

THIS SUB-REPRESENTATIVE AGREEMENT (the "Agreement") is made as of this \_\_\_\_ day of \_\_\_\_\_, 200\_\_, between \_\_\_\_\_, a \_\_\_\_\_ corporation (the "Manufacturers' Representative"), and \_\_\_\_\_, a \_\_\_\_\_ corporation (the "Sub-Representative").

W I T N E S S E T H

WHEREAS, The Manufacturers' Representative and the Principal (the "Principal") whose name is set forth on Schedule A attached hereto, as the same may be amended from time to time, are parties to a Sales Representative Agreement (the "Sales Agreement"), pursuant to which the Manufacturers' Representative is the exclusive sales representative in a designated territory (the "Territory") for the sale of certain products (the "Products") of the Principal; and

WHEREAS, Manufacturers' Representative and Sub-Representative desire that Sub-Representative represent the Products within the Territory in accordance with the terms, conditions and covenants set forth in the Sales Agreement and this Agreement;

NOW, THEREFORE, in consideration of the premises, and of the covenants, representations, and warranties made herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto do hereby agree as follows:

1. APPOINTMENT AND ACCEPTANCE. Manufacturers' Representative appoints Sub-Representative as its exclusive sub-representative of the Products in the Territory, and Sub-Representative accepts the appointment and agrees to sell and promote the Products within such Territory. The Sub-Representative shall solicit orders for Products solely within the Territory, and shall not solicit orders for Products in any geographic area other than the Territory. Manufacturers' Representative agrees that, during the term of this Agreement, it will not appoint any other sub-representative to sell any Products in the Territory.

2. PRODUCTS. (a) The Products to be promoted and sold by the Sub-Representative shall at all times be all of those Products which Manufacturers' Representative is authorized to promote and sell in accordance with the Sales Agreement; Manufacturers' Representative shall give prompt written notice to Sub-Representative of any additions or deletions which may be made by the Principal to the Products to be promoted and sold by the Manufacturers' Representative and the Sub-Representative.

(b) Unless otherwise authorized by Manufacturers' Representative in writing, Sub-Representative shall not, during the term of this Agreement, act as a representative for, or otherwise sell or promote, products which compete with the Products.

3. COMPENSATION. (a) Sub-Representative shall be entitled to receive from Manufacturers' Representative as compensation for the services rendered hereunder a commission in an amount equal to Manufacturers' Representative's Gross Commissions (as hereinafter defined) multiplied by \_\_\_\_\_ percent (\_\_%). For purposes of this Agreement, Gross Commissions means the gross amounts actually received by the Manufacturers' Representative from the promotion and sale by the Sub-Representative of the Products. All amounts due pursuant to this Section shall be paid not later than the fifteenth (15<sup>th</sup>) day of each month for all commissions actually received by the Manufacturers' Representative from the Principal during the immediately preceding month.

(b) Manufacturers' Representative shall provide the Sub-Representative, not later than the fifteenth (15<sup>th</sup>) day of each month, an accounting of all orders shipped and all payments actually received on account thereof during the immediately preceding month for which the Sub-Representative is eligible to receive compensation hereunder. Upon reasonable notice and during regular business hours, the Sub-Representative shall have access to the Manufacturers' Representative's books and records pertaining to its sales revenues and related expenses in order to verify the accounting called for in this Section 3(b).

(c) Manufacturers' Representative shall have the right to charge against any amounts payable to the Sub-Representative under this Agreement, an amount equal to \_\_\_\_\_ percent (\_\_\_%) of any chargeback made by the Principal against commissions payable by the Principal to the Manufacturers' Representative.

4. **TERM AND TERMINATION.** This Agreement shall be effective as of the date hereof, and shall continue until terminated by either party upon not less than ninety (90) days' prior written notice given by the terminating party to the non-terminating party; provided, however, that this Agreement may be terminated for "cause" upon not less than ten (10) days' prior written notice given by the terminating party to the non-terminating party. For purposes of this Agreement, "cause" means a material breach of a material obligation or duty of the non-terminating party contained in this Agreement. Following the termination of this Agreement, the Manufacturers' Representative shall continue to pay the Sub-Representative in accordance with Section 3 above all commissions payable with respect to orders booked on or prior to the effective date of such termination.

