



Marketing Representative Agreement

Document 4073A

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MARKETING REPRESENTATIVE AGREEMENT

This MARKETING REPRESENTATIVE AGREEMENT (the “**Agreement**”) is entered into this _____ day of _____, 20____ (the “**Effective Date**”) by and between [COMPANY NAME], a _____ corporation, with offices at [PRINCIPAL ADDRESS] (“**Company**”), and [NAME OF REPRESENTATIVE] with offices at [PRINCIPAL ADDRESS] (“**Representative**”).

RECITALS

WHEREAS, the Company develops, markets and licenses certain _____ (the “**Products**”).

WHEREAS, the Representative markets, sells and/or licenses certain products and services [to _____ or in _____ field].

WHEREAS, the Company desires to secure the services of Representative upon the terms and conditions set forth in this Agreement, and Representative desires to be so retained by the Company;

NOW, THEREFORE, in consideration of the premises and the mutual covenants and contained in this Agreement, the parties agree as follows:

1. Definitions. The following definitions apply to capitalized terms in this Agreement. All other capitalized terms are defined in the body of the Agreement.

1.1 “**Affiliate**” means a Person which, directly or indirectly, owns or controls, is owned or is controlled by or is under common ownership or control with another Person; “control” and its derivatives means the power to direct the management or affairs of a Person; and “own” and its derivatives means the beneficial ownership of fifty (50%) or more of the voting equity securities or other equivalent voting interests of the Person.

1.2 “**Confidential Information**” means all confidential and proprietary information of a party (“**Disclosing Party**”) disclosed to the other party (“**Receiving Party**”), whether orally or in writing, that is either marked or designated as confidential or is identified in writing as confidential or proprietary within fifteen (15) days of disclosure to the Receiving Party; provided that the following shall be deemed to be Confidential Information even if not so marked or identified: the terms and conditions of this Agreement (including pricing and other terms reflected in all schedules hereto), the Disclosing Party’s business and marketing plans, technology and technical information, product designs, and business processes, any information or materials with the name, sign, trade name or trademark of the Disclosing Party and any information that a reasonable person would deem confidential or proprietary given the nature of the information and the circumstances under which it is disclosed. “**Confidential Information**” does not include any item of information which (a) is or becomes available in the public domain without the fault of the Receiving Party; (b) is disclosed or made available to the Receiving Party by a third party without restriction and without breach of any relationship of confidentiality; (c) is independently developed by the Receiving Party

without access to the disclosing party's Confidential Information; or (d) is known to the recipient at the time of disclosure.

1.3 **"Customers"** means any Person who finalizes a purchase of the Product from Representative

1.4 **"Intellectual Property Rights"** means (a) all inventions (whether or not patentable and whether or not reduced to practice), all improvements thereto, and all patents, patent applications, and patent disclosures, together with all reissuances, divisions, continuations, continuations-in-part, revisions, renewals, extensions, and reexaminations thereof, (b) all works of authorship, including all mask work rights, database rights and copyrightable works, all copyrights, all applications, registrations and renewals in connection therewith, and all moral rights, (c) all trade secrets, (d) all registered and unregistered trademarks, service marks, trade dress, domain names, logos, trade names, and corporate names, together with all translations, adaptations, derivations, and combinations thereof and including all goodwill associated therewith, and all applications, registrations and renewals in connection therewith, (e) all derivative works of any of the foregoing; (f) any other similar rights or intangible assets recognized under any laws or international conventions, and in any country or jurisdiction in the world, as intellectual creations to which rights of ownership accrue, and all registrations, applications, disclosures, renewals, extensions, continuations or reissues of the foregoing now or hereafter in force, and (g) all copies and tangible embodiments of all of the foregoing (a) through (f) in any form or medium throughout the world.

1.5 **"Order"** means a purchase order executed by a Customer and accepted by the Company, and for which the full [fee], plus taxes and any other charges have been received by the Company.

1.6 **"Person"** whether capitalized or not, means any individual, sole proprietorship, joint venture, partnership, corporation, company, firm, bank, association, cooperative, trust, estate, government, governmental agency, regulatory authority, or other entity of any nature.

