

**COMPANY Exclusive Distribution Agreement**

Annotation by:

Timothy Nichols, Workman Nydegger ([TNichols@wnlaw.com](mailto:TNichols@wnlaw.com))

Sumaiya Sharmeen, Deeth Williams Wall LLP ([ssharmeen@dww.com](mailto:ssharmeen@dww.com))

Agreement		Remarks
<p><b>1 PARTIES</b></p> <p><b>1.1</b> COMPANY, Inc., a company duly registered in the State of *****, The United States of America, and having an address of *****, referred to herein as “COMPANY” and _____, a company duly registered under the laws of _____ with its address at _____, below referred to as the “Distributor,” hereby Agree on _____ (the “Effective Date”), as follows.<sup>[1, 2]</sup></p>	<p>[1] A distribution agreement generally sets forth the responsibilities between a supplier of goods and a distributor of goods. This agreement is an exclusive distribution agreement drafted in favor of the supplier of consumer goods.</p> <p>[2] This is a modern style of opening. Many attorneys find this style more direct and natural to introduce the operative terms of the agreement. It is important to properly list the party names.</p>	
<p><b>2 BACKGROUND<sup>[3]</sup></b></p> <p><b>2.1</b> COMPANY sells certain consumer products and is seeking ways of generating sales of these products in the Target Market (defined below).</p> <p><b>2.2</b> Distributor desires to sell COMPANY’s products in the Target Market.</p>	<p>[3] The background provides an opportunity to briefly describe the purpose of the agreement and the relationship between the parties.</p>	
<p><b>3 DEFINITIONS<sup>[4]</sup></b></p> <p><b>3.1</b> When used in this Agreement, the following capitalized terms shall have the meanings set forth below.</p> <p><b>3.1.1</b> “Distributor” shall mean the Party as indicated in Section 1.</p> <p><b>3.1.2</b> “Party” shall mean COMPANY or Distributor, as the context requires, and “Parties” shall mean COMPANY and Distributor.</p> <p><b>3.1.3</b> “Products” shall mean the products as specified in Appendix 1<sup>[5]</sup>, as well as any updates<sup>[6]</sup> additions or deletions as set forth in Section 4 below.</p> <p><b>3.1.4</b> “Target Market” shall mean the [ ]<sup>[7]</sup>.</p> <p><b>3.1.5</b> “Trademarks”<sup>[8]</sup> shall mean the trademarks and logos printed on the Products.</p>	<p>[4] The definitions define the key terms used in the agreement. It is important to pay close attention to how terms are defined and they are interrelated.</p> <p>[5] It is important to precisely define what products or product lines are included under the agreement. This especially true where the agreement is not intended to cover all of the Company’s products.</p> <p>[6] The inclusion or non-inclusion of “updates” in the definition of Products is likely a point of negotiation.</p> <p>[7] The definition of Target Market should be carefully considered. It may be described in terms of geographical limitations, channels of trade, market or industry specific limitations, combinations thereof, or other</p>	

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	<p>limitations.</p> <p>[8] The type and scope of intellectual property defined should be tailored to the needs of the parties.</p>
<p><b>4 PRODUCTS</b></p> <p><b>4.1 Change of Products:</b> COMPANY has the right<sup>[9]</sup> in its sole and exclusive discretion to discontinue at any time the offering of the Products or to change the design or function of the Products.</p> <p><b>4.2 Updated and new products of COMPANY<sup>[9.1]</sup>:</b> Company will offer updated Products to Distributor at reasonable prices. The parties agree that new or other products can be added to the Products by prior written agreement of both Parties.</p>	<p>[9] Company's unilateral right to change the design or function of the Products may be a point of negotiation. On one hand, the Company wants control over its product lines. On the other hand, the Distributor will want to reduce uncertainty.</p> <p>[9.1] Distributor may consider negotiating a first right of refusal for the updated Products.</p>
<p><b>5 APPOINTMENT OF Distributor</b></p> <p><b>5.1 Appointment and acceptance<sup>[10]</sup>:</b> COMPANY hereby appoints Distributor as an authorized distributor of the Products in the Target Market, and Distributor hereby agrees to act as an authorized distributor of the Products in the Target Market, subject to the terms defined herein.</p> <p><b>5.2 Exclusivity:</b> Distributor shall have the exclusive<sup>[11]</sup> right to sell or otherwise distribute the Products in the Target Market.</p> <p><b>5.3 Sub-Distributors:</b> Unless COMPANY provides prior written approval, Distributor shall not hire or appoint sub-distributors or other third parties to sell or distribute Products.<sup>[12]</sup></p>	<p>[10] The appointment of a distributor is regulated by the general principles of contract law, and in most jurisdictions there are no special formalities with which the Company must comply.</p> <p>[11] The agreement should specifically state whether the Distributor is given the exclusive right to sell the Products within the Target Market, or whether the Company and/or other distributors (e.g., sole or non-exclusive rights) will also be permitted to promote and sell the Products in the Target Market.</p> <p>[12] This restriction on sub-distributors is intended to help the Company maintain control over distribution of the Products. This can also be important for quality control purposes related to Company's trademarks.</p>

