices sent as above shall be deemed to have been received 3 working days after the day of posting (in the case of inland first-class mail), or 7 working days after the date of posting (in the case of airmail), or next working day after sending (in the case of email).

***EXECUTION:***

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

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

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

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

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

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

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

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