1.7 **"Products"** means [DESCRIBE PRODUCTS]

1.8 **"Services"** means assistance with overall business and marketing development, including the development and maintenance of a marketing plan, that includes lead generation, public relations and other marketing campaigns and effective sales tools. .

1.9 **"Term"** is defined in Section 3 (Term) hereof.

1.10 **"Territory"** means [DEFINE TERRITORY].]

2. Work to be Performed.

2.1 Services. Company hereby appoints Representative and Representative accepts such appointment solely during the Term as Company's non-exclusive, independent representative to market and promote the Products to unaffiliated, third party Customers [within the Territory]. Representative acknowledges that, during the Term,

Company may appoint other representatives or third parties to directly or indirectly market Products, [within or without the Territory], without liability or obligation to Representative.

2.2 Orders and Sale Price. The Company shall determine all prices and terms for the Order of the Product. The Company will promptly notify Representative of price changes as they may occur. Representative may discount the price of the Product only as provided by and agreed upon by Company. Company shall process Orders for Products received directly from Representative's Customers pursuant to the order processing provisions set forth in Section 2.3 (below). All orders are subject to acceptance by Company.

2.3 Order Procedures. Representative's Customers shall submit Orders directly to Company pursuant to a [valid, executed and authorized Customer purchase order sent via e-mail, courier or facsimile]. The Products shall be provided by Company directly to such Customer pursuant to Company's then current Products agreement. Company shall have no liability for non-acceptance of, or failure or delay in filling any Orders. Company shall acknowledge each order in accordance with its then current lead times. Company shall use reasonable effort to meet proposed delivery dates for the Products and shall not be liable for delivery delays. No purchase order, acknowledgment form, or other document or communication shall amend the terms and conditions of this Agreement.

2.4 Obligations of Representative. During the Term of this Agreement:

(a) Representative shall devote his best efforts to the promotion and marketing of the Product [within the Territory].

(b) Representative shall provide the Company with market research, competitive product offering information and assistance with new product planning, as requested. The Company will keep Representative informed as to the plans for new product development.

[(c) Representative shall inform the Company at the earliest possible date of all opportunities for the marketing and sales of the Product [within the Territory] and shall provide the Company with [monthly] reports as to his marketing activities.]

[(d) Representative may, [at his own expense], promote, market and advertise the Product so as to inform potential purchasers of the capabilities and applications of the Product and to promote recognition of the Company name. All advertising and promotional material proposed to be used by Representative shall be approved by the Company in writing prior to such use.]

[(e) At the Company's request, Representative shall assist the Company in facilitating the preparation and execution of documentation related to the marketing and advertising of the Product and related services.]

[(f) Representative may use the trade names or trademarks of the Company only as may be approved by the Company in writing. Representative hereby waives any right, title or interest in or to any trade names or trademarks of the Company.]

[(g) Representative will use its best efforts to support its customers. Representative will act as the coordinator and liaison with the Company for all matters regarding customer service and will provide feedback to the Company relating to Customer concerns regarding the Product.]

[(h) Representative represents that he has and shall maintain at all times the facilities, resources, personnel and experience and shall use his best efforts to market and license the Products, and to perform its obligations under this Agreement. Representative shall market the Products directly to the Customers pursuant to Company's then current agreements, executed solely by and between Company and such Customer and shall not modify such agreements in any way.

2.5 Obligations of the Company. During the Term of this Agreement:

(a) The Company will provide technical information regarding the Product and its performance to assist Representative with the effective marketing of the Product.

(b) The Company [shall] [may] provide training of Representative [or his employees] either in the Company's facilities or at Representative's location for the proper marketing of the Product.

[(c) The Company will support the promotional and sales efforts of Representative by keeping Representative informed in a timely manner as to the products and technology offered by the Company. Representative may periodically visit the Company, at reasonable times and on reasonable notice, for face to face discussions regarding the Company's business prospects and products and service offerings.]