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<p><b>6 ORDERS BY Distributor</b></p> <p><b>6.1 Orders:</b> Distributor must order all Products in writing from COMPANY<sup>[13]</sup>. Orders should be placed at least [days, months, quarter] prior to desired delivery to Distributor. COMPANY cannot guarantee the availability at all times of requested quantities, but COMPANY will, to the extent reasonably possible, confirm receipt of the order with a delivery date. An order is binding upon COMPANY after it has been accepted in writing by COMPANY.<sup>[14]</sup></p> <p><b>6.2 Target Volumes:</b><sup>[15]</sup> The parties agree to negotiate in good faith to establish a target volume of Products on an annual basis (measured from the “Effective Date” of this Agreement) (“Target Volumes”), and to determine expected corresponding quarterly volumes thereof (“Quarterly Volumes”).</p> <p><b>6.2.1 Orders of Target Volumes:</b> Distributor shall order and accept delivery of the expected Quarterly Volumes within each quarter of each year of this Agreement.</p> <p><b>6.2.2 Payment of Target Volumes:</b> Distributor shall make payment in full for each ordered Product pursuant to Section 8 herein.</p> <p><b>6.3 Remedies for Failure to Meet expected Quarterly Volumes:</b> If Distributor fails to perform under Section 6.2<sup>[16]</sup>, including failure to meet, order, or pay for any Quarterly Volumes, COMPANY agrees to:</p> <p><b>6.3.1</b> provide an opportunity for Distributor to cure any such failure subject to the terms of section 18.2; or</p> <p><b>6.3.2</b> cooperate with Distributor to determine a mutually agreed upon modified Target Volume and/or modified Quarterly Volume(s).</p> <p><b>6.3.3</b> All modifications to any Target Volumes (quarterly or otherwise) shall be made in writing.</p> <p><b>6.4 Failure to Meet Any Remedies:</b> If <u>a cure or mutually</u></p>	<p>[13] The Company may want to require that Distributor’s orders include specific information or be in a specific format.</p> <p>See also 6.2.1</p> <p>[14] The Distributor may try to include a specific time period within which the Company must accept or reject an order.</p> <p>[15] The intent of this section is to establish performance standards that the Distributor must meet to keep the privilege of being an exclusive distributor.</p> <p>Consider whether an annual period defined by the calendar year or COMPANY’s fiscal year is appropriate.</p> <p>[16] This provision gives Distributor a second chance or an opportunity to cure certain non-performance before Company can exercise its remedial rights under the following section.</p>

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<p><del>agreed modification is not accomplished pursuant to Distributor fails to meet a remedy in</del> Section 6.3 COMPANY may<sup>[17]</sup>, at its sole discretion:</p> <p>6.4.1 convert this Agreement to a non-exclusive agreement as provided in Section 18.4; or</p> <p>6.4.2 terminate this Agreement as provided in Section 18.2.2 hereof.</p>	<p>[17] The Company may simply want to threaten termination in order to induce performance or cooperation by Distributor.</p>
<p><b>7 DELIVERY</b></p> <p><b>7.1 Terms of Delivery:</b> Delivery terms for the Products are to be set forth by COMPANY.<sup>[17.1]</sup></p> <p><b>7.2 Inspection:</b> Distributor will inspect all Products upon delivery. Distributor will provide Company notice of its acceptance or rejection of the Products within fifteen (15) days following delivery. If Distributor rejects the Products, Distributor shall provide Company written explanation of any shortages, non-conformance with the Distributor's order or any other failure of the Products or otherwise under this Agreement. Failure to provide Company notice of acceptance or rejection of the Product within fifteen (15) days following delivery of the Products pursuant to Section 7.1 shall be deemed acceptance by Company.</p>	<p>[17.1] The parties may consider requiring that the delivery terms be interpreted in accordance with rules for international trade as defined by Incoterms® 2016.</p>
<p><b>8 PAYMENT</b></p> <p><b>8.1 Price<sup>[18]</sup>:</b> The Company shall have the sole right to set the prices for the Products as sold to Distributor. Distributor shall pay COMPANY the prices stated in Appendix 2 when purchasing Products pursuant to this Agreement. The prices set forth in Appendix 2 are subject to change from time to time in COMPANY's sole discretion upon thirty (30) days written notice; provided, however, that such changed prices will not apply to orders already accepted by COMPANY.</p> <p><b>8.2 Terms of Payment:</b> Unless otherwise agreed, Distributor shall pay for the Products prior to or at delivery. However, if Distributor provides reasonable security indicated by COMPANY, payments are instead</p>	<p>[18] This provision gives the Company the right to set the price for the Products being sold to the Distributor. The parties may also want to include provisions governing resale pricing by Distributor.</p> <p>With respect to the Company's right to set prices, the parties should keep in mind potential anti-trust law implications with respect to vertical price restraints.</p>

