Independent Distribution Agreement

This Independent Distribution Agreement is between a Principal and a Distributor.  A principal pays a distributor to distribute goods in a particular territory for a specified amount of time.  This document in its draft form contains numerous of the standard clauses commonly used in these types of agreements; however, additional language may be added to allow for customization to ensure the specific terms of the parties agreement are addressed.  Use this agreement when engaging the services of an independent distributor.

**INDEPENDENT DISTRIBUTION AGREEMENT**

This Independent Distribution Agreement (“Agreement”) is made as of the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_by and between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Distributor”) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Principal”).

**RECITALS;**

1. Distributor is engaged in the business of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_;
2. Principal is a manufacturer or supplier of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_;
3. Principal desires to contract with Distributor and Distributor accepts this engagement as its primary sales coordinator and/or distributor for \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “Products”) to customers in the Territory and if applicable, to international locations where Distributor has conducted or is capable of conducting business.

NOW, THEREFORE, in consideration of the mutual covenants, warranties and representations contained herein, the parties hereby agree as follows:

**Definitions**

As used herein, the following terms shall have the following respective meanings:

“Products” shall mean those products listed in Schedule 1.

“Territory” shall mean those areas listed in Schedule 2.

“Marks” shall mean those trademarks and service marks listed in Schedule 3.

1. **APPOINTMENT AND ACCEPTANCE**
   1. Appointment: Principal hereby appoints Distributor as its exclusive distributor (on a case by case basis) of Products in the Territory, and Distributor hereby accepts this appointment. Principal shall not directly or indirectly sell or offer to sell any of the Products in the Territory to any other person, firm or corporation. In the event Principal receives requests for information relating to, or purchase orders for, Products from customers or potential customers within the Territory, Principal shall promptly forward such requests or orders to Distributor.
   2. Distributor's Right to Distribute Other Products. During the term of this Agreement Distributor shall have the right to manufacture, market, distribute and sell any and all products in the Territory, regardless of whether such products compete with the Products, but only in the event Principal in unable to supply the particular Product.
   3. Sub-Distributors: Distributor shall have the right to appoint sub-distributors at its discretion.

The Principal reserves the right to improve or modify the Products without prior notice but shall notify the Distributor of any modifications which affect the form or function of the Products or any permissions consents or licenses obtained by the Distributor. The Distributor shall in such circumstances have the right to vary or cancel any orders placed for the Products prior to the receipt of such notification. The Distributor must notify the Principal of such cancellation within ninety (90) days.

1. **RIGHT TO USE MARKS**
   1. Principal hereby grants to the Distributor, for the term of this Agreement, and subject to the terms and conditions herein, a non-exclusive, non-transferable right to use the Marks, logos, copyright notices and other identifications (“Marks”) within the Territory in connection with the Products sold by the Distributor under the terms of this Agreement, in the manner as approved by Principal in writing, prior to each type of usage (e.g., co-branding, advertising, packaging). Such approval shall not be unreasonably withheld.
   2. The Distributor acknowledges Principal's right, title and interest in and to the Marks and agrees to make no use of any of the Marks except as specifically provided in this Agreement. The Distributor shall use or display the Marks only in conjunction with such words as indicate that the Marks are the property of Principal. The Distributor acquires no right, title or interest in or to the Marks hereunder and any and all goodwill associated with the Marks will inure exclusively to the benefit of Principal and its licensors. During the term of this Agreement and after termination hereof, the Distributor shall not dispute or contest, for any reason whatsoever, directly or indirectly, the validity, ownership or enforceability of any of the Marks. The Distributor shall execute such documents and do all such acts and things as may be necessary in Principal's reasonable opinion to establish ownership of any rights in and to the Marks.
   3. The Distributor agrees that if it is notified or otherwise obtains knowledge of any alleged infringement of the Marks, the Distributor will promptly notify Principal. No legal proceedings shall be instituted by the Distributor against any third party in respect of any such alleged infringement without the prior written consent of Principal.
2. **APPROVAL OF PRODUCTS**
   1. Initial Approval - As of the Effective Date, Principal has tested samples of the Products, which have been approved by\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [**names of agencies, e.g., United States Customs and United States Food and Drug Administration]**. All consignments and shipments should be backed by customs approved documents and Principal acknowledges that Principal shall provide all necessary documents from authorities should there be any necessity from customers.
   2. Product Modifications - If Principal makes any modifications or changes to any of the Products, Principal shall immediately notify Distributor of same in writing, specifying the modification or change.
3. **PURCHASE ORDERS**
   1. All purchase orders submitted by the Distributor to Principal shall be directed to:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