[(d) The Company shall supply and make available to the Representative, at no charge to the Representative, all marketing collateral, appropriate materials, catalogs and advertising data ("**Marketing Materials**") which shall be reasonably necessary to assist the Representative in making and promoting sales of the Product [in the Territory]. The Company may, but shall not be required to, furnish Representative with samples or models of the Product, or demonstration materials relating to its services, which shall remain the property of the Company, and shall be returned by Representative to the Company upon its request or disposed of by Representative as the Company shall direct at any time during the Term of this Agreement or thereafter. Marketing Materials shall not be altered, copied or modified without the express written permission of Company. Representative may obtain additional quantities of such materials at Company's then current charges and/or fees.]

[(e) Representative may from time to time request support and participation by the Company in customer visits, and the Company will use its best efforts to provide this support[, at no cost to Representative.]]

3. Term and Termination

3.1. Term. The initial term of this Agreement shall commence on the Effective Date and continue for [NUMBER] (___) consecutive months unless terminated as provided herein (the “**Term**”). Thereafter, this Agreement shall automatically extend for additional terms of [NUMBER] (___) months unless terminated by a party hereto upon written notice not less than thirty (30) days prior to the expiration of the then current term.

3.2 Termination for Breach. Either party may terminate this Agreement upon the material breach of any term of this Agreement of the other party if such breach remains uncured for [thirty (30)] days following written notice setting forth the nature of the breach to the non-breaching party.

[3.3] Termination by Mutual Agreement. Either party may terminate this Agreement at any time, without cause and without penalty, provided, however, that Representative shall use good faith efforts to prevent business disruption to the Company in the event that Representative terminates this Agreement.]

[3.4] Effect of Termination. Following termination, Representative’s right or ability to market any of the Products or to use Company trademarks and trade names, including the name "Company" shall immediately cease. In the event Representative or the Company terminates this Agreement in accordance with this Section 3 (Term and Termination), the Company shall pay Representative, within [thirty (30)] days following such termination, any monies due through and including the Effective Date of such termination. Upon termination, Representative shall promptly deliver to the Company all work in progress, Company equipment, Marketing Materials and any Confidential Information received from the Company or developed by Representative in connection with the performance of Services hereunder.

4. Compensation.

4.1 Orders Commission and Bonuses. The Company shall pay the Representative a commission (the “**Commission**”) equal to [___]% of the sales price of the Product as invoiced, exclusive of taxes, discounts and allowances. Payment shall be due only upon receipt by the Company of payment by the Customer (a “**Completed Order**”). Copies of all invoices will be sent by the Company to Representative on a monthly basis. Any commissions due and owing to Representative with respect to Completed Orders collected during any calendar month shall be paid by the Company to Representative by the last day of the following calendar month.

4.2 Affiliations and Other Discounts. The Company shall bear no responsibility for the payment of any sub-commissions or other amounts promised by Representative to its employees, affiliates or other networking contacts in exchange for his assistance with sales of the Product.

[4.3 Reimbursable Costs. The Company shall reimburse Representative [SPECIFIC] costs incurred in connection with the Services rendered. Reimbursable costs include, but are not limited to, travel costs, subcontractors, materials, computer costs, telephone costs, copy costs, delivery and courier costs that are directed attributable to the Services provided (the “**Reimbursable Costs**”). “**Travel Costs**” are defined reasonable costs for airline travel, lodging, meals, ground transportation, tools and other costs related to travel. All extraordinary travel expenses must receive Company’s approval prior to incurring the expense. The Representative shall provide Company with substantiation of all Reimbursable Costs incurred within thirty (30) days. All automobile travel will be reimbursed at the current Internal Revenue Service acceptable rate per mile.]

OR

[4.3 Reimbursable Costs. The Company will not reimburse Representative for any costs incurred in connection with the Services rendered. Representative shall be responsible for all expenses incurred by Representative in connection with the performance of his obligations hereunder, including expenses relating to salaries of his employees, office, travel, correspondence, communication, advertising, and any and all taxes which may be imposed on Representative [within the Territory], other than extraordinary expenses incurred at the written request of the Company.]

[4.4 Annual Bonus. At the end of each calendar year, providing that the Representative remains associated with the Company at the end of such calendar year, the Company will pay Representative an annual bonus of [__]% of the total gross Completed Orders made [in the Territory] during such year.]