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<p>due within 30 days from the date of COMPANY's invoice. All payments hereunder shall be made in US Dollars. COMPANY reserves the right to change the payment terms with immediate effect by written notice to Distributor in case Distributor shall be late with any payment due under this Agreement, including the right to demand advance payment, letter of credit or other security for payment.</p> <p><b>8.3 Late Payments:</b> If Distributor is overdue on any payment due under this Agreement, then Distributor shall pay interest on the overdue amount at a rate equal to one and one-half percent (1.5%) per month on a simple interest basis or, if lower, at the highest rate permitted under applicable law. Interest shall accrue on a monthly basis from the date payment becomes overdue until COMPANY receives payment in full of the overdue amount.</p> <p><b>8.4 Taxes:</b><sup>[19]</sup> Distributor shall pay all taxes or levies imposed in the Target Market under applicable laws, regulations and tax treaties as a result of this Agreement and any payments made hereunder (including those required to be withheld or deducted from payments).</p>	<p>[19] This provision requires Distributor to pay all applicable taxes in addition to the purchase price of the Products.</p>
<p><b>9 UNDERTAKINGS BY COMPANY</b><sup>[20]</sup></p> <p><b>9.1</b> COMPANY undertakes the following:</p> <p><b>9.1.1 Support:</b> COMPANY shall, to a commercially reasonable extent, support Distributor in its efforts to market and sell the Products in the Target Market.</p> <p><b>9.1.2 Promotion:</b> COMPANY shall, to a commercially reasonable extent, assist Distributor in the promotion of the Products in accordance with a marketing plan, which is to be agreed upon by the Parties on an annual basis.</p> <p><b>9.1.3 Meetings:</b> COMPANY may, as COMPANY deems commercially reasonable, organize and</p>	<p>[20] Sections 9 and 10 of the Agreement set forth the rights and obligations of both parties to the agreement.</p> <p>[21] This right to have sales meetings can be important in helping the Company oversee the marketing of</p>

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participate in sales meetings with Distributor. <sup>[21]</sup>	the Products.

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**10 UNDERTAKINGS BY Distributor**

**10.1** Distributor undertakes the following:

**10.1.1 Promotion:** Distributor shall use its best efforts to promote and sell the Products in accordance with the marketing plan. Distributor shall spend a minimum of 5% of gross sales of Products on marketing activities in the Target Market.<sup>[22]</sup>

[22] This provision makes Distributor responsible for the promotion of the Products and requires it to spend a defined dollar amount on marketing.

**10.1.2 Sales outside the Target Market:** Distributor shall not market or sell the Products outside of the Target Market unless otherwise agreed to in writing with COMPANY.

**10.1.3 Distributor Feed-Back:** Distributor shall use its best efforts to provide COMPANY with market and Distributor feedback. Distributor shall regularly discuss with COMPANY market conditions in the Target Market, and no less than in a written report prepared written and delivered to COMPANY twice per annum<sup>[23]</sup>.

[23] The Company may want to specify what information must be included in the written reports.

**10.1.4 Laws and Regulations<sup>[24]</sup>:** Distributor shall conform to all applicable laws and/or regulations within the Target Market relating to the Products, including the safety, marketing, selling, packaging and labelling thereof, and to the highest business ethics in performing its obligations under this Agreement. Distributor shall obtain all necessary permits and licenses that may be required to lawfully market and license the Products in the Target Market. Distributor shall inform COMPANY of any markings and/or packaging requirements that may be required by applicable laws and/or regulations in the Target Market.

[24] This provision may seem redundant because the Distributor has to comply with the law for reasons independent of the Agreement. What this provision does is to make a failure to comply with the law a breach of contract.

**10.1.5 Insurance:** Distributor shall maintain customary insurance protection against liabilities that might occur to third parties.

**10.1.6 Expenses:** Unless otherwise agreed in writing, Distributor shall be responsible for all expenses associated with Distributor's fulfilment of this Agreement.

