EXHIBIT 16.1  
  
 DISTRIBUTION AGREEMENT  
  
 THIS DISTRIBUTION AGREEMENT (this "AGREEMENT") is made effective as of the  
4th day of October, 2005 by and between NeoMedia Micro Paint Repair, Inc., a  
Nevada corporation with its principal place of business at Jetport Commerce Park  
00000 Xxxxxxx Xxxx #00-00, Xx Xxxxx, Xxxxxxx 00000 ("NMPR"), and WI-THO AS, a  
Norwegian corporation with its principal place of business at Xxxxxxxxxxxxxxx 0,  
0000 Xxxx, Xxxxxx (the "Distributor").  
  
 W I T N E S S E T H :  
  
 WHEREAS, Distributor is in the business of marketing and/or distributing a  
variety of automotive products, tools and other automotive-related businesses  
and systems.  
  
 WHEREAS, NMPR (i) manufactures and sells chemicals, paints, and related  
products that are more fully described in Section 3.1 hereof and that are  
described with particularity in Exhibits A and B hereof (collectively, the  
"Products"), and (ii) provides certain limited Technical Support and Services as  
set forth in Exhibit C hereof.  
  
 WHEREAS, Distributor desires to offer the Products for sale throughout the  
Territory described in Section 1.1 hereof, on a exclusive basis, as an NMPR  
Distributor, such designation entitling the Distributor to market and sell the  
Products in the Territory under the Distributor's own brand name using  
Distributor's proprietary labeling.  
  
 WHEREAS, NMPR desires to appoint Distributor as a distributor of the  
Products throughout the Territory, and should Distributor desire to enter other  
markets outside of the Territory and subsequently notify NMPR of such desire,  
NMPR would consider such an appointment at such time, all in accordance with  
this Agreement.  
  
 WHEREAS, concurrent with the execution of this Agreement, pursuant to  
Section 8.1.4 hereof, and in any event before any technical training of the  
Distributor by NMPR pursuant to this Agreement commences, Distributor has signed  
a Confidentiality and Non-Competition Agreement in the form attached hereto as  
Exhibit D (the "Confidentiality and Non-Competition Agreement").  
  
 WHEREAS, Distributor is being trained in the procedures and processes of  
the NMPR painting system (the "System") and realizes that the System represents  
a unique proprietary process.  
  
 NOW, THEREFORE, in consideration of the mutual representations,  
warranties, covenants and agreements and upon the terms, and subject to the  
conditions hereinafter set forth, the parties, intending to be legally bound,  
hereby agree as follows:  
  
 ARTICLE I  
 APPOINTMENT  
  
 1.1 Appointment as Exclusive Distributor. Subject to the terms and  
conditions of this Agreement, NMPR hereby appoints Distributor as an exclusive  
distributor of the Products throughout Norway, Denmark, and Sweden (the  
"Territory") and Distributor accepts this appointment.  
  
  
  
 1.2 Defintions  
  
 (a) Defintion of exclusivity. For the purposes of this Agreement,  
 "exclusive" means that although Distributor has the right to sell  
 and distribute the Products in the Territory, NMPR shall be  
 entitled, either directly or indirectly, to quote prices, sell  
 and/or deliver the Products on an unfettered and unlimited,  
 wholesale or retail basis throughout the world except for in the  
 territory specified in Section 1.1. hereof.  
  
 (b) Definitions of Affiliate and Subsidiary. For the purposes of  
 Section 1.2(a) hereof: (i) an entity is "affiliated" with  
 another entity if one of them is the subsidiary of the other,  
 or both are subsidiaries of the same entity, or each of them  
 is controlled by the same person or entity and if each entity  
 is affiliated with the same entity at the same time, then each  
 is deemed to be affiliated with the other; (ii) an entity is a  
 subsidiary of another entity if (a) it is controlled by that  
 other entity, or by that other entity and one or more  
 entities, each of which is controlled by that other entity, or  
 by two (2) or more entities, each of which is controlled by  
 that other entity, or (b) it is a subsidiary of a subsidiary  
 of that other entity; and (iii) an entity is controlled by a  
 person or entity if the shares or interests of the entity  
 carrying more than 50% of the votes for election of the  
 directors are held, other than by way of security, by or for  
 the benefit of that person or entity and the votes carried by  
 such shares or interests are sufficient, if exercised, to  
 elect a majority of the directors of the entity.  
  
 (c) Definition of distributor  
  
 Distributor is defined as the parent company WI-THO AS located  
 in Norway and the wholly owned subsidiaries WI-THO AB (Sweden)  
 and WI-THO A/S (Denmark). Direct sales from these three units  
 are not defined as sales to sub-distributors.  
  
 1.3 Sub-Distributors. Distributor may appoint, license or contract with  
 Affiliates and franchisees or with other non-affiliated  
 distributors, dealers, wholesalers, retailers, jobbers and other  
 businesses (collectively, "Dealers") to sell, market and distribute  
 the Products as long as any such Dealer executes the Confidentiality  
 and Non-Competition Agreement. Affiliates of Distributor and Dealers  
 are collectively referred to in this Agreement as  
 "Sub-Distributors." No appointment, license or contract by  
 Distributor with a Dealer or Sub-Distributor shall absolve  
 Distributor of its duties and obligations pursuant to this  
 Agreement, however, and Distributor shall remain principally and  
 wholly liable for any transactions involving NMPR, the Products and  
 any such Dealer or Sub-Distributor.  
  
 1.4 Minimum purchases/Royalty payments Distributor agrees to pay a  
 total of $500,000 US dollars for the exclusive distribution  
 rights, such sum to include Distributor's product orders equal  
 to the purchase price of $500,000 US dollars.. The product  
 orders and Products will be delivered upon request from  
 Distributor during the initial term of the Master Distribution  
 Agreement. NMPR will train a maximum of 4 of Distributor's  
 trainers during a 5 year period from date of signature of this  
 agreement without cost to the distributor other than air fare,  
 hotel and meals. Distributor will also commit to the following  
 minimum yearly purchases after the first year of the agreement  
 as follows:  
  
  
  
 Year 2: $100,000  
 Year 3: $150,000  
 Year 4: $250,000  
 Year 5: $250,000  
  
 If distributor fails to meet the yearly minimum purchase the exclusive  
appointment becomes non- exclusive.  
  