5. Ownership of Intellectual Property; Conflicts.

5.1. Ownership of Intellectual Property. Representative acknowledges and agrees that Company shall retain and own all right, title and interest and all Intellectual Property Rights (including copyrights, trade secrets, trademarks and patent rights) in and to all of the Products (collectively, the “**Company Materials**”) and all copies thereof, and that nothing herein transfers or conveys to Representative any ownership right, title or interest in or to the Company Materials or to any copy thereof or any license right with respect to same not expressly granted herein. Representative agrees that it will not, either during or after the termination of this Agreement, contest or challenge the ownership of the intellectual property rights in the Company Materials by Company.

5.2 Proprietary Notices. Representative will provide Company with appropriate notices of copyright, trademark or other proprietary rights in Representative’s name, and Company will place such notices in such manner as Company will direct. In no event shall Representative alter, remove, obscure, erase or deface or otherwise hide from view, any copyright, trademark or other proprietary rights notice of Company contained or incorporated in the Product.

5.3 Customer Privacy. It is Company’s policy to respect each Customer’s privacy. Representative will not monitor, edit, or disclose any personal information about any Customer or Customer’s account, including its contents, without Company’s prior

permission unless Representative has a good faith belief that such action is necessary to: (a) conform to legal requirements or comply with legal process; (b) protect and defend the rights or property of Company or of a Customer; (c) enforce this Agreement or protect Company's business or reputation, including upon termination, cancellation or suspension of this Agreement by Company; (d) respond to request for identification in connection with claim of copyright or trademark infringement by Representative or a claim by a third party that Representative is using the Product in connection with an infringing, illegal or improper activity; or (e) act to protect the interests of Company's Customer or others.

6. Confidentiality.

[Representative shall, contemporaneously with the execution of this Agreement, enter into the Company's standard confidentiality agreement for independent contractors substantially in the form of Exhibit B attached to this Agreement.]

OR

[Both parties agree to use Confidential Information only in its performance under this Agreement and shall treat and protect such Confidential Information in the same manner as it treats its own Confidential Information of like character, but under no conditions with less than reasonable care. The obligations of this Section __ (Confidentiality) shall continue for a period of [NUMBER (__)] years after termination or expiration of this Agreement. Such Confidential Information shall be returned by the Receiving Party as soon as reasonably practicable upon written notice or termination or expiration of this Agreement.

7. Non-Competition and Non-Solicitation.

7.1 Non-Competition. Representative agrees that, during Representative's engagement with the Company [and for a period of [____] thereafter], Representative will not establish or act, directly or indirectly, by way of ownership, management or otherwise, whether or not for compensation, as a Representative, employer, employee, agent, principal, partner, stockholder (other than ownership of less than 5% of the outstanding capital stock of a publicly-traded corporation), officer, director or in any other representative or individual capacity for, any business that (i) is similar to, (ii) is directly competitive with, or (iii) provides goods or services to any aspect of the business in which the Company is engaged or contemplates engaging. During the term of this Agreement, Representative will not undertake any planning for any outside business competitive with the Company.

[7.2 No Conflicts. Representative agrees not to enter into any agreement that contains any term that may conflict, either actually or potentially, with the terms of this Agreement.]

OR

[7.2 Conflicts of Interest. Based on the information the Company has provided to Representative, Representative is not aware of any conflicts of interest that would

prevent him from performing the Services to be rendered hereunder. [The Company is advised, however, that Representative may have to obtain a waiver of any existing, potential or perceived conflict of interest. Representative may not be able to obtain such waiver or waivers and in that event, Representative would not be able to perform the required Services to the extent they create such conflict or perceived conflict.] If hereafter Representative becomes aware of an actual or potential conflict of interest, Representative will promptly discuss this with the Company and the parties shall mutually determine whether the conflict will prevent Representative from continuing to provide Services under this Agreement. Representative agrees not to enter into any agreement that contains any term that may conflict, either actually or potentially, with the terms of this Agreement.]

7.3 Business Opportunities. Representative agrees that during the Term of this Agreement, Representative will not take for Representative's own use, and will promptly notify the Company of, any and all business opportunities of which Representative becomes aware that relate, directly or indirectly, to the current or reasonably anticipated future business of the Company.