* 1. The terms and conditions of the Agreement shall apply to any purchase order (“Purchase Order”) placed by Distributor. In the event of any conflict of any terms as set forth in any Purchase Order issued by Distributor under this Agreement, such conflicting terms shall be of no force or effect whatsoever, and this Agreement shall govern. Any such Purchase Order shall be deemed to have been issued by Distributor solely for its internal administrative purposes.
  2. All Purchase Orders shall be are issued, on an irrevocable basis, by Distributor to Principal, at least \_\_\_\_\_ ( ) days before the beginning of each quarter, and will include delivery dates for three monthly shipments, no one month of which will contain less than ten (10) percent of the total order volume, based upon minimum commitment levels mutually agreed on a case by case basis. Additional purchase orders can be placed at any time with a thirty (30) day lead time for shipment of Products included on these Purchase Orders.
  3. Should Principal confirm a Purchase Order for specific Products and supplies shipment lower than the permissible limit mentioned in Section 4c, Principal shall make reasonable efforts to arrange for a follow up shipment to remedy the incomplete shipment. However, if Principal fails to arrange for a follow up shipment within \_\_\_\_\_\_ ( ) days of the incomplete shipment, Distributor shall cancel the follow-up shipment and Principal shall pay Distributor \_\_\_\_\_\_ (\_\_\_\_%) of the cost of the Products, as liquidated damages. This shall not apply to events such as Force Majeure (as defined below) and lack of production due to seasonal changes etc.

1. **SUPPLY OF PRODUCTS**
2. Principal shall maintain inventories of the Products in sufficient quantities to fill the orders of Distributor. If Principal discontinues production, delivery or sales of any of the Products, it shall so notify Distributor of same in writing at least \_\_\_\_\_\_\_\_\_\_\_\_ ( ) days prior to any discontinuance.
3. All Products delivered or sold to the Distributor s shall bear whatever Marks Principal shall prescribe. Principal shall bear all costs of affixing such Marks and of all artwork, printing plates or any other miscellaneous items which are required as part of the production process of the Products.
4. **PRICES; COMPENSATION**
   1. Prices for Products shall be calculated in accordance with the provisions below:

i. Definition Of Cost - The price to customers for all Products sold under this Agreement (the “Selling Price”) will be calculated on the basis of Cost. “Cost” is defined as the invoice cost to Distributor plus applicable freight, storage, administrative charges, and custom duties (if applicable). The invoice used to determine cost will be the invoice issued to Distributor by the Principal. Cost shall not be reduced by cash discounts for prompt payment or earned performance allowances available to Distributor.

ii. Applicable Freight - In those cases where the invoice cost to Distributor is not a delivered cost, applicable freight charges will be added to invoice cost. Freight charges may include common or contract carrier charges by the product vendor or by Distributor fleet back-haul, or by charges billed by third party carriers. Applicable freight for any product will not exceed the rate charged by nationally recognized carriers operating in the same market for the same type of freight service. Earned back-haul efficiencies are retained by Distributor and do not reduce product cost.

iii. Calculation Of Selling Price - The Selling Price for each Product sold under this Agreement will equal the Cost of such Product plus applicable freight and other expenses as specified under this Section 6(a)(ii), plus percentage mark-ups mutually agreed between Distributor and Principal on a case by case basis and evidenced in individual Purchase Orders.

**b**. Substitutions – Should a substitution be necessary and approved by Principal, Distributor will ship a comparable product at a Selling Price calculated using the same percentage of mark-up as on the original product.

* 1. Hold Harmless Agreement - Distributor policy is that all suppliers provide indemnity agreements and insurance coverage for products purchased by Distributor. In order to protect Distributor when it stocks proprietary/special order items at Principal's request and the vendor of such items will not provide an indemnity, Principal will defend, indemnify, and hold harmless Distributor and its employees, and officers from all actions, claims and proceedings, and any judgments, damages and expenses resulting in the delivery, sale, re-sale, use or consumption of any Principal proprietary/special order item.
  2. Adjustment In Margins For Unanticipated Problems - If the operating costs of Distributor are increased as a direct result of a significant regional or national economic problems, including, without limitation, fuel cost increases and power shortages, Distributor may, with the prior consent and agreement of Principal, increase the mark-up schedule specified in on mutually agreed terms to compensate for such increased costs during the period such increases are experienced.

1. **PAYMENTS; INVOICING**

Principal shall invoice the Distributor, directly for all Products supplied by Principal within \_\_\_days. The invoices and other forms of Principal, and other agreements between Principal and the Distributor, shall govern the terms of payment for the Products.