 While this and all amounts in this Agreement are expressed in United  
 States Dollars, this and all subsequent dollar amounts are intended by the  
 parties to be payable to NMPR by Distributor in the official and legal  
 currency of Norway at the applicable exchange rate relative to the United  
 States Dollar posted in the Wall Street Journal on the business day  
 immediately before such payment. Such payment shall be made by check or in  
 cash by wire transfer of immediately available funds to an account  
 specified by NMPR. In addition to the initial payment contemplated by this  
 Section 1.4, the following fees and royalties shall be remitted to NMPR by  
 Distributor from time to time as follows:  
  
 (i) 3% of any Product sales  
  
 (ii) 25% of any royalties or technical fees that Distributor  
or Sub-Distributors collect from franchisees or Dealers on revenues that they  
earn from performing services using the Products. Such sums as are accrued for  
any given year of this agreement shall be payable to NMPR within 30 days after  
the anniversary date for the beginning of the subsequent year of this agreement.  
  
Distributor shall purchase Products in accordance with pricing as set forth in  
Exhibits A and B hereof. Prices are F.O.B. Ft Xxxxx, Florida, United States (or  
a distribution site designated in writing by NMPR) and are subject to change.  
Distributor will remit the amounts described in this Section 1.4 on a monthly  
basis as Distributor or its Sub-Distributors collect these fees or royalties  
from franchisees. Distributor will make all payments 30 days after collection.  
  
 1.5 Distributor Right to Use or Resell. Distributor may use or resell the  
Products purchased from NMPR under this Agreement.  
  
 1.6 No Trademark License Conferred. Distributor acknowledges and agrees  
 that no rights are granted to it by NMPR herein or hereby for the use of  
 any of NMPR's proprietary marks and that no goods or services, including,  
 but not limited to, the Products, will be sold pursuant to any such  
 license or in connection with the license to Distributor of any of NMPR's  
 proprietary marks nor will any Affiliate of Distributor, Dealer,  
 Sub-Distributor or franchisee be licensed to use any of NMPR's proprietary  
 marks unless NMPR enters into a separate licensing agreement with  
 Distributor or such Affiliate, Sub-Distributor, Dealer or franchisee. NMPR  
 will provide Distributor, licenses to operate NMPR facilities under its  
 own signage; these licenses can only be used at locations owned by Wi-THO  
 AS and cannot be assigned.  
  
  
  
 1.7 Relationship of Parties. NMPR and Distributor are each independent  
contractors and nothing in this Agreement will be construed or interpreted as  
creating an employer/employee, agency, joint venture or any similar relationship  
between the parties. Consequently, (a) Distributor is and will remain an  
independent purchaser and seller of the Products, (b) neither party will have or  
exercise any right or authority to assume or create any obligations or  
responsibilities, including without limitation contractual obligations, on  
behalf of or in the name of the other party, and (c) each party hereto will be  
exclusively responsible for paying all income and other taxes and costs and all  
expenses relating to its respective business.  
  
 (a) No Less-Favorable Terms. NMPR covenants and agrees that NMPR  
will treat Distributor no less favorably than any other distributor of NMPR with  
respect to training and distribution of the Products. Wherever possible, NMPR  
agrees to utilize Distributor to provide training and/or distribute the Products  
if NMPR determines there is such a need. Without prejudice to the foregoing  
generality, NMPR covenants and agrees that it will not provide training or other  
services to any distributor other than Distributor for a lesser price than it  
sells and provides Products and services to Distributor, nor offer benefits to  
other distributors if the same are not offered to Distributor. NMPR may grant  
reasonable volume discounts to other distributors provided the same or better  
terms and conditions are offered to Distributor.  
  
 (b) Equal Access to Products. Distributor shall have reasonably  
equal access with NMPR and any other customers to all new Products for the  
purpose of sale and distribution. Distributor shall have the right to  
participate in prior testing of new Products before sale and distribution. NMPR  
shall take reasonable steps to keep Distributor informed as to new Products  
being developed. NMPR and Distributor acknowledge and agree that any material  
change in the chemistry, performance or other essential characteristics of the  
Products shall constitute a new Product for the purposes of this provision.  
  
 1.8 Distributor Not To Bind NMPR. Distributor agrees that it will at no  
time represent to any other party that it is an agent of NMPR or is acting on  
behalf of NMPR and not undertake any agreements with any other parties  
(including, but limited to, with Dealers, Sub-Distributors, Affiliates and  
franchisees) that state, imply, infer or leave open the possibility or prospect  
that it has the right to bind NMPR to any sort of undertaking or instrument and  
Distributor agrees to indemnify NMPR against any and all actions that could  
arise or be brought against NMPR due to a breach of this Section 1.8.  
  
 ARTICLE 2  
 DUTIES OF DISTRIBUTOR  
  
 Distributor shall, subject to the terms and conditions of this Agreement:  
  
 1. Use its reasonable efforts to promote the sale of the Products  
throughout the Territory using appropriate marketing and advertising programs  
and campaigns;  
  
 2. Maintain a sufficient stock of the Products in inventory to allow  
prompt filling of all orders placed by Distributor's Sub-Distributors,  
Affiliates and franchisees;  
  
  
  
 3. Furnish NMPR with such forecasts of anticipated Product sales and  
shipment schedules as NMPR may reasonably request from time to time;  
  
 4. Refrain from tampering with the Products as set forth in detail in  
Section 8.2;  
  
 5. Keep confidential and treat as trade secrets, and cause employees,  
agents and consultants to keep confidential and treat as trade secrets, all  
information disclosed to Distributor by NMPR concerning the composition of the  
Products and the methods, procedures, specifications and techniques used in  
conjunction with the Products or the application of the Products, all as  
described in detail in Section 8.1 hereof;  
  
 6. Purchase, use and sell for use with the Products only those products,  
materials, equipment and supplies that are compatible with the Products as set  
forth in more detail in Section 3.2; and  
  
 7. Submit the Product packaging labels to NMPR for its review and approval  
as set forth in Section 9.2.  
  
 ARTICLE 3  
 PRODUCTS, PRICES AND PURCHASES  
  
 3.1 Products. For the purposes of this Agreement, "Products" mean those  
chemicals, paints, software, Toll Free Technical Support and Service and related  
products described in the exhibits to this Agreement. If NMPR adds new paints,  
chemicals or related products to its line of Products, enhances or improves the  
Products, or substitutes different Products during the Term of this Agreement,  
then these additional, enhanced, improved, or substitute Products will be deemed  
to be added to the exhibits to this Agreement together with the pricing for  
those Products and Distributor will be entitled to buy and distribute them on  
the same terms as those Products originally included in the exhibits to this  
Agreement.  
  
