

## Section 9 – Indemnifications as to Third-party Intellectual Property Rights

9.1 Agent agrees to resist or defend at its own expenses any request for royalty payments or any claim for equitable relief of damages against Principal based on an allegation that the manufacture, use, distribution or other disposition of the products or services infringes any patent, copyright or other intellectual property right of any third party, and to pay any royalties and other costs related to the settlement of such request and to pay the costs and damages, including attorney's fees, finally agreed or awarded as the result of any suit based on such claim.

9.2 In the event that as a result of any suit (i) prior to delivery, the manufacture, use, distribution or other disposition of any Products/Services to be provided by the Agent hereunder is enjoined, or (ii) after delivery, the manufacture, use, distribution or other disposition thereof is enjoined, Agent will, at its option and expense, either (a) negotiate a license or other agreement with plaintiff so that such item is no longer infringing, (b) modify such item suitably or substitute a suitable item therefore, which modified or substituted item is not subject to such injunction (provided that such modified or substituted item shall meet substantially the specification applicable to the original item), and to extend the provision of this Section thereto.

## Section 10 – Limitation of Liability

In no event shall either party be liable to each other or anyone else for special, collateral, exemplary, punitive, indirect, incidental, or consequential damages (including, without limitation, loss of goodwill, loss of profits or revenues, loss of savings, loss of use, interruption of business, and claims), whether such damages occur prior or subsequent to, or are alleged as a result of tortious conduct or breach of any of the provisions of this agreement, even if party has been advised of the possibility of such damages. The liability of Principal towards the Agent if any shall be limited to the payment made to the Agent by the Principal under this Agreement.

## Section 11 - Duration and Termination

11.1 This Agreement shall enter into effect as of the date as first written above, and shall remain in full force and effect for a period of one (1) year thereafter, unless terminated in accordance with the terms of this Section 11. This Agreement shall be automatically renewed for successive period of one (1) year, unless one of the parties hereto provides the other party with written notice of non-renewal at least thirty (30) calendar days prior to the end of the initial term of this Agreement or any renewal term thereof.

11.2 This Agreement may be terminated in the following circumstance, without judicial action or arbitration:

- a) In the event of any material breach of this Agreement by either party, the non-breaching party shall give the other party written notice of such breach or default. If the other party fails to remedy the breach within a period of thirty (30) calendar days from the date of receipt of such written notice, the non-breaching party may give written notice of termination to the other party; and
- b) To the extent permitted by applicable law, either party may terminate this Agreement immediately, upon written notice of termination to the other party, if the other party goes into bankruptcy or voluntary or involuntary dissolution, is declared in solvent, fails to pay its debts as they come due, makes an assignment for the benefit of creditors, becomes subjects to any proceedings under any bankruptcy or trustee over all or substantially all of its assets or properties.

11.3 Termination of this Agreement for whatever reason shall not release either party from any obligation or liability hereunder that has accrued and remains to be performed as of the date of such termination. Except in the event of a material breach or default by Agent hereunder, within thirty (30) days after expiration or termination of this Agreement, Principal shall pay the Service Fees then owing to Agent.

11.4 Upon the termination or expiration of this Agreement for any reason, Agent shall, at the request of Principal, promptly return to Principal or its designated representative or otherwise dispose of as Principal may instruct any and all tangible results of the Products/Services, Documentation and work in progress relating to the Marketing and Sales Services, and all materials that contain Confidential Information in written, recorded or other tangible form which Agent may have in its possession, custody or under its direct or indirect control.

## Section 12 - Representations

Each Party hereby represents and warrants that it has full right and authority to enter into and perform any and all applicable provisions of this Agreement and that there are no encumbrance or other restrictions that may prevent each such Party or its employees from performing any and all applicable provisions of this Agreement.

## Section 13 – Independent Contractor

The relationship of the Principal and Agent in the performance of this Agreement shall be that of an independent contractor. Nothing in this Agreement shall be construed as creating a partnership between the parties or as constituting either party as the agent of the other party for any purpose whatsoever and neither party shall have the authority or power to bind the other party or to contract in the name of or

create a liability against the other party in any way or for any purpose.

#### Section 14 - Compliance with Laws: Governing Law and Legal Proceedings

14.1 Each party shall all times and at its own expense (a) strictly comply with all applicable laws, rules, regulations and governmental orders, now or hereafter in effect, relating to its performance of this Agreement, (b) pay all fees and other charges required by such laws, rules, regulations and order, and (c) maintain in full force and effect all licenses, permits, authorizations, registrations and qualifications from all applicable governmental departments and agencies to the extent necessary to perform its obligations hereunder.

14.2 This Agreement shall be governed by, and interpreted in accordance with, the laws of the State of California of the United States of America, excluding its conflicts of laws or rules. In the event any dispute arises between the parties out of or in relation to this Agreement, including any dispute relating to its breach, termination or validity, the Parties shall in the first instance attempt to resolve such dispute through consultations between themselves. If the dispute has not been resolved through consultations within thirty (30) days after one Party has served written notice on the other Party requesting the commencement of such discussions, either Party may submit the dispute to be finally settled by binding arbitration in San Francisco, California, USA, under the auspices of the American Arbitration Association and in accordance with the rules of said Association. The said arbitration shall be conducted by a panel of three arbitrators, who shall deliver a written decision detailing the legal arguments and shall be in the English language. Judgment upon any arbitration award may be entered and enforced in any court of competent jurisdiction. Without waiving the right to arbitrate disputes set forth in this Article, either party may seek injunctive relief against the other party, including preliminary injunctive relief, from the courts in any territory having jurisdiction over a Party.

14.3 The prevailing party in any legal proceeding brought by one party against the other party and arising out or in connection with this Agreement shall be entitled to recover its legal expenses, including court costs and reasonable attorney's fees.

#### Section 15 - Amendments

All amendments or modifications to this Agreement must be in writing, identified as an amendment to this Agreement and signed by an authorized representative of each Party.

#### Section 16 - Assignment

Neither party may assign this Agreement or any rights or obligations under this Agreement without the prior written consent of the other party.

Section 17 - Waiver

The failure to exercise or delay in exercising a right or remedy under this Agreement shall not constitute a waiver of the right or remedy or a waiver of any other rights or remedies and no single or partial exercise of any right or remedy under this Agreement shall prevent any further exercise of the right or remedy or the exercise of any right or remedy.

Section 18 - Severability

The illegality, invalidity or unenforceability of any provision or term of this Agreement for any reason whatsoever shall not affect the validity of any other provisions or terms of this Agreement and the illegal, invalid or unenforceable provision or term shall be severable from this Agreement and shall be deemed deleted from this Agreement.

Section 19 – Entire Agreement

This Agreement constitutes the entire agreement between the parties hereto relating to the subject matter thereof and supersedes all previous agreements, negotiations, commitments and/or representations made between the parties hereto either orally or in writing.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives, effective as of the date first written above.

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

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

Name: \_\_\_\_\_

Name: \_\_\_\_\_

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

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