1. **DELIVERY; STORAGE**
   1. All Products shall be transported by Principal or a common carrier designated by Principal unless another carrier is designated by the Distributor at the time an order is placed. Each shipment will be accompanied by a packing slip, and the count and/or weight evidenced by such slip will be conclusive unless Principal is notified in writing of a discrepancy by the Distributor within \_\_\_\_\_\_\_\_\_\_\_ days following delivery.
   2. Title to, liability for, and risk of loss of all Product sold hereunder shall remain with Principal until delivery, hereupon title to, liability for and risk of loss shall pass to Distributor, as the case may be.
2. **RESPONSIBILITIES; WARRANTIES**
   1. The Distributor shall, during the term of this Agreement, diligently and faithfully serve the Principal as its Distributor in the Territory and use its best efforts to improve the goodwill of the Principal in the Territory.
   2. The Principal warrants that he has good title to the Products supplied to the Distributor and that where such Products supplied are defective the Principal will replace these at no cost to the Distributor.
   3. The Distributor shall at all times during the continuance of this Agreement carry at least \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_months’ stock of the Products to enable the Distributor to meet any orders received without undue delay. The Distributor shall supply reports every quarter to the Principal as to stock levels and movements of the Products.
   4. The Distributor shall at all times during the continuance of this Agreement maintain sufficient staff to sell, distribute, market and promote the sale of the Products throughout the Territory.
   5. The Distributor undertakes to achieve the targets in relation to the Products as specified to the Distributor by the Principal in writing every quarter.
   6. The Distributor will ensure that it conforms to all legislation, rules, regulations and statutory requirements in relation to the Products existing in the Territory from time to time.
   7. The Distributor shall conform to the sales and marketing policies of the Principal. The Distributor must obtain the Principal’s prior approval of all advertisements, sales promotion, merchandising and publicity material for the Products.
   8. Neither party shall enter into or have authority to enter into any contracts, agreements or engagements or make any representation or warranty or incur any liabilities on behalf of the other or pledge the credit of or otherwise bind or oblige the other party hereto.
3. **CONFIDENTIAL INFORMATION**
   1. Definitions - The term “Confidential Information” as used in this Agreement means secret, confidential or proprietary information of either Party, including without limitation, lists of distributor(s), customers, business methods, and products and supplies. The term “Confidential Information” does not include information that has become generally available to the public by the act of one who has the right to disclose such information without violating any right of the disclosing party. The term "Confidential Information" does not include information which is known to the receiving party prior to its disclosure party by the receiving party, as evidenced by the receiving party’s written records, or which is independently developed without using the confidential information.
   2. Ownership - Ownership of all trade secrets of receiving party and the Confidential Information furnished or disclosed by disclosing party and shall remain the property of the same. Any reproductions, notes, specifications, manuals, summaries or similar documents relating to the trade secrets and Confidential Information shall become and remain the property of disclosing party immediately upon creation.
   3. Nondisclosure – The receiving party agrees that it will not, during or after the term of this Agreement for so long as any such information remains trade secrets, use or permit the duplication or disclosure of any trade secrets (other than to an employee of Receiving party who must have such information for the sole purpose of supplying the Products contemplated under this Agreement), unless such use, duplication, or disclosure is specifically authorized in advance and in writing by the disclosing party. The receiving party agrees that it will not, for a period commencing with the date of this Agreement and for so long thereafter, up to a maximum of three (3) years after termination of this Agreement, as any such information remains competitively sensitive, use or permit the duplication or disclosure of any Confidential Information of disclosing party to any person (other than to an employee of receiving party who must have such information for the sole purpose of supplying the Products contemplated under this Agreement), unless such use, duplication, or disclosure is specifically authorized in advance and in writing by the disclosing party.
4. **INDEMNIFICATION**

Principal shall and hereby agrees to indemnify, defend and hold Distributor harmless from and against any and all actions, claims, costs (including attorney's fees), damages, judgments and liabilities whatsoever, including without limitation any products liability claims, in law or equity, arising out of (i) the production, supply, distribution, delivery or sale by Principal of any products or goods or (ii) the breach by Principal of any of its obligations or representations under this Agreement.