 3.2 Non-Proprietary Products. The parties agree that anyone using the  
Products in the exhibits to this Agreement will also need to or may wish to  
obtain and use various other products, materials, equipment and supplies that  
are associated with use of the Products. The non-proprietary products currently  
offered for sale by NMPR are described in the exhibits to this Agreement (the  
"Non-Proprietary Products"). Distributor will have the right, but not the  
obligation, to purchase the Non-Proprietary Products from NMPR at the prices  
shown in the exhibits to this Agreement. NMPR will have the unfettered right to  
alter these prices for the Non-Proprietary Products at any time during the Term  
of this Agreement. Distributor, its franchisees and Sub-Distributors and Dealers  
will be entitled to purchase, use and sell the Non-Proprietary Products obtained  
from sources other than NMPR. If Distributor desires to purchase any  
Non-Proprietary Products from such other supplier, then Distributor will submit  
samples and/or specifications to NMPR for review and/or testing to determine  
whether such Non-Proprietary Products are compatible with the Products. If NMPR  
does not present Distributor with proof that the Non-Proprietary Products are  
incompatible with the Products within thirty (30) days of submission of the  
samples or specifications, Distributor, franchisees, Sub-Distributors and  
Dealers will be entitled to purchase, use and sell such Non-Proprietary Products  
for use with the Products.  
  
  
  
 3.3 Prices for Proprietary Products. Distributor shall pay the prices for  
the Products for sale in the Territory that are set forth in Exhibit A hereto.  
Distributor shall pay the prices for the Products that are set forth in Exhibit  
B for products and equipment for sale outside of the Territory. Distributor  
shall pay the prices for the Products that are set forth in Exhibits A and B in  
the official and legal currency of the United States. Commencing one (1) year  
from the date of this Agreement and each year thereafter, NMPR may increase the  
price of any of the Products by no more than ten percent (10%) of the prior  
year's price for that Product, unless the latest available value of the Producer  
Price Index published by the U.S. Bureau of Labor Statistics for the commodity  
grouping "Refined Petroleum Products" (Code 05-7) (the "Index") has risen more  
than ten percent (10%) from its one year prior value, in which case NMPR may  
raise the price of any of the Products by no more than the one year percentage  
increase in the Index. (This price increase does not apply to Exhibit C). If any  
Products are added to the exhibits to this agreement after the date of execution  
of this Agreement, then the parties will negotiate the price of such additional  
Products in good faith and will determine a period of time for which such  
negotiated price will be effective. After such period, NMPR may increase the  
price of any additional Product on the same basis as the Products originally  
listed on the exhibits hereto.  
  
 3.4 Payment Terms. NMPR will invoice Distributor for each purchase order  
received by NMPR upon the complete shipment of the Products specified in the  
purchase order. NMPR will simultaneously provide an advance shipping notice to  
Distributor by either fax or electronic mail. Unless otherwise agreed to in  
writing by the parties, Distributor will pay all invoices net 30 days. All  
payments by Distributor under this Agreement shall be payable to NMPR by  
Distributor in the official and legal currency of Norway at the applicable  
exchange rate relative to the United States Dollar posted in the Wall Street  
Journal on the business day immediately before such payment. Such payment shall  
be made by check or in cash by wire transfer of immediately available funds to  
an account specified by NMPR. Payments under this Article may be combined with  
payments to NMPR under Section 1.4. Without prejudice to the other provisions of  
this Section or any other right or remedy of NMPR, if Distributor is in arrears  
with respect to any payment due to NMPR, or in the reasonable opinion of NMPR,  
Distributor is or will be unable to pay its debts as they fall due, then: (a)  
NMPR may elect not to deliver the Products except against contemporaneous  
payment by Distributor in cash in full of all amounts due and owing to NMPR; and  
(b) all amounts owed to NMPR by Distributor shall become immediately due and  
payable.  
  
 3.5 Resale Prices. Distributor will have the absolute right to resell the  
Products at any price determined by Distributor in its sole discretion.  
  
 ARTICLE 4  
 TERM  
  
 4.1 Initial Term. Unless terminated as provided herein, the initial term  
of this Agreement will be 5 years (the "Initial Term") and will commence on the  
date of this Agreement.  
  
 4.2 Renewal Terms. Distributor will have the unilateral right to renew  
this Agreement for an indefinite number of successive additional one (1) year  
terms (each, a "Renewal Term," collectively, the "Renewal Terms.") This  
Agreement will automatically renew for the next Renewal Term unless Distributor  
gives NMPR written notice that it is terminating the Agreement 90 days before  
the last day of the Initial Term or applicable Renewal Term. The Initial Term  
and any Renewal Terms shall collectively be referred to in this Agreement as the  
"Term" of this Agreement.  
  
  
  
 4.3 Specific Performance. Each additional year after the initial three  
years will require a minimum yearly purchase of Products and training of  
Distributor's trainers at a total of $ 250,000 US dollars per annum to maintain  
this agreement for a five (5) year period. After the five (5) year renewal  
conditions have been met, both NMPR and the Distributor will mutually agree to  
the terms and conditions for a further renewal. If the appointment is converted  
from exclusive distribution to non-exclusive distribution during the Initial  
Term, both NMPR and the Distributor will mutually agree to specific performance  
terms related to non exclusivity.  
  
 ARTICLE 5  
 OBLIGATIONS OF NMPR  
  
 5.1 General Obligations. NMPR will (a) supply the Products ordered by  
Distributor on a timely basis and promptly notify Distributor of any changes in  
projected manufacturing or delivery dates regarding same, (b) promptly notify  
Distributor in writing of any changes to the specifications of the Products, (c)  
promptly provide Distributor with all documentation and information as may be  
necessary to allow Distributor to arrange for the transportation of the Products  
at the time and to the destinations specified by Distributor, and (d) promptly  
notify Distributor in writing of all new Products that Distributor will have the  
right to sell and distribute.  
  
 5.2 Training.  
  
 5.2.1 Initial Technical Training  
  
 NMPR will, within sixty (60) days after the date of this Agreement,  
make available qualified instructors experienced in the use and application of  
all Products ("NMPR Instructors") and provide written teaching materials for  
initial technical training of up to two (2) of Distributor's trainers  
(collectively, the "Distributor Trainers") as part of NMPR's Train The  
TrainersTM Program. The Distributor Trainers shall be employees of Distributor.  
Distributor will be responsible for selecting Distributor Trainers who are both  
technically qualified to benefit from the training and capable of training  
others. The initial technical training will consist of five (5) days of classes  
for two Distributor Trainers at NMPR's facilities in Ft Xxxxx, Florida. The  
initial technical training will provide Distributor Trainers with all necessary  
technical information required for training others to market, sell, use and  
apply the Products. The training will also be designed to provide Distributor's  
Trainers with sufficient information for them to train others in how to deal  
with any hazards related to the use of the Products or the application of the  
Products, as such training is or may later be required to comply with laws,  
rules and regulations pertaining to workplace safety and health, including, but  
not limited to 29 CFR ss. 1910.1200 of the United States Code of Federal  
Regulations. To compensate NMPR for this initial technical training, Distributor  
will pay NMPR a flat fee of US$0.00 for each training program taught by NMPR.  
Distributor will be responsible for the costs and expenses incurred by  
Distributor Trainers in traveling to and attending all training classes in  
NMPR's facilities in Ft Xxxxx, Florida. Distributor will pay an additional fee  
to be negotiated on an ad hoc basis for any trips Distributor requires NMPR  
Instructors to make outside of Canada or Florida and all travel costs of NMPR  
Instructors for such trips will be paid for by Distributor. At any time during  
the Term of this Agreement, Distributor may request that NMPR provide one or  
more additional classes of initial technical training for additional Distributor  
Trainers. The fee for such additional initial technical training will be US  
$3,000 for a class of up to two (2) Distributor Trainers for each training  
center location.  
  