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<p>10.1.7 <b>Suitable organization:</b> Distributor shall maintain a suitable office and sufficient staff.</p> <p>10.1.8 <b>Reputation of the Products and the Trademarks</b><sup>[25]</sup>: Distributor is aware that it is very important to refrain from any marketing or sales activities, which could cause damage to the Products' and Trademarks' status and reputation. Thus, Distributor will use best efforts to maintain and strengthen the Products' and Trademarks' exclusive status. In particular, Distributor understands that sales to Internet shops generally may damage the Products and Trademarks' exclusive status. Distributor agrees to report to COMPANY any time Distributor is aware, or is made aware, of any activities that could be construed as minimizing or damaging the aforementioned exclusive status of the Products and Trademarks.</p>	<p>[25] The purpose of this provision is to protect the strength of Company's trademarks by prohibiting improper or specific uses by Distributor.</p>
<p><b>11 CONFIDENTIAL INFORMATION</b></p> <p>11.1 <b>Undertaking of Confidentiality</b><sup>[26]</sup>: A Party receiving ("Receiving Party") any technical, financial or commercial information, including the terms and conditions of this Agreement as well as COMPANY's prices to DISTRIBUTOR ("Information") from the other Party ("Disclosing Party") shall not disclose such Information to third parties, nor use for any purpose other than for the proper fulfillment of the purpose of this Agreement in whatever form under or in connection with this Agreement without the prior written permission of the Disclosing Party. This obligation shall survive the termination of this Agreement for a period of five years. The above mentioned limitations shall not apply to Information which the Receiving Party can demonstrate by written records:</p> <p>11.1.1 was in the possession of the Receiving Party prior to disclosure hereunder; or</p> <p>11.1.2 was in the public domain at the time of disclosure or later becomes part of the public domain without breach of the confidentiality</p>	<p>[26] The scope of information to be considered confidential should be carefully defined according to the needs of the Parties. It is equally important to define what is not confidential because an overly broad definition of confidential information may be found unenforceable.</p>

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<p>obligations herein contained; or</p> <p>11.1.3 was disclosed by a third party without breach of any obligation of confidentiality owed to the Disclosing Party; or</p> <p>11.1.4 was independently developed by personnel of the Receiving Party having no access to the Information.</p> <p>11.2 <b>Press Release:</b> Distributor shall not make any press release or other public announcement concerning this Agreement without first submitting a draft of such press release or announcement to COMPANY for comments and consultation.</p>	
<p>12 <b>WARRANTY</b><sup>[27]</sup></p> <p>12.1 <b>Compliance with consumer legislation:</b> COMPANY warrants that the Products shall comply with applicable consumer legislation, including any mandatory statutory warranties.</p> <p>12.2 <b>Exclusions:</b> Except as set out above in Section 12.1 COMPANY makes no warranties whatsoever with respect to the Products.</p> <p>12.3 <b>No further warranty:</b> Distributor shall not, without the prior written approval of COMPANY, make any warranty or representation as to the Products or promise any remedies or return policies relating thereto which are different from or in addition to the warranty contained in this Agreement or any representations contained in COMPANY's written Product documents, as may be amended from time to time.</p>	<p>[27] A warranty is a part of a contract that must be true and must remain true in accordance with its terms. The intent of this section is to limit the warranties passed to Distributor and the consumer by the Company.</p> <p>Parties should also bear in mind the UCC provisions.</p>

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<p><b>13 INTELLECTUAL PROPERTY</b></p> <p><b>13.1 Authorized Distributor:</b> During the Term of this Agreement, Distributor is entitled to refer to Distributor as an authorized Distributor of COMPANY. Distributor will not otherwise at any time use COMPANY’s trade names, trademarks or other proprietary information as part of Distributor’s corporate or trade name, except where pre-approved in writing by COMPANY.</p> <p><b>13.2 Limited right to use Trademarks:</b> COMPANY grants to the Distributor a limited, revocable, non-sublicensable, non-transferable right to use the Trademarks in only connection with the marketing and sale of the Products in the Target Market during the Term.<sup>[28]</sup></p> <p><b>13.3 Acknowledgement of Ownership:</b><sup>[29]</sup> The Distributor acknowledges that COMPANY is the owner of the Trademarks and all intellectual property rights associated with the Product(s), and Distributor shall not obtain or attempt to obtain any right, title, or interest by registration or otherwise, in the names or trademarks of COMPANY Inc., <u>nor shall Distributor oppose or aid the opposition of, any action taken by COMPANY to register or otherwise protect its name, Trademarks and Product(s)</u> All rights not expressly granted herein are expressly reserved and retained by Company.</p> <p><b>13.4 All Rights of Use Inure to COMPANY</b><sup>[30]</sup>. Distributor agrees to assign any rights Distributor (including its affiliates or assigns) has accrued under law of the Target Market by virtue of Distributor’s (including its affiliate’s or assign’s) activities in the Target Market to COMPANY.</p> <p><b>13.5 Other Intellectual Property:</b> Unless receiving express written permission from COMPANY, Distributor shall not file for any intellectual property protection on or in connection with any COMPANY Product, whether in the</p>	<p>[28] This provision grants Distributor the limited right to use the Trademarks in connection with the marketing and sale of the Product. It is important to define the limits of the right granted to Distributor.</p> <p>[29] Sections 13.3 through 13.5 protect the Company from assertions by the Distributor that by performing its obligations under the Agreement it has somehow acquired rights beyond those specifically granted.</p> <p>[30] Distributor’s licensed use of the Trademarks benefits the Company, not the Distributor. See e.g., 15 U.S.C.A. § 1055.</p>