1. **INSURANCE; CUSTOMER CREDIT.** 
   1. During the term of this Agreement, Principal shall maintain and keep in force, at its own expense, the following minimum insurance coverage and minimum limits:
2. Product Liability Insurance - with a limit of \_\_\_\_\_\_\_\_ ($ \_\_\_\_\_\_\_) Dollars as required by the laws and regulations applicable for any adverse claims from customers such as for side effects, allergy, injury, death in relation to their use or consumption of Products.
3. In addition to the above, Principal must keep current a \_\_\_\_\_\_\_\_\_\_ ($\_\_\_\_\_\_\_\_\_) Dollars umbrella cover, unless the suppliers of the Products have a higher stipulated amount.
   1. All such policies of insurance shall provide that the same shall not be canceled nor the coverage modified nor the limits changed without first giving thirty (30) days' prior written notice thereof to Distributor. No such cancellation, modification or change shall affect Principal’s obligation to maintain the insurance coverage required by this Agreement.
   2. Principal shall be responsible for payment of any and all deductibles from insured claims under its policies of insurance. The coverage afforded under any insurance policy obtained by Principal pursuant to this Agreement shall be primary coverage regardless of whether or not Distributor has similar coverage.
   3. Principal shall not perform under this Agreement unless and until certificates of such insurance, including renewals thereof, have been delivered to and approved by Distributor. Distributor shall, upon written request to Principal, promptly receive a certified copy of any or all of the insurance policies required hereunder.
   4. The minimum limits of coverage required by this Agreement may be satisfied by a combination of primary and excess or umbrella insurance policies.
   5. If Principal shall fail to comply with any of the insurance requirements herein, Distributor may, at its sole discretion and upon written notice to Principal by Distributor, terminate this Agreement. The maintenance of the insurance coverage required under this Agreement shall in no way operate to limit the liability of Principal to Distributor under the provisions of this Agreement.
   6. If Distributor engages as the exclusive sales coordinator, the Principal shall be solely responsible for providing the due diligence required to establish reasonable credit limits for customers.
4. **PRODUCT QUALITY**

Principal represents and warrants that all Products delivered by Principal shall be of good and merchantable quality and fit for the purpose for which they are intended to be used; it being understood that the Products shall at all times be stored in a safe and commercially reasonable manner by the Distributor.

* 1. **Inspection**

Principal agrees that acceptance of delivery of Products shall be subject to an inspection of the Products by the Distributor or any authorized third party to determine whether any item or items included in the shipment are in short supply, defective or damaged.

Distributor shall notify Principal of any damages, defects and shortages detected in the Products and within \_\_\_\_\_\_ ( ) days after the receipt of such notice, Principal will investigate the claim of shortages, defects or damage, inform Distributor of its findings. Principal shall replace such Products which are short in supply, defective, or damaged, if and only if, it is able to do so within \_\_ ( ) days of the investigation of the claims.

Principal shall be solely liable and shall hold Distributor harmless and indemnify for any loss or damage (consequential or otherwise) however suffered or incurred:

* + - 1. in relation to the Products and their quality; or
      2. caused by or resulting directly or indirectly from the Products or from any failure, breakdown, defect, deficiency of any nature, or exceeding of expiration or “best before” date on the Products.
      3. due to delay in the transportation and delivery of Products to the agreed destination.
  1. **Regulations**

Principal undertakes to obtain at its own costs all permits and licenses for importing, storing and selling the Products to Distributor in the Territory. Distributor shall make sure that the Products are suitable for sale in the Territory and particularly that they comply with all trade provisions, regulations, specifications or recommendations in force or customary in the Territory, including but not limited to all safety and labeling and packaging regulations. Distributor agrees that during the course of this Agreement, it shall distribute the Products in the Territory in full compliance with all packaging, and labeling requirements of any applicable laws and regulations in the Territory. Subject to Principal’s obligation under this Clause, the Distributor or any appointed sub-distributor have the sole responsibility for obtaining insurance for the risks which may occur to the Products after the delivery of the Products.

1. **TERM AND TERMINATION**
   1. Term - The term of this Agreement (the “Contract Term”) shall commence on the Effective Date and shall continue in effect until terminated earlier for reasons discussed below.
   2. Events of Default –This Agreement may be terminated without prejudice to Section 14(a) or any right or remedy either party may have against the other for breach or non‐performance of this Agreement if any of the following circumstances arise:
      1. Either party commits a serious or grave breach of this Agreement or persistent breaches of this Agreement including, but not limited to, non‐performance, default or neglect of that party's duties under this Agreement and such breach remains un‐remedied for thirty (30) days after notice of such breach has been given by the non‐defaulting party.
      2. Where the conduct of the Distributor is likely to have a serious or detrimental effect upon the Principal’s business, products and affairs.
      3. Either party is unable or has no reasonable prospect of paying their debts, the amounts or aggregate amounts which equal or exceed the bankruptcy or enters into a compromise for the benefit of their creditors, or being a company become subject to an Administration Order or goes into liquidation or has the Receiver of any of its property or assets appointed or ceases or threatens to cease to carry on business.
      4. Where the Distributor commits any acts of dishonesty, fraud or theft.
   3. Such termination will take place with immediate effect on written notice to the other party and without prejudice to any remedy either party may have against the other for any breach committed prior to the date of such termination or which gave rise to the termination.
   4. Upon termination of this Agreement for whatever reasons, the Distributor shall at the request of the Principal promptly return to the Principal all documentation in his possession or control relating to the Products or the Principal’s business activities and affairs.
   5. Upon such termination the Distributor shall sell and the Principal shall buy back all the Products which were not sold. The Distributor shall (if so required) supply the Principal with a list of the Distributor’s customers for the Products.
   6. Upon termination the Products which are un‐merchantable, obsolete, damaged or deteriorated or defective or otherwise unfit for sale (or where any Product has a shelf‐life, more than half of their shelf‐life has expired) shall be destroyed forthwith by the Distributor in the presence of the Principal or an authorized representative of the Principal at the expense of the Distributor.