  
  
 (a) Update Training. At the request of Distributor, NMPR will  
provide technical update training to Distributor Trainers concerning any new  
information known about the use and application of the Products or hazards  
related to the use or application of the Products, as well as information about  
any new Products developed by NMPR. The timing of any technical update training  
will be agreed upon by mutual consent of Distributor and NMPR and will be at the  
sole cost and expense of Distributor.  
  
 (b) Refresher Training. Distributor will pay NMPR's then current  
daily training fee (presently US$600 per day) for any training to refresh the  
training of Distributor Trainers that Distributor may request NMPR to conduct  
and Distributor will reimburse NMPR for the cost of travel, meals and lodging  
for the NMPR Instructors who provide such refresher instruction if the training  
is not conducted in Fort Xxxxx, Florida, USA.  
  
 (c) Hot Line. Distributor agrees to purchase Toll-Free Technical  
Support and Service from NMPR (the "Hot Line") as they become available, which  
will allow its distributors, Dealers, franchisees, wholesalers, retailers,  
jobbers, catalog companies, telemarketers and other businesses involved in  
distribution of the Products to obtain technical information about the Products  
by telephone or on a Web site. The Hot Line may be operated either by the  
Distributor regional training centers or by Distributor on a country-wide basis.  
Distributor shall make the Hot Line available during normal business hours in  
all areas where the Products are sold. Distributor shall staff the Hot Line with  
competent technicians. NMPR also agrees to allow Distributor access to any of  
NMPR's Teleconference and Videoconference Technologies that it is developing so  
as to assist Distributor with new and high tech Training and Technical Support  
Services by means of these Toll-Free lines. (An example of how the Hot Line will  
work is explained as Exhibit C attached hereto).  
  
 5.3 Material Safety Data Sheets. For each of the Products, NMPR will  
provide Distributor with a Material Safety Data Sheet ("MSDS"), as that term is  
defined in 29 CFR ss. 1910.1200(g) of the United States Code of Federal  
Regulations. NMPR will supply each MSDS in English and/or Spanish (if required),  
within ninety (90) days of the date of this Agreement, and will also supply a  
French and/or Spanish translation (if required). NMPR will supply the MSDS to  
Distributor in electronic format. In the event that Distributor determines that  
the laws or regulations of any country, state or province where Distributor is  
selling the Products require a MSDS document that contains different information  
or formatting than that specified under 29 CFR ss. 1910.1200(g), Distributor  
shall provide NMPR with the relevant law or regulation and NMPR shall prepare a  
version of the MSDS for each of the Products that complies with those laws and  
regulations. If the MSDS is updated or modified at any time during the Term of  
this Agreement, NMPR will provide Distributor with an updated or modified MSDS  
with the first shipment of the Products to Distributor after the date that the  
MSDS is updated or modified. Each MSDS will be prepared at NMPR's expense, but  
Distributor will bear the costs of printing and distribution of the MSDS for  
each of the Products.  
  
 5.4 Advertising and Marketing Materials. NMPR will provide Distributor, at  
no charge to Distributor, samples of sales and marketing literature that NMPR  
has developed in connection with its marketing of the Products, such as  
catalogs, brochures, flyers, advertisements and other sales literature or video  
presentations concerning the qualities, properties, advantages and uses of the  
Products. If available, samples of this literature will be made available in  
English, French and/or Spanish. Distributor will be free to use any or all of  
the content of this literature in developing and producing its own sales and  
marketing literature to be used in conjunction with the sale of the Products by  
Distributor. Distributor will be responsible for all expenses associated with  
the creation and reproduction of its sales and marketing literature and all  
labeling associated with Distributor's "brand name" for NMPR's products.  
Distributor agrees to submit copies of all proposed MSDS sheets, sales and  
marketing materials to NMPR's compliance department prior to use in the  
marketplace.  
  
  
  
 ARTICLE 6  
 PRODUCTS, ORDERS, DELIVERY, LABELING AND SHIPPING  
  
 6.1 Purchase Orders. Distributor will submit purchase orders to NMPR for  
all Products to be purchased by Distributor. Each purchase order will be subject  
to the provisions of this Agreement. If there is a discrepancy between the  
provisions of this Agreement and the terms of any purchase order, order  
confirmation or other communication between the parties, whether or not such  
communication is acknowledged by the other party, then the provisions of this  
Agreement will govern.  
  
 6.2 Delivery Terms. Unless otherwise agreed in writing, all deliveries of  
Products will be F.O.B. at NMPR's manufacturing or distribution site. Title to  
the Products and all risk of loss or damage to the Products will pass to  
Distributor when NMPR loads the Products onto the common carrier's vehicle at  
NMPR's manufacturing or distribution site .  
  
 6.3 Labeling. NMPR will deliver all Products to Distributor's common  
carrier properly packaged and labeled in shipping cases. Distributor will  
instruct NMPR at the time of placing its order whether the Product containers  
themselves should be labeled by NMPR. If so instructed NMPR will apply labels  
supplied by Distributor to the Products. In order for Distributor to produce  
these labels, NMPR agrees to supply Distributor with copies of all labels  
developed by NMPR for each of the Products that meet the requirements of Section  
9.2. Distributor will substitute its various brand names for the brand names  
previously used by NMPR on these labels. Distributor will then print the new  
labels at its sole cost. Distributor will provide a copy of each of the labels  
to NMPR for its review and approval before final printing pursuant to Section  
9.2, such approval not to be unreasonably withheld. Before final printing,  
Distributor will make all changes to the label designated by NMPR in writing as  
necessary to comply with laws or regulations. In the event that Distributor  
instructs NMPR not to label containers, Distributor will be responsible for the  
cost of labeling the Products at or en-route to their destination.  
  
 6.4 Shippinq. Distributor will be responsible for arranging and paying for  
all transportation of the Products from NMPR's distribution center to any final  
destination. NMPR will be responsible for preparing all documentation required  
to export the Products from the United States or import the Products into any  
other country where the Products are sold. Distributor agrees, however, to  
cooperate in this process by providing all information in its possession that  
may be required of NMPR by the customs services of any of these countries or any  
other agency or instrumentality of any government. Distributor also agrees to  
pay any tariffs, duties or other sales taxes imposed on the Products by reason  
of their import or export.  
  