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<p>form of state, federal, or other common law protections, including but not limited to filing any trademark, patent, or copyright applications for or on behalf of COMPANY or in any way related to COMPANY Product(s) and Trademark(s). All intellectual property rights in the Product(s), Trademark(s) or other intellectual property of the COMPANY shall remain with the COMPANY, and, consistent with Section <del>13.343-3</del> (Acknowledgement of Ownership) and <del>13.443-4</del> (All Rights of Use Inure to COMPANY), Distributor hereby irrevocably assigns<sup>[31]</sup> all right, title, and interest, if any, and any corresponding goodwill in any intellectual property associated with the Product(s) to COMPANY.</p> <p><b>13.6 Use of Trademark</b><sup>[32]</sup>: The Distributor will not:</p> <ul style="list-style-type: none"> <li>i. Make any modification to the Products, or packaging, logos, Trademarks, or word treatments without obtaining the prior written consent of COMPANY. <ul style="list-style-type: none"> <li>a. Should Distributor desire to place Distributor's name(s) or logo(s) upon or beside any COMPANY Product, Product packaging, Product name, or corresponding promotional material, and before doing so, Distributor shall provide COMPANY with an advanced copy of the same for COMPANY'S sole evaluation.</li> </ul> </li> <li>ii. Remove, conceal, alter, or tamper with any labeling on or packaging of the Products that bears the Trademarks, numbers or any other identification means used on the Products.</li> <li>iii. Use any Trademarks or trade names in any manner that might prejudice their distinctiveness, validity, or goodwill of COMPANY Inc. / COMPANY or as to confusion or deception in the Target Market.</li> </ul> <p><b>13.7 No other use:</b> The Distributor shall use Trademarks or COMPANY's trade names solely for the purposes of performing its obligations under this Agreement.<sup>[33]</sup></p> <p><b>13.8 Notification by Distributor of Infringement:</b> Distributor shall notify COMPANY promptly in writing if it becomes</p>	<p>[31] To avoid a potential loss of Company's rights, it is important that the Distributor affirmatively assigns the intellectual property to Company rather than merely promising to assign it to Company at some undetermined future point.</p> <p>[32] The intent of this provision is to give Company control over Distributor's use of the Trademarks. If Company does not exercise adequate quality control over Distributor's use of the Trademarks, a court may find the arrangement between the parties is a "naked license" and Company may lose its exclusive rights to the Trademarks.</p> <p>[33] The purpose of this provision is to highlight the understanding between the parties that Distributor's right to use the Trademarks is limited to use under this Agreement.</p>

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<p>aware of or suspects any infringement of any of COMPANY's intellectual property (including any trademarks, trade dress, product packaging, processes, patents, product designs, or the like) and it shall cooperate with COMPANY with respect to any action that COMPANY may elect to take.</p> <p><b>13.9 Removal of COMPANY Trademarks at Termination</b><sup>[34]</sup>: Upon termination of this Agreement for any reason, Distributor shall remove all references to COMPANY, and any Trademarks, trade names, or business names used by COMPANY, from its letterheads, advertising literature and places of business, and shall not thereafter use any similar or deceptive name or trademark that implicates any relationship between the Parties.</p> <p><b>13.10 Domain Names</b><sup>[35]</sup>: Distributor agrees to the following conditions for establishing or operating domain names below:</p> <ul style="list-style-type: none"><li>a. Distributor, or its affiliates, shall disclose to COMPANY any interest in establishing a domain name used to describe, promote, sell, or distribute such COMPANY products in the Territory. Additionally, Distributor shall identify all existing domain names that Distributor, or its affiliates, uses (or plans to use) describe, promote, sell, or distribute such COMPANY products in the Territory.</li><li>b. Except with the express written consent of COMPANY, Distributor shall not register, whether by itself, or by its affiliates, any domain names that incorporate all or a part of a name (including any abbreviations of names) used by COMPANY in a business name, company name, DBA (Doing Business As), product name, trademark, or trademark application (COMPANY Domain Name).</li><li>c. For any COMPANY Domain Name already registered by Distributor or its affiliates (or</li></ul>	<p>[34] The intent of this provision is to make it clear that upon termination the Distributor's rights terminate and Distributor must cease all use of the Trademarks and marketing materials.</p> <p>[35] This provision sets forth conditions specific to e-commerce and Distributor's use of Company's name in domain names.</p>

