



Sales Representative Agreement

Document 1484A

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SALES REPRESENTATIVE AGREEMENT

This SALES 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 CONSULTANT], with offices at [PRINCIPAL ADDRESS] (“**Consultant**”).

RECITALS

WHEREAS, the Company is engaged in the business of manufacturing and selling [DESCRIBE PRODUCT] (the “**Product**”); and

WHEREAS, the Company desires to secure the services of Consultant upon the terms and conditions set forth in this Agreement, and Consultant 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 “**Change of Control**” means as to either party (a) the sale, conveyance, transfer, or disposition of all or substantially all of such party’s assets, business, technology, intellectual property or other material goods, to a third party, (b) the acquisition of such party by a third party (whether through a merger, acquisition, consolidation or other transaction or series of transactions) the consummation of which results in a Person (other than an Affiliate of such party prior to such transaction) becoming the beneficial owner of fifty (50%) percent or more of the outstanding equity interests or voting power in such party, other than, in the case of this clause (b), an acquisition or a merger or consolidation in which holders of shares of voting capital stock immediately prior to the acquisition, merger or consolidation will not have at least fifty (50%) percent of the ownership of voting capital stock of the acquiring third party or the surviving corporation in such merger or consolidation, or transaction effected solely for purpose of changing the corporate domicile of such party, as the case may be, immediately after the merger or consolidation.

1.3 “**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.

1.4 "**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 "**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.

1.6 "**Sale**" or "**Sales**" 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.

1.7 "**Services**" means assistance with overall business development, identification of sales leads, contacting sales leads and directing each prospect successfully through the sales process resulting in Sales.

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

1.9 "**Work Product**" means any and all records, databases and materials related to sales, customers or contacts made on behalf of the Company or the Product, as well as written work product that is maintained by or delivered by Consultant related to the Company or the Product.

2. Work to be Performed.

2.1 Services. Consultant agrees to provide Services within [LIST TERRITORY] (the “Territory”) to accounts designated by the Company from time to time and those accounts identified by Consultant (collectively, “Customers”) who are or may be interested in acquiring the Product.

2.2 Orders and Invoices. All orders for the Product shall be effective only upon acceptance by the Company at its office at [ADDRESS]. All credit approvals [and billings] for the Product shall be handled by the Company directly. Consultant shall have no authority or responsibility to make any credit approvals on behalf of the accounts of the Company.

2.3 Sale Price. The Company shall determine all prices and terms of the Sale for the Product. The Company will promptly notify Consultant of price changes. Consultant may discount the price of the Product only as shown on Exhibit A attached to this Agreement, except as otherwise agreed by the Company.

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

(a) Consultant shall devote his best efforts to the promotion and Sale of the Product within the Territory.

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

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

[(d) Consultant may, [at his own expense], promote 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 Consultant shall be approved by the Company in writing prior to such use.] [Consultant will maintain contact with customers directly, and through his own channels in the Territory.] [Except for the materials provided at no cost by the Company, cost of this promotion in the Territory will be borne by Consultant.]

[(e) At the Company’s request, Consultant shall assist the Company in facilitating the preparation and execution of documentation related to the Sale of the Product and related services [,including obtaining payment and administering matters relating thereto]].

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

[(g) Consultant will use its best efforts to support its customers. Consultant 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.]

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 Consultant with the effective marking of the Product.

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

[(c) The Company will support the promotional and sales efforts of Consultant by keeping Consultant informed in a timely manner as to the products and technology offered by the Company. Consultant 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 the Consultant with appropriate materials, catalogs and advertising data which shall be reasonably necessary to assist the Consultant in making and promoting sales of the Product in the Territory. The Company may, but shall not be required to, furnish Consultant 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 Consultant to the Company upon its request or disposed of by Consultant as the Company shall direct at any time during the Term of this Agreement or thereafter.]

[(e) Consultant 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 Consultant.]

3. Term and Termination.

3.1 Term. Unless earlier terminated as hereinafter provided, the term of this Agreement shall be for a period of [NUMBER] (__) [year(s) / months] (the "**Term**"). The Term shall automatically be extended for [NUMBER] (__) additional [year(s) / months] on each anniversary hereof unless either party hereto notifies the other of its intent to terminate at least [thirty (30)] days prior to such anniversary or unless otherwise terminated pursuant to this Section 3 (Term and Termination).

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 Consultant shall use good

faith efforts to prevent business disruption to the Company in the event that Consultant terminates this Agreement.]

[3.4] Effect of Termination. Following termination, Consultant'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 Consultant or the Company terminates this Agreement in accordance with this Section 3 (Term and Termination), the Company shall pay Consultant, within [thirty (30)] days following such termination, the full Commission for Completed Sales through and including the Effective Date of such termination [(and only such Completed Sales)] [as well as Completed Sales subsequent to the date of termination arising from sales activities of Consultant prior to such date]. Upon termination, Consultant shall promptly deliver to the Company all work in progress, Company equipment and any Confidential Information received from the Company and developed by Consultant in connection with the performance of Services hereunder.