5. **CONFIDENTIAL INFORMATION.** During the term of this Agreement and for a period of two (2) years thereafter, neither party shall disclose to any third person Confidential or Proprietary Information of the other party. For purposes of this Agreement, "Confidential or Proprietary Information" includes, but is not limited to, methods, operations, plans for doing business, trade secrets, customer lists, and other business matters peculiar to and pertaining to its business. Information already in the public domain through no fault of either party hereto shall not be Confidential or Proprietary Information.

6. **SUB-REPRESENTATIVE'S DUTIES AND RELATIONSHIP TO MANUFACTURERS' REPRESENTATIVE.** During the term of this Agreement:

(a) Sub-Representative shall conduct all of its business in the name of Manufacturers' Representative; and in connection therewith, Sub-Representative shall maintain a sales office and sales and support staff, and use its best efforts to sell and promote the Products within the Territory.

(b) Sub-Representative shall pay all expenses whatsoever of its office and activities and be responsible for the acts and expenses of its employees.

(c) Sub-Representative shall not, without Manufacturers' Representative's or the Principal's prior written approval, alter, enlarge, or limit orders, make representations or guarantees concerning Products, or accept the return of, or make any allowance for, Products.

(d) Sub-Representative shall furnish to Manufacturers' Representative any information which it may have from time to time relative to the credit standing of any of its customers for Products.

(e) If for any reason Sub-Representative takes possession of any Products, the risk of loss or damage to, or destruction of, such Products shall be borne by the Sub-Representative, and the Sub-Representative shall indemnify and hold Manufacturers' Representative harmless against all losses, costs, damages or expenses whatsoever, including reasonable attorney's fees and costs, resulting from any such loss, damage or destruction.

(f) Sub-Representative shall attend, at its own expense, all meetings, conventions, and trade shows reasonably required by Manufacturers' Representative.

7. MANUFACTURERS' REPRESENTATIVE'S DUTIES AND RELATIONSHIP TO SUB-REPRESENTATIVE. During the term of this Agreement:

(a) Manufacturers' Representative shall furnish Sub-Representative, at no expense to Sub-Representative, samples, catalogs, literature and any other materials available from the Principal for the promotion and sale of its Products. All literature, samples, or other materials so provided remaining in the possession of Sub-Representative shall be returned to Manufacturers' Representative upon its reasonable request.

(b) Manufacturers' Representative shall at all times keep Sub-Representative informed about the Principal's sales and promotional policies and programs affecting the Territory, and shall refer all inquiries it receives from within the Territory to Sub-Representative.

(c) Manufacturers' Representative shall furnish Sub-Representative with copies of all correspondence, quotations, orders, invoices and shipping documents sent or received by it relating to sales of Products in the Territory.

(d) The parties hereto acknowledge that (i) all orders are subject to acceptance or rejection by the Principal; (ii) the Principal has exclusive control over its prices, discounts, specifications, and the terms governing the sale of its Products; (iii) neither Manufacturers' Representative nor Sub-Representative may accept orders in the Principal's name or make price quotations or delivery promises without the Principal's prior approval; and (iv) the collection of payments from customers is the responsibility of the Principal.

8. REPRESENTATIONS AND WARRANTIES.

(a) Manufacturers' Representative represents and warrants to the Sub-Representative as follows:

(i) Manufacturers' Representative is a corporation duly organized and validly existing under the laws of the State of \_\_\_\_\_.

(ii) All necessary corporate and other actions have been taken by Manufacturers' Representative to authorize it to enter into this Agreement and perform in accordance with this Agreement. This Agreement is binding on the Manufacturers' Representative and enforceable against it in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally or by general equitable principles.

(iii) Neither the execution, delivery, or performance of this Agreement will violate or conflict with any provision of the Articles of Incorporation or Bylaws of the Manufacturers' Representative, or cause a violation or breach of any material statute, rule, ordinance, lease, bond, agreement, or other instrument to which it is a party or by which it is bound, including, but not limited to, any applicable Sales Agreement.

(b) Sub-Representative represents and warrants to the Manufacturers' Representative as follows:

(i) Sub-Representative is a corporation duly organized and validly existing under the laws of the State of \_\_\_\_\_.