 ARTICLE 7  
 PRODUCT ACCEPTANCE AND WARRANTY  
  
 7.1 Acceptance of Products. Distributor or its agents will examine all  
incoming Products as soon as possible upon arrival of the Products at the  
destination specified by Distributor, but in no event later than ninety (90)  
days from the date of receipt. Distributor will promptly report to NMPR in  
writing all shortages, damages, defects or discrepancies in each shipment. Upon  
  
  
  
providing supporting material that the shortage, damage, defect or discrepancy  
existed at the time NMPR made the Products available for shipping, NMPR will  
promptly deliver additional or substitute Products to Distributor, who will  
alternately deliver additional or substitute products to its Sub-Distributor,  
franchisee or Dealer in accordance with the delivery procedures set forth in  
this Agreement. In the event that the loss or damage occurred during shipping,  
Distributor will file an appropriate freight loss and damage claim with the  
carrier and arrange for disposal of any damaged Products.  
  
 7.2 Damaged or Defective Product. In the event that any of the Products  
NMPR ships are damaged or defective at the time they are made available for  
shipping or received by Distributor, Distributor will store the damaged or  
defective Products and combine them for shipment back to NMPR along with a  
packing list that briefly describes the damage or defects. NMPR will then ship  
replacement Products to Distributor, who will deliver additional or substitute  
products to its Sub-Distributor, franchisee or Dealer to whom the damaged or  
defective Products were shipped. Damaged or defective Products for the purposes  
of this Section 7.2 do not include Products that are lost or damaged in shipping  
for which Distributor shall look to the carrier for redress pursuant to Section  
7.1.  
  
 7.3 Warranty. EXCEPT AS OTHERWISE SET FORTH HEREIN, NMPR MAKES NO WARRANTY  
WHATSOEVER CONCERNING THE PRODUCTS OR THE SYSTEM. NMPR WARRANTS THAT THE  
PRODUCTS AND SYSTEM CONFORM TO THE SPECIFICATIONS AND REPRESENTATONS REGARDING  
THE SAME THAT NMPR HAS REPRESENTED TO DISTRIBUTOR AS BEING THOSE WHICH PERTAIN  
TO THE PRODUCTS AND SYSTEM. THE PRODUCTS AND THE SYSTEM ARE SOLD WITHOUT IMPLIED  
WARRANTY OF ANY KIND. NMPR FURTHER DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING  
WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF TITLE, NONINFRINGEMENT,  
MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR ARISING FROM A COURSE OF  
DEALING OR USAGE OF TRADE. DISTRIBUTOR ACKNOWLEDGES THAT THE ENTIRE RISK ARISING  
OUT OF THE USE OR PERFORMANCE OF THE PRODUCTS AND THE SYSTEM REMAINS WITH  
DISRIBUTOR. TO THE EXTENT THAT A PARTICULAR JURISDICTION DOES NOT ALLOW FOR THE  
EXCLUSION OF IMPLIED WARRANTIES, ANY IMPLIED WARRANTIES UNDER THIS AGREEMENT ARE  
LIMITED TO THIRTY (30) DAYS AFTER DELIVERY TO DISTRIBUTOR WITHOUT AFFECTING ANY  
OTHER LIMITATION CONTAINED IN THIS AGREEMENT.  
  
 ARTICLE 8  
 CONFIDENTIALITY, TRADE SECRETS AND NON-COMPETITION  
  
 8.1 Confidentiality and Non-Competition Agreement  
  
 8.1.1. Distributor acknowledges that the System and the formula of  
each of the Products in Exhibits A and B hereto are trade secrets and covenants  
and agrees that it shall not, directly or indirectly, during the Term of this  
Agreement, or at any time thereafter, take any steps to reproduce, reverse  
engineer or otherwise ascertain the formulas for any such Product, nor shall it  
attempt to manufacture or produce such Product or the System.  
  
  
  
 8.1.2 Distributor and all of its Sub-Distributors, franchisees or  
Dealers are prohibited from performing any tests of the Products in Exhibits A  
and B except as may be required by law or as may be necessary to determine  
conformance of the Products to the specifications and representations of NMPR,  
whether during the Term of this Agreement or at any time thereafter. It shall be  
the responsibility of Distributor to obtain either separate Confidentiality and  
Non-Competition Agreements in the form attached hereto as Exhibit D from its  
Sub-Distributors, franchisees or Dealers, or to include provisions containing  
all of the provisions of the Confidentiality and Non-Competition Agreement in  
its agreements with Sub-Distributors, franchisees or Dealers for the benefit of  
NMPR. In addition, Distributor shall require that its Sub-Distributors,  
franchisees or Dealers obtain either separate Confidentiality and  
Non-Competition Agreements in the form attached hereto as Exhibit D from their  
employees and contractors that use or apply the Products in Exhibits A and B or  
include provisions containing the provisions of the Confidentiality and  
Non-Competition Agreement in its agreements with such employees and contractors.  
  
 8.1.3 Within thirty (30) business days of the execution of this  
Agreement, Distributor shall require any and all of its managers, employees,  
agents, directors, officers, partners, members, affiliates or independent  
contractors having access to any Confidential Information of NMPR (as defined in  
the Confidentiality and Non-Competition Agreement) or to the System to (a)  
execute a copy of the Confidentiality and Non-Competition Agreement, and (b)  
provide such Confidentiality and Non-Competition Agreement to NMPR. Failure to  
comply with this Section 8.1.3 shall constitute breach of this Agreement and  
shall allow NMPR to terminate this Agreement immediately with no consequences to  
NMPR whatsoever.  
  
 8.1.4 On the date hereof, Distributor shall execute the  
Confidentiality and Non-Competition Agreement attached hereto as Exhibit D and  
provide same to NMPR contemporaneously with the execution of this Agreement.  
  
 8.2 Non-tamperinq Agreement. Distributor agrees to refrain from tampering  
with, altering or modifying the Products without the express written consent of  
NMPR. In order to ascertain that Distributor is complying with this obligation,  
NMPR shall be entitled, at any reasonable time, to remove and test samples of  
the Products from Distributor's inventory or the inventory of Distributor's  
Affiliates, Sub-Distributors, franchisees or Dealers. NMPR will not be required  
to pay for these samples. NMPR will promptly replace all such samples at its  
cost. NMPR will take the smallest quantities reasonably necessary for testing  
and will not take a quantity of the Products at any Affiliate, Sub-Distributors,  
franchisees or Dealers location that will impair the ability of the Affiliate,  
Sub-Distributors, franchisees or Dealers to serve its customers. An independent  
certified laboratory selected by NMPR will do all testing of these samples. The  
cost of such testing will be borne by NMPR unless the testing demonstrates that  
the Products sampled were not supplied to Distributor by NMPR or have been  
tampered with, altered or modified without the written consent of NMPR, in which  
case the cost of testing will be borne by Distributor.  
  