4. Compensation.

4.1 Sales Commission and Bonuses. The Company shall pay the Consultant 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 Sale**"). Copies of all invoices will be sent by the Company to Consultant on a monthly basis. Any commissions due and owing to Consultant with respect to Completed Sales collected during any calendar month shall be paid by the Company to Consultant 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 Consultant to its employees, affiliates or other networking contacts in exchange for their assistance with sales of the Product.

[4.3 Reimbursable Costs. The Company shall reimburse Consultant [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 Consultant 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 Consultant for any costs incurred in connection with the Services rendered. Consultant shall be responsible for all expenses incurred by Consultant 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

Consultant 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 Consultant remains associated with the Company at the end of such calendar year, the Company will pay Consultant an annual bonus of [__]% of the total gross Completed Sales made in the Territory during such year.]

5. Ownership of Intellectual Property; Conflicts.

5.1. Ownership of Intellectual Property. Consultant 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 Consultant 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. Consultant 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. Consultant will provide Company with appropriate notices of copyright, trademark or other proprietary rights in Consultant’s name, and Company will place such notices in such manner as Company will direct. In no event shall Consultant 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. Consultant 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 Consultant 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 Consultant or a claim by a third party that Consultant 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.

6.1. Confidentiality Agreement. Consultant 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.

7. Non-Competition and Non-Solicitation.

7.1. Non-Competition. Consultant agrees that, during Consultant’s engagement with the Company [and for a period of [____] thereafter], Consultant will not establish or act, directly

or indirectly, by way of ownership, management or otherwise, whether or not for compensation, as a consultant, 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, Consultant will not undertake any planning for any outside business competitive with the Company.

[7.2 No Conflicts. Consultant 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 Consultant, Consultant 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 Consultant may have to obtain a waiver of any existing, potential or perceived conflict of interest. Consultant may not be able to obtain such waiver or waivers and in that event, Consultant would not be able to perform the required Services to the extent they create such conflict or perceived conflict.] If hereafter Consultant becomes aware of an actual or potential conflict of interest, Consultant will promptly discuss this with the Company and the parties shall mutually determine whether the conflict will prevent Consultant from continuing to provide Services under this Agreement. Consultant 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. Consultant agrees that during the Term of this Agreement, Consultant will not take for Consultant's own use, and will promptly notify the Company of, any and all business opportunities of which Consultant 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 Consultants. Consultant agrees that during the Term of this Agreement and for a period of [] months thereafter, Consultant 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 consultants 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. Consultant also agrees that, during the Term of this Agreement and for a period of [] months thereafter, Consultant 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 Consultant's own benefit or for the benefit of another person or entity, and Consultant will not solicit or induce any customer or potential customer to terminate a business relationship with the Company.]

8. Non-Disparagement. Consultant 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 Consultant from complying with the terms of a validly issued subpoena.

9. Injunctive Relief. Consultant acknowledges that it would be difficult for the Company to measure actual damages resulting from any breach by Consultant of Section 5 through Section 8 of this Agreement, and that money damages alone would be an inadequate remedy for any such breach. Accordingly, Consultant agrees that if Consultant 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 Consultant, without showing or proving any actual damage sustained by the Company or posting any bond or other security.

10. Independent Contractor.

10.1 No Employer-Employee Relationship. It is expressly understood and agreed that during the Term of this Agreement, Consultant'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. Consultant 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. Consultant shall assume and accept all responsibilities which are imposed on independent contractors by any applicable statute, regulation, ruling or otherwise. Consultant 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. Consultant 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. Consultant 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, Consultant 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. Consultant agrees that upon the request of the Company, Consultant will meet with representatives of the Company to review the terms of this

Agreement and Consultant's obligations hereunder. Consultant will keep the Company advised of Consultant's home address and business address during the term of this Agreement so the Company can contact Consultant regarding Consultant's post-engagement obligations hereunder. Consultant has carefully read this Agreement and understands its terms.

13. Indemnification. Company agrees to, and will indemnify, defend and hold harmless Consultant [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. Consultant 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 Consultant informed of, and consult with Consultant in connection with the progress of such litigation or settlement; and (ii) Company will not have any right, without Consultant'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 Consultant.

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 CONSULTANT 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 CONSULTANT 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, fright 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. Consultant 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. Consultant acknowledges that the Company's performance is dependent on Consultant's timely and effective cooperation. Therefore, the Consultant acknowledges that any delay on [his/her] part may result in the Company being released from an obligation or scheduled deadline or in Consultant 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 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.

[The remainder of this page has been intentionally left blank.]

IN WITNESS WHEREOF, the undersigned have executed this Sales Representative Agreement as of the date first written above.

COMPANY

[NAME OF COMPANY]

By: _____

Name: _____

Title: _____

CONSULTANT

[Consultant]

PRICE LIST

FORM OF CONFIDENTIALITY AGREEMENT

See LeapLaw for Confidentiality Agreements.