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<p>another acting on Distributor's behalf) Distributor agrees to promptly assign full right, title, and ownership of the same to COMPANY, Inc.</p> <p>d. In some cases, COMPANY may allow some operational use by Distributor or its affiliates of a COMPANY Domain Name upon COMPANY's sole determination that the COMPANY Domain Name is (or will be) used in accordance with COMPANY's interests in the Territory. Nevertheless, COMPANY (or an explicit trustee or designee thereof other than Distributor) shall continue to maintain ownership of the COMPANY Domain Name, and further reserves the right to prohibit (or subsequently deny) use of a COMPANY Domain Name at any point for any reason.</p> <p>e. Distributor or Distributor's affiliates, shall cooperate with COMPANY personnel to provide all relevant technical information to COMPANY for any COMPANY Domain Name, including any user names, passwords, name server addresses, internet protocol addresses, or the like, which are necessary to operate, administer, and/or renew the domain name.</p>	
<p><b>14 PROMOTIONAL MATERIAL</b><sup>[36]</sup></p> <p><b>14.1</b> COMPANY will furnish to Distributor electronic copies of promotional and marketing materials and a reasonable amount of printed material about the Products. COMPANY has the right to charge a reasonable price on specific printed promotional materials and excessive quantities of material, as COMPANY may agree with Distributor from time to time.</p> <p><b>14.2</b> Distributor shall, should it desire to produce its own marketing and promotional material concerning the Products, obtain COMPANY's written consent for each</p>	<p>[36] This provision gives Company additional control over Distributor's advertising of the products and associated use of the Trademarks.</p>

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<p>such document, whether in hard copy or electronic form, before doing so.</p>	
<p><b>15 REPRESENTATIVES</b></p> <p><b>15.1</b> COMPANY and Distributor shall during the term of this Agreement appoint and maintain an authorized representative for purposes of receiving any notices required pursuant to the terms of this Agreement<sup>[37]</sup>. Also, any proposed changes in this Agreement shall be directed to this representative. Until otherwise notified by the Parties, the following persons shall serve in such capacities:</p> <p><u>COMPANY</u></p> <p><u>Distributor</u></p> <p>[ ] [ ]</p> <p><b>15.2</b> COMPANY and Distributor shall have the right to rely in good faith upon the acts of such representatives and to act in accordance therewith without further consent or approval and without other independent investigation.</p>	<p>[37] This provision lists authorized representatives for receiving notices and handling changes to the agreement.</p>
<p><b>16 RELATIONSHIP<sup>[38]</sup></b></p> <p><b>16.1</b> Distributor is, and will remain, an independent contractor and this Agreement is not to be interpreted as a joint venture between the Parties. Distributor will not be deemed to be an employee, partner or franchisee of COMPANY for any purpose whatsoever. Accordingly, Distributor will be exclusively responsible for the manner in which it performs its duties under this Agreement and for the profitability or lack thereof of its activities under or in connection with this Agreement.</p> <p><b>16.2</b> All financial obligations associated with Distributor business are the sole responsibility of Distributor. Distributor shall have, and will not represent itself as having, any right or authority to obligate or bind COMPANY in any manner whatsoever.</p> <p><b>16.3</b> Distributor purchases and resells the Products in its</p>	<p>[38] The intent of this section is to establish between the parties that the Distributor is on its own in its performance under the agreement. The Company may also try to rely on language in this section to resist efforts to hold it responsible for Distributor's acts or omissions.</p>

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Agreement	Remarks
<p>own name and at its own risk.</p>	
<p><b>17 LIMITATION OF LIABILITY</b></p> <p><b>17.1 Compensatory Damages:</b> For the avoidance of doubt the following paragraphs are not intended to be an estimate of the Parties liability in the case of loss or damage occurring to any other Party or a Distributor. The sole purpose of this Section 17 is to provide clarification of the limitation of liability for each Party regardless of the size of the claim. Under no circumstances shall a Party be liable for an amount in excess of the damage actually suffered.</p> <p><b>17.2 No Indirect Damages:</b> No Party shall be liable for any indirect damages whatsoever including, without limitation damages or loss of business profits, lost savings, business interruption, loss of business, information or data.</p> <p><b>17.3 Liability Limited:</b> The liability of a Party for any direct damage shall on annual basis be limited to an amount corresponding to 50% of the total order value within one year.</p> <p><b>17.4 Misconduct:</b> The limitations provided for in this Section 17 shall not apply, and the Parties shall be fully liable, in case of any loss, cost or expense caused by the wilful misconduct (including, but not limited to, the wilful breach of any of the provisions of this Agreement) or gross negligence of a Party.</p> <p><b>17.5 Indemnification.</b><sup>[39]</sup> Distributor shall defend, indemnify and hold harmless COMPANY, including its officers, heirs, successors, or assigns, from and</p>	<p>[39] All liabilities in the Target Market are effectively sitting with the Distributor. Depending on the relationship between the Parties, this may trigger pushback from the Distributor.</p>