Upon termination the Distributor shall have no further rights to use the Marks in any way whatsoever. The Distributor shall (if legally possible) assign to the Principal free of charge all permissions, consents and licenses relating to the marketing and/or distribution and/or sale of the Products and execute all documents and do all things necessary to ensure the Principal shall enjoy the benefit of the said permissions, consents and licenses.

1. **FORCE MAJEURE**
   1. Definition – “Force Majeure” shall mean and include any circumstance beyond the reasonable control of Principal or Distributor , including without limitation, the following: any act of nature or the public enemy, accident, explosion, fire, storm, earthquake, flood, drought, perils of the sea, the elements, casualty, strikes, lock-outs, labor troubles, riots, sabotage, embargo, war (whether or not declared), governmental laws, regulations, orders, or decrees, or seizure for reasons other than the adverse financial condition of the party so affected.
   2. Force Majeure shall not mean, however, any delay of delivery caused by choice of shipment route by Principal which is affected by weather, when alternative shipment routes were available.
   3. When circumstances require Principal to allocate Products among Principal 's customers, Principal agrees that it shall not discriminate against the Distributor and that Principal will supply them on a basis no less favorable to them than a pro rata basis.
   4. Notwithstanding anything herein to the contrary, the Distributor(s) or Members may purchase Product from third parties during any period Principal is unable to satisfy customer's purchase orders as a result of an event of Force Majeure.
   5. In case the performance of any terms or provisions hereof shall be delayed or prevented because of an event of Force Majeure, the party so suffering may, at its option, suspend performance during the period such cause continues, and no liability shall attach against either party on account thereof. Any party suffering an event of Force Majeure shall diligently attempt to remove such cause or causes with reasonable dispatch. As soon as any event of Force Majeure is remedied, the parties' respective rights, obligations and performance as set forth in this Agreement shall be immediately reinstated.
2. **GOVERNING LAW; ARBITRATION.**

This Agreement shall be construed in accordance with the Laws of the State of \_\_\_\_\_\_\_\_\_\_\_\_\_\_, and shall be subject to the exclusive jurisdiction of the Courts of such state. Any dispute arising out of this Agreement shall be referred to arbitration. It is further agreed that decision of the arbitrator shall be considered as final and binding as though rendered by a court of law and enforceable in any court having jurisdiction over the same.

1. **MISCELLANEOUS** 
   1. Assignment — Principal may not assign this Agreement without the prior written consent of the Distributor. Subject to this limitation, this Agreement shall be binding upon and inure to the benefit of the successors and assigns of each of the parties.
   2. Entire Agreement — The parties expressly acknowledge that this Agreement contains the entire agreement of the parties with respect to the relationship specified in this Agreement and supersedes any prior arrangements or understandings between the parties with respect to such relationship.
   3. Amendments — This Agreement may only be amended by a written document signed by each of the parties.
   4. Notices — Any written notice called for in this Agreement may be given by personal delivery, certified mail, overnight delivery service or confirmed facsimile transmission. Notices given by personal delivery will be effective on delivery; by overnight service on the next business day; by first class mail five business days after mailing; and by facsimile when an answer back confirming receipt by the recipient’s facsimile machine is received. The address of each party is set forth above.
   5. Third Parties Rights — **Nothing** in this Agreement shall confer any benefit on any person who is not a party to this agreement.

Executed as of the Effective Date set forth at the beginning of this Agreement.

Distributor: Principal

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

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

**SCHEDULE 1**

**PRODUCTS**

**SCHEDULE 2**

**TERRITORY**

**SCHEDULE 3**

**MARKS**

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