 8.3 Affiliates of Distributor. Distributor agrees to honor (and shall  
cause its Affiliates, Sub-Distributors, franchisees or Dealers to honor) the  
provisions of this Article 8 while Distributor has control by way of ownership  
or otherwise. Article 8 shall not apply to any publicly traded company unless it  
sells or distributes the Products in the exhibits attached hereto.  
  
 ARTICLE 9  
 LEGAL COMPLIANCE  
  
 9.1 In General. Distributor and its Affiliates shall each comply with all  
national, state or provincial, and local or municipal laws, ordinances, by-laws,  
rules, regulations, orders, rulings and permits applicable to its performance  
under this Agreement. Distributor and its Affiliates agree to promptly make all  
reports to and filings with governmental agencies required by applicable laws,  
by-laws, rules and regulations and to obtain all approvals, licenses, permits  
and permissions necessary for its operations under this Agreement. Distributor  
shall pay its own costs incurred in making such filings and reports and in  
obtaining such approvals, licenses, permits and permissions. NMPR shall provide  
Distributor with the information necessary to make such filings and reports and  
to obtain such approvals, licenses, permits and permissions.  
  
  
  
 9.2 Packaqinq and Labelinq. Distributor will be responsible for developing  
labeling and packaging for the Products that are in compliance with all laws,  
by-laws, rules and regulations of each of the countries in which the Products  
are sold by Distributor. Prior to the first shipment of Products by Distributor  
into any country, Distributor and NMPR shall cooperate to do research to  
determine what laws, by-laws, rules and regulations may apply to packaging and  
labeling of paint and chemical products generally. NMPR will then develop any  
additional or different labels and packaging pursuant to Section 6.3 that are  
necessary to comply with these laws and regulations.  
  
 ARTICLE 10  
 TERMINATION  
  
 10.1 Termination. Unless this Agreement is terminable by NMPR in its sole  
discretion pursuant to the terms of Sections 8.1.3 or 12.1(k) of this Agreement,  
this Agreement may otherwise be terminated before the expiration of the Term,  
including any Renewal Terms set forth in Article 3, in accordance with any of  
the following provisions:  
  
 (a) Termination For Cause With Notice. Except as provided to the  
contrary in this Agreement, either party may terminate this Agreement if the  
other party materially breaches this Agreement and fails to cure such breach  
within thirty (30) days after receipt of a written notice from the party  
alleging the breach; provided, however, that if NMPR terminates this Agreement  
under the terms of this paragraph, NMPR agrees that it will continue to sell  
Distributor, on a C.O.D. basis, a sufficient quantity of the Products for  
Distributor to meet its obligations under any agreement entered into during the  
term of this Agreement.  
  
 (b) Termination without Notice. Either party may terminate this  
Agreement, effective immediately upon receipt by the other party of written  
notice of termination, if the other party files a petition of any type as to its  
bankruptcy, is declared bankrupt, becomes insolvent, makes an assignment for the  
benefit of any of its creditors, goes into liquidation or receivership or  
otherwise loses legal control of its business. In the event of termination by  
Distributor pursuant to this Section 10.1(b), Distributor shall comply with the  
provisions of Section 10.2 hereof as they relate to termination pursuant to this  
Section 10.1(b) to the extent allowable by applicable law.  
  
 (c) Termination by Distributor. Distributor shall have the right to  
terminate this Agreement for any reason on giving sixty (60) days written notice  
to NMPR to this effect, provided, however, that Distributor shall comply with  
the provisions of Section 10.2 hereof as they relate to termination pursuant to  
this Section 10.1(c).  
  
  
  
 10.2 Riqhts and Obliqations upon Termination. The expiration or  
termination of this Agreement will not release or affect the obligations of  
either party to timely pay all amounts then or thereafter due to the other  
party. Upon termination by Distributor of this Agreement pursuant to Sections  
10.1(b) or 10.1(c) hereof, NMPR will become entitled to sell the Products  
directly to all Sub-Distributors, franchisees or Dealers of Distributor to which  
Distributor sold Products during the Term and Distributor shall then timely  
provide NMPR with any non-confidential or non-privileged information or data  
needed to enable NMPR to continue to service these customers in a complete  
fashion to the degree that such customers desire to be serviced by NMPR.  
Distributor covenants to include language in any agreement with its Dealers,  
Sub-Distributors and franchisees providing for and describing this eventuality.  
This undertaking by Distributor shall be expressly subject to injunctive relief  
for specific performance by NMPR against Distributor should Distributor fail to  
comply with this Section 10.2. Distributor relinquishes any claim for  
compensation of any type or kind for any such post-termination sales of the  
Products by NMPR to these Sub-Distributors, franchisees or Dealers. If this  
Agreement is terminated by NMPR pursuant to Section 10.1 hereof and such  
termination occurs within five years of the date of the execution of this  
Agreement, NMPR shall refund to Distributor the remaining portion of the initial  
$500,000.00 paid to NMPR by Distributor pursuant to Section 1.4 above that has  
not been taken out in form of Products and NMPR shall repurchase from  
Distributor all Products purchased by Distributor which Distributor has been  
unable to sell.  
  
 10.3 Limitation of Liability. Distributor will not be liable to NMPR or  
NMPR will not be liable to Distributor due to the termination or expiration of  
this Agreement in accordance with its terms except for as outlined in section  
10.2 above. Neither party will be entitled to any compensation, reimbursement or  
damages from the other for: (a) loss of prospective compensation, profits or  
income or other consequential damages; (b) loss of anticipated sales; (c)  
goodwill or loss thereof; or (d) expenditures, expenses, investments, leases or  
any type of commitment made in connection with, or in reliance upon, this  
Agreement.  
  
 ARTICLE 11  
 DISPUTE RESOLUTION  
  
 11.1 Unaided Negotiations. All disagreements, disputes and controversies  
(each, a "dispute") between the parties arising from or relating to this  
Agreement, including, but not limited to, allegations of fraud and  
misrepresentation, shall be settled by the procedures specified in this Article.  
If one party believes the other party has breached this Agreement, that party  
shall promptly notify the other party in writing. The party receiving such a  
notice shall respond in writing within seven (7) days after receipt. If the  
dispute is not promptly resolved there shall follow, within twenty (20) days,  
after written notice, a meeting of the representatives of the parties. The  
purpose of the meeting shall be to discuss and negotiate in good faith, a  
resolution of any outstanding dispute. The location of the meeting will be in Ft  
Xxxxx, Florida. All negotiations pursuant to this Article are confidential and  
shall be treated as compromise and settlement negotiations.  
  