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<p>against all claims, liability, losses, damages and expenses (including attorneys' fees and court costs) arising from or in connection with Distributor's activities, including any unauthorized modifications by Distributor of the COMPANY Products or the packaging thereof, and further including any promotional activities by Distributor in contravention of legal authority, which activities were not otherwise explicitly authorized by COMPANY in writing. COMPANY shall not be responsible for losses or damages arising from the negligence of Distributor, its employees, agents or third party contractors.</p> <p><b>17.6 Force Majeure:</b><sup>[40]</sup> No Party shall be liable to the other for any delay or non-performance of its obligations hereunder in the event and to the extent that such delay or non-performance is due to an event of Force Majeure. Events of Force Majeure are events beyond the control of the Party which occur after the date of signing of this Agreement and which were not reasonably foreseeable at the time of signing of this Agreement and whose effects are not capable of being overcome without unreasonable expense and/or loss of time to the Party concerned. Events of Force Majeure shall include (without being limited to) war, acts of government, natural disasters, fire and explosions.</p>	<p>[40] This provision protects each party against the possibility of being unable to perform for reasons beyond its control. Company may want to exclude specific events which are not Force Majeure to prevent Distributor from claiming Force Majeure for events that can and should be planned for by Distributor.</p>
<p><b>18 TERM OF AGREEMENT AND TERMINATION</b><sup>[41]</sup></p> <p><b>18.1 Term:</b> This Agreement shall remain in force until <b>One year from the Effective Date</b>. Thereafter this Agreement can be extended for additional periods of twelve (12) months each by written consent by both Parties, unless terminated by one Party serving on the other Party no less than three (3) months prior written notice of its intention to terminate.</p> <p><b>18.2 Termination</b><sup>[42]</sup>: The following termination provisions shall apply:</p>	<p>[41] This Section sets forth the procedure and timeline for terminating the Agreement, as well as the actions that the parties must take once the relationship has ended.</p> <p>[42] This provision sets forth the reasons for which the parties may terminate the Agreement.</p>

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<p><b>18.2.1</b> <u>Mutual Consent</u>. This Agreement may be terminated at any time by mutual written agreement of the Parties.</p>	
<p><b>18.2.2</b> <u>Breach</u>: In the event COMPANY or Distributor materially breaches any terms or conditions of this Agreement or fails to perform any material obligation or undertaking hereunder and if such breach is not cured within thirty (30) days after COMPANY or Distributor, as the case may be, having notified the other Party, the Party giving notice is entitled to terminate this Agreement.</p>	
<p><b>18.2.3</b> <u>Target Volume</u>: In the event that Distributor fails to reach the Product sales targets consistent with the terms of Section 6, COMPANY has the right to terminate this Agreement or convert this Agreement to non-exclusive.</p>	
<p><b>18.2.4</b> <u>Starting competing sales</u>: In the event that Distributor initiates the marketing or selling of new products that compete with the Products in the Target Market, COMPANY shall have the rights to terminate this Agreement by serving thirty (30) days prior written notice.<sup>[43]</sup></p>	<p>[43] Section 18.2.4 provides for termination if Distributor starts selling competing products.</p>
<p><b>18.2.5</b> <u>Insolvency</u>: COMPANY or Distributor is entitled forthwith to terminate this Agreement if the other Party has become bankrupt, gone into liquidation either voluntarily or compulsorily, has had a receiver appointed for the whole or major part of his assets, or if a court order has been made or a resolution has been passed for the winding up of the Party, except where such winding up is for the purpose of amalgamation or reconstruction and in such manner that the Distributor resulting, if a different legal entity, has agreed to assume the obligations of this Agreement and such Distributor is one which the other Party may not reasonably object to.</p>	
<p><b>18.2.6</b> <u>Change in Ownership</u>: COMPANY may terminate this Agreement at any time effective upon delivery of thirty (30) days written notice</p>	