(ii) All necessary corporate and other actions have been taken by Sub-Representative to authorize it to enter into this Agreement and perform in accordance with this Agreement. This Agreement is binding on the Sub-Representative and enforceable against it in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally or by general equitable principles.

(iii) Neither the execution, delivery, or performance of this Agreement will violate or conflict with any provision of the Articles of Incorporation or Bylaws of the Sub-Representative, or cause a violation or breach of any material statute, rule, ordinance, lease, bond, agreement, or other instrument to which it is a party or by which it is bound.

9. RELATIONSHIP OF THE PARTIES. (a) Nothing in this Agreement shall be construed to constitute either the Manufacturers' Representative or the Sub-Representative as the partner or employee of the other, or to constitute Sub-Representative as the partner or employee of the Principal, it being intended that Sub-Representative is and shall remain an independent contractor solely responsible for its own actions.

(b) The Sub-Representative shall not have any right, power, or authority to enter into any agreement, arrangement, or understanding, or to incur any indebtedness, for or on behalf of the Manufacturers' Representative, or to bind the Manufacturers' Representative in any way, and any such act in violation of this Section 9(b) shall be null and void and of no effect.

10. ARBITRATION. (a) Any controversy, claim or dispute arising out of or relating to this Agreement, including the formation, validity, or breach thereof, whether arising during or after the period of this Agreement, shall be settled by arbitration in accordance with the rules of the American Arbitration Association, and the decision of the arbitrator shall be final and binding upon the parties. Nothing in this paragraph, however, shall prevent the parties from seeking injunctive or other equitable relief from a state or federal court of competent jurisdiction.

(b) The arbitration shall be conducted by one neutral arbitrator, who shall be selected in accordance with the rules of the American Arbitration Association. Any arbitration proceedings hereunder shall take place in the location closest to the principal place of business of the Manufacturers' Representative in which the American Arbitration

Association maintains an office. The arbitrator shall issue a written decision and set forth the reasons for said decision. Judgment upon the award rendered by the arbitrator may be entered in any federal or state court having competent jurisdiction thereof. The costs of arbitration, including the fees of the arbitrator, shall be borne equally. Each side shall bear its own attorneys' fees and costs, and punitive damages shall not be allowed.

11. MISCELLANEOUS. (a) This Agreement shall be governed by and construed in accordance with the laws of the State in which the Manufacturers' Representative has its principal place of business.

(b) All Notices required or permitted to be given hereunder shall be in writing and shall be deemed to have been duly given (i) by personally delivering the notice; or (ii) by mailing the notice by certified mail, return receipt requested, with postage prepaid. Notice is deemed to be served and effective when received. Any party may change the address to which notices and other communications hereunder are to be sent to such party by giving the other party written notice thereof in accordance with this provision. Notices shall be given as follows:

If to Manufacturers' Representative:

\_\_\_\_\_

Attn: \_\_\_\_\_

If to Sub-Representative:

\_\_\_\_\_

Attn: \_\_\_\_\_

(c) No party may assign any of its rights or obligations under this Agreement without the prior written consent of the others. This Agreement shall be binding upon the parties hereto, and their respective successors and permitted assigns.

(d) This Agreement is the entire Agreement between the parties pertaining to the subject matter hereof, and supersedes all previous agreements, negotiations or understandings, written or oral, between the parties.

(e) This Agreement may only be modified, amended or supplemented by a writing executed by the parties hereto.

(f) No term or provision of this Agreement shall be deemed waived, and no breach or default shall be deemed excused, unless such waiver, consent or excuse is in writing, and signed by the parties hereto. A waiver by a party hereto of any breach or default by the other party to this Agreement shall not constitute a continuing waiver, or a waiver of any subsequent breach or default hereunder by the other party.

(g) The headings herein are inserted for convenience of reference only, and same shall not serve to limit, expand or interpret the paragraphs to which they apply, and shall not be deemed a part of this Agreement.

(h) In case any one or more of the provisions in this Agreement should be declared by a court, arbitrator, or governmental agency or department to be invalid, illegal or

unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

(i) This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have caused this Sub-Representative Agreement to be executed and delivered as of the day and year first above written.

[MANUFACTURERS' REPRESENTATIVE]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[SUB-REPRESENTATIVE]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_