 11.2 Mediation. If the procedure outlined in Section 11.1 fails to bring  
about a prompt resolution of the dispute, then within twenty (20) days following  
the meeting of the parties, the parties shall initiate a voluntary, non-binding  
mediation conducted by a mediator mutually-agreed upon by the parties. If the  
parties are not able to agree upon a mediator, they shall request that the  
Florida (State) office of the American Arbitration Association appoint a capable  
mediator for them. The parties shall bear equally the costs and expenses of this  
mediation and endeavor in good faith to resolve their differences. Mediation  
pursuant to this Article is confidential and shall be treated as compromise and  
settlement negotiations.  
  
  
  
 11.3 Choice of Law; Litigation. This Agreement will be construed under and  
subject to the laws of the State of Florida, without regard to the conflict of  
laws principles thereof. The parties agree to waive any provision in the United  
Nations Convention on the Law Applicable to the International Sale of Goods or  
any other treaty or international convention to which Canada or the USA are or  
may become signatories which might lead to a different choice of law. The  
parties hereto hereby submit to the exclusive jurisdiction of the courts of  
general jurisdiction of the County of Xxx, State of Florida and the federal  
courts of the United States located in the Middle District of the State of  
Florida for all litigation, court actions and other legal proceedings between  
the parties arising under this Agreement. Distributor and NMPR and their  
respective officers, directors, and employees hereby submit to personal  
jurisdiction in Florida for all such litigation and waive any rights they may  
have to contest personal jurisdiction or venue elsewhere and any claims that  
such jurisdiction or venue is invalid.  
  
 ARTICLE 12  
 INDEMNIFICATION AND LIABILITY LIMITATION  
  
 12.1 Distributor Indemnification of NMPR. Distributor agrees to comply  
with all municipal, city, Provincial and Federal laws, by-laws, regulations,  
ordinances and any other regulations with which it must comply. Distributor  
shall indemnify and hold NMPR, its officers, directors, employees, agents,  
successors and assigns harmless against, and will reimburse NMPR for, all  
losses, claims, damages, judgments, costs and expenses of whatever form and  
nature, including, without limitation, attorneys' fees, court costs and  
litigation expenses, whether direct or indirect, that NMPR, or any of is  
officers, directors, employees, agents, successors or assigns, may sustain or  
incur as a result of: (a) any failure by Distributor and/or its directors,  
officers, employees, Dealers, Affiliates, franchisees and Sub-Distributors  
(collectively, the "Distributor Parties") to comply with any municipal, city,  
Provincial and Federal law, by-law, regulation, ordinance or any other  
regulation, (b) any distribution, sale, use or misuse of the Products or the  
System by the Distributor Parties; (c) any loss, claim or action based on the  
negligence, misfeasance or nonfeasance of the Distributor Parties, including,  
but not limited to, actions by each or any Distributor Party involving or  
administering training concerning the Products or the System or any  
environmental liability within the control of Distributor involving, relating to  
or arising from the Products, or (d) any liability arising due to or as a result  
of the labeling of the Products by Distributor.  
  
 (a) NMPR shall not be obligated or liable for any injury or death of  
any person or damage to any property caused by the Distributor's action, failure  
to act, negligence or willful conduct, nor for any liability of the Distributor,  
whether or not the same be covered by insurance arranged pursuant to this  
Agreement. For purposes of this Agreement, if the Distributor can control or  
cause the actions or omissions of any Distributor Party, or can control or cause  
any Distributor Party's to omit to take any action, NMPR shall not be obligated  
or liable for any injury or death of any person or damage to any property caused  
by the any Distributor Party's action, failure to act, negligence or willful  
conduct, nor for any liability of the Distributor Party, whether or not the same  
be covered by insurance arranged pursuant to this Agreement or otherwise.  
  
 (b) The Distributor shall indemnify and save NMPR and its affiliates  
and its and their respective shareholders, directors, officers, partners,  
members, employees and agents harmless from:  
  
 (i) All fines, suits, proceedings, claims, demands or actions  
of any nature or kind whatsoever, directly or indirectly arising out of, or in  
any manner whatsoever associated or connected with the Distributor's operations,  
including without limitation, all claims made in respect of loss of or damage to  
customer's vehicles or the contents thereof;  
  
  
  
 (c) The Distributor shall indemnify and hold NMPR and any of its  
affiliates and its and their respective directors, shareholders, officers,  
partners, members and employees harmless from and against any and all taxes that  
the Distributor may be required by applicable law to pay.  
  
 (d) This Agreement, the documents incorporated by reference herein,  
and the exhibits hereto constitute the entire agreement between the parties and  
all prior negotiations, commitments, conditions, representations, warranties and  
undertakings are merged herein. Except as herein provided, there are no oral or  
written conditions, representations, warranties, undertakings or agreements made  
by NMPR to the Distributor relating to the subject matter hereof. NMPR and  
Distributor specifically acknowledge and agree that the Distributor has entered  
into this Agreement after making an independent investigation of the operations  
of NMPR and not upon any representation made by NMPR as to the profits which the  
Distributor might expect to realize, nor has anyone made any other  
representation which is not expressly set forth herein to induce the Distributor  
to execute and deliver this Agreement. The Distributor hereby represents and  
warrants to NMPR that all written statements made by the Distributor to NMPR  
prior to the execution of the Agreement, including, without limitation, all  
statements pertaining to the Distributor's financial standing, were true when  
made and continue to be true at the time of execution of this Agreement (unless  
subsequently corrected in writing), and in the event that such representation or  
warranty is untrue, NMPR shall, at its option, be entitled to terminate this  
Agreement without prejudice to any other remedies that it may have.  
  
 (e) Nothing in this Agreement shall be interpreted as requiring the  
Distributor to sell any product or provide any service at a price stipulated by  
NMPR or any other person. However, NMPR may establish, maintain and advertise a  
suggested schedule of retail prices, although the Distributor shall be under no  
obligation whatsoever to comply with same, and shall suffer no penalty from NMPR  
for non-compliance.  
  
 (f) The Distributor acknowledges that NMPR may receive rebates from  
suppliers of NMPR or the Distributor in respect of purchases made by NMPR or  
Distributor and expressly acknowledges and confirms that the Distributor shall  
have no rights in respect of, or entitlement to, such rebates.  
  
 (g) NMPR acknowledges that the Distributor may operate other  
non-competing dealerships or sell other non-competing products or offer  
non-competing services within its facility and/or at the same time as it  
operates its Distributorship.  
  