7.4 No Solicitation of Company Employees and Representatives. Representative agrees that during the Term of this Agreement and for a period of [] months thereafter, Representative will not disrupt, damage, impair or interfere with the Company's business by recruiting, soliciting or otherwise inducing any of the Company's employees or exclusive Representatives to enter into employment or an exclusive consulting relationship with any other business entity that competes with the Company.

7.5 No Solicitation of Company Customers. Representative also agrees that, during the Term of this Agreement and for a period of [] months thereafter, Representative will not (a) call on, solicit, or take away (directly or indirectly), or (b) attempt to call on, solicit or take away (directly or indirectly) any Company customer or potential customer whom the Company has identified in the course of any Project Assignment, either for Representative's own benefit or for the benefit of another person or entity, and Representative will not solicit or induce any customer or potential customer to terminate a business relationship with the Company.]

8. Non-Disparagement. Representative agrees he will not, at any time, make comments, whether oral or in writing, that tend to disparage or injure the Company, its officers, directors, agents, employees, products and services, provided, however, that nothing in this Agreement will be construed to preclude Representative from complying with the terms of a validly issued subpoena.

9. Injunctive Relief. Representative acknowledges that it would be difficult for the Company to measure actual damages resulting from any breach by Representative of Section 5 through Section 8 of this Agreement, and that money damages alone would be an inadequate remedy for any such breach. Accordingly, Representative agrees that if Representative breaches any provision of Section 5 through Section 8, the Company will be entitled, in addition to any other remedies it may have, to specific performance, injunctions, or other appropriate orders to correct or restrain any such breach by

Representative, without showing or proving any actual damage sustained by the Company or posting any bond or other security.

10. Independent Representative.

10.1 No Employer-Employee Relationship. It is expressly understood and agreed that during the Term of this Agreement, Representative's relationship to the Company will be that of an independent contractor and that neither this Agreement nor the Services to be rendered hereunder shall for any purpose whatsoever or in any way or manner create any employer-employee relationship.

10.2 Taxes. Representative shall have sole and exclusive responsibility for the payment of all federal, state and local income taxes, for all employment and disability insurance and for social security and other similar taxes, in each case with respect to any compensation or benefits provided by the Company hereunder.

10.3 Compliance with Law. Representative shall assume and accept all responsibilities which are imposed on independent contractors by any applicable statute, regulation, ruling or otherwise. Representative represents and warrants that he is and will continue to be an independent merchant or enterprise within the meaning and requirement of any laws or customs [in the Territory]. Representative will comply with the Company's policies and all applicable laws, rules, regulations and expressed public policies of [STATE] and will take no action in connection with his duties under this Agreement that would violate any such laws, rules, regulations and policies.

10.4 Not Authorized to Bind the Company. Representative shall not hold himself out or permit himself to be described otherwise than as an independent sales representative of the Company, and unless specifically authorized in advance in writing by the Company, Representative shall not enter into, assume, or incur any obligation on the Company's behalf or transact any business for the Company's account.

[11. **Attorneys' Fees.** If any action is necessary to enforce this Agreement, including any action under Section 9 (Injunctive Relief), the prevailing party will be entitled to recover its reasonable costs and attorneys' fees, including reasonable expert witness fees.]

12. Communications; Acknowledgements. Representative agrees that upon the request of the Company, Representative will meet with representatives of the Company to review the terms of this Agreement and Representative's obligations hereunder. Representative will keep the Company advised of Representative's home address and business address during the term of this Agreement so the Company can contact Representative regarding Representative's post-engagement obligations hereunder. Representative has carefully read this Agreement and understands its terms.

13. Indemnification. Company agrees to, and will indemnify, defend and hold harmless Representative [and its directors, shareholders, officers, agents, employees, successors and assigns] from and against any and all claims, demands, suits, actions, judgments, damages, costs, losses, expenses (including attorneys' fees and expenses) and

other liabilities arising from, in connection with or related in any way to, directly or indirectly, (a) its performance with this Agreement (b) any breach or alleged breach of any of the representations and warranties, undertakings or agreements made by it under this Agreement, (c) its activities under this Agreement, including without limitation, any unauthorized use by it or any of its subcontractors of any portion of the Customer Materials or the Product, or (d) any act or omission of its, its directors, officers, agents, employees or subcontractors. Representative will promptly notify Company of any such claim. Company will bear full responsibility for the defense (including any settlements); provided however, that (i) Company will keep Representative informed of, and consult with Representative in connection with the progress of such litigation or settlement; and (ii) Company will not have any right, without Representative's written consent, to settle any such claim if such settlement arises from or is part of any criminal action, suit or proceeding or contains a stipulation to or admission or acknowledgement of, any liability or wrongdoing (whether in contract, tort or otherwise) on the part of Representative.