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<p>if, without COMPANY's prior written approval, the ownership or control of Distributor changes in any material way. Material change in ownership is defined as the sale of more than 50% of the assets or shares of Distributor</p> <p><b>18.2.7 Other Failures:</b> COMPANY shall have the right to terminate this Agreement upon thirty (30) days written notice in case (i) the conduct by Distributor results or is reasonably likely to result (in the reasonable opinion of COMPANY) in a material adverse effect (financial or otherwise) on the business or reputation of COMPANY.</p> <p><b>18.3 Effects of Termination:</b> Termination of the Agreement does not relieve either Party of its rights and obligations that have previously accrued. Sections 11 and 17 of the Agreement shall survive termination and remain in effect.<sup>[44]</sup> Upon termination (i) Distributor shall return any documentation and any other Confidential Information to Company, (ii) Distributor shall cease all use of the Trade Marks, and (iii) Distributor is not entitled to any termination compensation.</p> <p><b>18.4 Non-exclusivity (Conversion to):</b> Should COMPANY elect to convert this Agreement to a non-exclusive per Section 7 or 19 herein:</p> <p><b>18.4.1</b> The conversion to non-exclusive shall be immediate upon the date COMPANY sent notice of the same in writing (the Conversion Date); and</p> <p><b>18.4.2</b> Sections 5.1 and 5.2 are to be understood on the Conversion Date in modified form as indicated below:</p> <p>(i) 5.1 (modified): <b>Appointment and acceptance:</b> COMPANY hereby appoints Distributor as a non-exclusive Distributor of the Products in the Target Market, and Distributor hereby agrees to act as the non-exclusive Distributor</p>	<p>[44] The obligations of confidentiality, limitation of liability, and Distributor's obligation to indemnify the Company survive termination of the agreement.</p>

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<p>of the Products in the Target Market, subject to the terms defined herein.</p> <p>(ii) 5.2 (modified) <b>Exclusivity:</b> Distributor shall have the non-exclusive right to sell or otherwise distribute the Products in the Target Market. COMPANY may, within its discretion, appoint (or have appointed) other distributors in the Target Market through separate agreement without objection from Distributor.</p> <p><b>All other terms of this Agreement are to be construed in light of the modifications of this Section (18.4)</b></p>	
<p><b>19 MISCELLANEOUS</b></p> <p><b>19.1 Waivers</b><sup>[45]</sup>: No failure on the part of COMPANY or Distributor to exercise, and no delay in exercising, any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise by COMPANY or Distributor of any right or remedy hereunder preclude any other or further exercise thereof or of any other right or remedy.</p> <p><b>19.2 Notices:</b> All notices or other communications required or permitted to be given hereunder shall be in writing.</p> <p><b>19.3 Amendment:</b><sup>[46]</sup> No terms of this Agreement may be altered, modified, amended, supplemented, terminated or waived except by an instrument in writing signed by all Parties.</p> <p><b>19.4 Counterparts:</b> This Agreement shall be executed by COMPANY and Distributor. Two copies of this Agreement shall be signed by each Party with each retaining one original version.</p> <p><b>19.5 Severability:</b><sup>[47]</sup> If any terms or provisions of this Agreement not essential to the basic purpose hereof shall be held to be illegal, invalid or unenforceable by a</p>	<p>[45] The intent of this provision is to eliminate unintended waivers. The governing law of the agreement may dictate whether to include such a provision because some jurisdictions will enforce it and some may not.</p> <p>[46] The intent of this provision is to preclude any implied amendment by virtue of a course of conduct.</p> <p>[47] The intent of this provision is to continue the agreement even if a</p>

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<p>court of competent jurisdiction, it is the intention of the Parties hereto that the remaining terms hereof shall constitute the agreement with respect to the subject matter hereof, and all such remaining terms shall remain in full force and effect and shall be deemed to constitute the entirety of this Agreement as though such illegal, invalid or unenforceable provision had never been a part hereof.</p> <p><b>19.6 Complete Agreement:</b><sup>[48]</sup> This Agreement constitutes the entire agreement between the Parties with respect to the transactions contemplated hereby and supersedes any prior agreements with respect thereto. COMPANY rejects any terms in any order forms submitted by Distributor which are different from or additional to the provisions of this Agreement, unless mutually agreed to in writing.</p> <p><b>19.7 Governing Law:</b><sup>[49]</sup> This Agreement will be governed by and construed according to the laws of the State of [insert jurisdiction of choice], without application of its conflicts or choice of law rules. The Parties hereby expressly consent to personal jurisdiction and venue the state and federal courts located in [insert jurisdiction of choice] for any lawsuit filed arising or relating to this Agreement.</p>	<p>provision of the agreement is declared illegal. Sometimes this is referred to as a blue-pencil clause.</p> <p>[48] This reflects the intention of the parties that the executed agreement will supersede and exclude from consideration prior understandings of the parties relating matters dealt with in the agreement.</p> <p>[49] The parties' agreement on the choice of law and venue is often difficult. The parties may also consider including an arbitration provision and/or jury waiver provision.</p>
<p><b>IN WITNESS WHEREOF</b>, this Agreement is executed as of the Effective Date.</p> <p>[Company] By: _____ Name: Title:</p> <p>[Distributor] By:</p>	

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Name: Title:	