13. Limitation of Liability.

13.1 Limitation. EXCEPT FOR LIABILITY ARISING FROM INDEMNIFICATION OBLIGATIONS SET FORTH IN **SECTION 12** (INDEMNIFICATION) OR LIABILITY ARISING FROM A BREACH BY REPRESENTATIVE OF **SECTION 5** (OWNERSHIP OF INTELLECTUAL PROPERTY) AND **SECTION 6** (CONFIDENTIALITY) HEREOF, IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE AMOUNTS ACTUALLY PAID BY COMPANY HEREUNDER.

13.2 Exclusion of Consequential and Related Damages. EXCEPT FOR LIABILITY ARISING FROM INDEMNIFICATION OBLIGATIONS SET FORTH IN **SECTION 12** (INDEMNIFICATION) OR LIABILITY ARISING FROM A BREACH BY REPRESENTATIVE UNDER **SECTION 5** (OWNERSHIP OF INTELLECTUAL PROPERTY) AND **SECTION 6** (CONFIDENTIALITY) HEREOF, IN NO EVENT SHALL EITHER PARTY OR ANY THIRD PARTY PROVIDER HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS, LOSS OF USE, COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. SOME STATES AND JURISDICTIONS DO NOT ALLOW LIMITATIONS ON DURATION OR THE EXCLUSION OF AN IMPLIED WARRANTY, SO THE ABOVE LIMITATION MAY NOT APPLY. EACH PARTY MAY ALSO HAVE ADDITIONAL RIGHTS NOT STATED IN THIS DOCUMENT.

14. Miscellaneous.

14.1 Governing Law. This Agreement will be construed in accordance with and governed by the laws of the [STATE], without giving effect to the conflict of law principles of the [STATE].

14.2 Disputes. Any controversy, claim or dispute arising out of or relating to this Agreement, shall be settled by binding arbitration in [CITY/STATE]. Such arbitration shall be conducted in accordance with the then prevailing commercial arbitration rules of [NAME OF ARBITRATOR], with the following exceptions if in conflict: (a) one arbitrator shall be chosen by [ARBITRATOR]; (b) each party to the arbitration will pay its pro rata share of the expenses and fees of the arbitrator, together with other expenses of the arbitration incurred or approved by the arbitrator; and (c) arbitration may proceed in the absence of any party if written notice (pursuant to the Arbitrator's rules and regulations) of the proceeding has been given to such party. The parties agree to abide by all decisions and awards rendered in such proceedings. Such decisions and awards rendered by the arbitrator shall be final and conclusive and may be entered in any court having jurisdiction thereof as a basis of judgment and of the issuance of execution for its collection. All such controversies, claims or disputes shall be settled in this manner in lieu of any action at law or equity, provided however, that nothing in this subsection shall be construed as precluding bringing an action for injunctive relief or other equitable relief. The arbitrator shall not have the right to award punitive damages or speculative damages to either party and shall not have the power to amend this Agreement. IF FOR ANY REASON THIS ARBITRATION CLAUSE BECOMES NOT APPLICABLE, THEN EACH PARTY, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY AS TO ANY ISSUE RELATING HERETO IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER MATTER INVOLVING THE PARTIES HERETO.

14.3 Cumulative Remedies. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.

14.4 Successors and Assigns. Except as otherwise expressly provided in this Agreement, this Agreement will be binding on, and will inure to the benefit of, the successors and permitted assigns of the parties to this Agreement. Nothing in this Agreement is intended to confer upon any party other than the parties hereto or their respective successors and assigns any rights or obligations under or by reason of this Agreement, except as expressly provided in this Agreement.

14.5 Notices. All notices under this Agreement shall be in writing and shall be delivered to the addresses first set forth above. Notice shall be deemed to have been given upon: (a) personal delivery; (b) the first business day after sending notice via nationally recognized overnight courier; or (c) three (3) business days after depositing notice in the United States mail, sent Certified Mail Return Receipt Requested. Notices to Company shall be addressed to the attention of its Chief Executive Officer. Either party may change its address for notice by giving notice of such address change in the manner provided herein.

14.6 Severability. In the event that any provision of this Agreement is held to be unenforceable under applicable law, this Agreement will continue in full force and effect without such provision and will be enforceable in accordance with its terms.

14.7 Construction. The titles of the sections of this Agreement are for convenience of reference only and are not to be considered in construing this Agreement. Unless the context of this Agreement clearly requires otherwise: (a) references to the plural include the singular, the singular the plural, and the part the whole, (b) references to one gender include all genders, (c) “or” has the inclusive meaning frequently identified with the phrase “and/or,” (d) “including” has the inclusive meaning frequently identified with the phrase “including but not limited to” or “including without limitation,” and (e) references to “hereunder,” “herein” or “hereof” relate to this Agreement as a whole. Any reference in this Agreement to any statute, rule, regulation or agreement, including this Agreement, shall be deemed to include such statute, rule, regulation or agreement as it may be modified, varied, amended or supplemented from time to time.

14.8 Entire Agreement. This Agreement embodies the entire agreement and understanding between the parties hereto with respect to the subject matter of this Agreement and supersedes all prior or contemporaneous agreements and understanding other than this Agreement relating to the subject matter hereof.

14.9 Amendment and Waiver. This Agreement may be amended only by a written agreement executed by the parties hereto. No provision of this Agreement may be waived except by a written document executed by the party entitled to the benefits of the provision. No waiver of a provision will be deemed to be or will constitute a waiver of any other provision of this Agreement. A waiver will be effective only in the specific instance and for the purpose for which it was given, and will not constitute a continuing waiver.

14.10 Force Majeure. Neither party shall not be responsible to the other party for delays or failures (including any delay to make progress in sales and distribution of the Product) if such delay arises out of causes beyond its control. Such causes may include, but are not restricted to acts of God or of the public enemy, fires, floods, epidemics, riots, quarantine restrictions, strikes, freight embargoes, earthquakes, severe weather, any natural disaster, electrical outages, computer and communications failures, and acts or omissions of subcontractors or third parties.

14.11 Cooperation. Representative will cooperate with the Company in taking any and all necessary actions, including the execution of documents, in order to achieve the objectives of this Agreement. Representative acknowledges that the Company's performance is dependent on Representative's timely and effective cooperation. Therefore, the Representative acknowledges that any delay on [his/her] part may result in the Company being released from an obligation or scheduled deadline or in Representative having to pay extra fees for the Company's agreement to meet a specific obligation or deadline despite the delay.

14.12 Survival. Sections 5 through 9 shall survive the expiration or termination of this Agreement and shall continue in full force and effect until terminated in accordance with their terms.

[14.13 Export Regulations. This Agreement is made subject to any laws, regulations, orders or other restrictions on the export from the United States of America of Products or of information about such Products that may be imposed from time to time by the government of the United States of America. Representative will not export, directly or indirectly, any such Products or information pertaining thereto to any country for which the government of the United States of America or any agency thereof requires an export license or other governmental approval at the time of export without first obtaining such license or approval. Representative shall indemnify, defend, and hold Company harmless from and against all claims, actions, proceedings, losses, and costs relating to a violation by Representative of this Section 14.13 (Export Regulations).]

14.14 Counterparts. This Agreement may be in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one instrument.

14.15 Publicity. The parties shall mutually agree upon a joint press release within thirty (30) days of the Effective Date.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective duly authorized representative as of the Effective Date.

COMPANY:

[COMPANY NAME]

By: _____

Its: _____

REPRESENTATIVE:

[COMPANY NAME]

By: _____

Its: _____

EXHIBIT A

PRICE LIST

EXHIBIT B

CONFIDENTIALITY AGREEMENT

Sample can be found at LeapLaw