 (h) This Agreement may be executed in counterparts, and each  
counterpart so executed shall be deemed an original.  
  
 (i) Time is of the essence hereof.  
  
 (j) Whenever a personal pronoun is used herein, it is understood  
that such usage shall include both singular and plural, masculine, feminine and  
neuter, and refer in appropriate cases to corporations or other legal entities  
as well as to individuals.  
  
  
  
 (k) This Agreement shall inure to the benefit of and be binding upon  
the Distributor and its successors and assigns but shall be personal to and  
non-assignable by the Distributor to any person or entity which is in  
competition with NMPR, except with the prior written consent of NMPR, which may  
not be unreasonably withheld. Any purported assignment of the rights of the  
Distributor hereunder without such consent by NMPR shall permit NMPR to  
immediately terminate this Agreement without notice. For the purpose of this  
provision the term "assignment" shall include any sale, assignment, transfer,  
pledge, hypothecation, encumbrance or other disposition of this Agreement or of  
the Distributor's rights hereunder, including, but not limited to, any transfer  
or assignment resulting from the death of the Distributor, bankruptcy of the  
Distributor, or otherwise resulting by operation of law.  
  
 (l) Any requested assignment of this Agreement by Distributor to an  
individual or entity or addition of a geographic region to the Territory shall  
be subject to the following conditions:  
  
 (i) NMPR must approve the assignment, sale or addition in  
writing and approve the qualifications of any new Distributor succeeding to the  
rights of this Agreement.  
  
 (ii) A fee of US $3,000 (plus all applicable taxes) must be  
paid to NMPR to cover training for up to two (2) members of any new Distributor.  
  
 (iii) All monthly fees shall be paid by the new Distributor to  
NMPR and cannot be claimed in whole or in part by the former Distributor.  
  
 (iv) NMPR may require in its sole discretion that (a) any new  
Distributor sign a new version of this Agreement, the terms of which need not be  
the same as this Agreement, or (b) that the Distributor sign a new version of  
this Agreement, the terms of which need not be the same as this Agreement, in  
order to add any geographic region to the Territory.  
  
 ARTICLE 13  
 INSURANCE  
  
 13.1 General and Products Liability Insurance. NMPR and Distributor will  
each procure and maintain in full force and effect general and products  
liability insurance with coverage of at least two million dollars ($2,000,000)  
insuring NMPR, on the one hand, and Distributor, Sub-Distributors, franchisees  
or Dealers, on the other hand, and each of their respective officers, directors,  
employees and agents from and against any and all losses, liability, damages,  
causes of action, lawsuits, claims, and expenses of any kind whatsoever  
("Claims"), including Claims for personal injury, death, property damage and all  
other occurrences, arising out of, in connection with or related to the Products  
or the System, the application of the Products and the System, the use of the  
Products and the System, and the operation of NMPR's and Distributor's  
businesses. The insurance policy procured by NMPR will specifically provide  
coverage for Claims made against either Distributor or NMPR based on the failure  
of the Products or the System to perform as represented and Claims for product  
liability.  
  
 13.2 Approval of Insurance Companies; Evidence of Coverage. NMPR will  
provide Distributor and Distributor will provide NMPR with a certificate  
evidencing the insurance coverage set forth in Section 13.1 within sixty (60)  
days after the date of this Agreement.  
  
  
  
 ARTICLE 14  
 GENERAL TERMS  
  
 14.1 Expenses. Each party will be solely responsible for and will pay all  
expenses it incurs in fulfilling its obligations under this Agreement. Each  
party has had the opportunity to seek legal counsel regarding this Agreement.  
  
 14.2 NMPR's Ownership of the Products. NMPR represents and warrants that  
NMPR owns the Products and the System (defined for these purposes as the trade  
secret formulae of the Products, the manufacturing processes used to produce the  
Products and the System and/or any patents or patent rights associated with  
either the Products, the System or the manufacture of the Products).  
  
 14.3 Notices. All notices required under this Agreement must be in writing  
and by at least one of the following means; (a) personally delivered, (b)  
facsimile, (c) sent by certified air mail, postage prepaid, or (d) delivered by  
a recognized international delivery service (such as Federal Express, United  
Parcel Service or Airborne Express), which requires the signature of the  
addressee or its agent for delivery. Copies of all notices sent to NMPR by  
Distributor shall be sent to the attention of each of:  
  
 NeoMedia Technologies, Inc.  
 0000 Xxxxxx Xxxxxx  
 Xxxxx 000  
 Xxxx Xxxxx, Xxxxxxx 00000  
 Attention: Xxxxxxx X. Xxxxxx, President  
 Facsimile: (000) 000-0000  
  
 Copies of all notices sent to Distributor by NMPR shall be sent to the  
attention of:  
  
 WI\_THO AS  
 Xxxxxxxxxxxxxxx 0  
 0000 Xxxx, Xxxxxx  
 Attention: Marten Wigst0l  
 Facsimile: (x00) 00000000  
  
 Any notice will be effective upon the earlier of (a) receipt by the party  
to which notice is given, or (b) the fifth (5th) day following the date such  
notice was sent which date shall be evidenced by an affidavit of the sender.  
  
 14.4 Entire Agreement. This Agreement constitutes the entire agreement of  
the parties with respect to the subject matter hereof and supersedes all  
previous proposals and agreements, whether oral or written, and all prior  
negotiations, conversations, understandings or discussions between the parties  
related to the subject matter of this Agreement.  
  
 14.5 Amendment. This Agreement may not be, and will not be deemed or  
construed to be modified, amended, rescinded, canceled or waived, in whole or in  
part, except by a written amendment signed by both parties. An alleged verbal  
modification or amendment to this Agreement will be void and unenforceable.  
  
  
  
 14.6 Severability. If any of the terms of this Agreement are in conflict  
with any law, statute, rule, ordinance, or order or otherwise unenforceable  
under the laws or regulations of any government or subdivision thereof, such  
terms will be deemed stricken from this Agreement, but such invalidity or  
unenforceability will not invalidate any of the other terms of this Agreement,  
and this Agreement will continue in force.  
  
 14.7 Force Majeure. "Force Majeure" will mean any event or condition, not  
existing as of the date of this Agreement, not reasonably within the control of  
either party, which prevents in whole or in material part the performance by one  
of the parties of its obligations under this Agreement or which renders the  
performance of such obligations so difficult or costly as to make such  
performance commercially unreasonable. Without limiting the generality of the  
foregoing, the following will constitute events or conditions of Force Majeure:  
acts of State or governmental action, embargoes, riots, disturbance, war,  
terror, strikes, lockouts, slowdowns, prolonged shortage of energy supplies,  
delays in transportation, fire, flood, hurricane, typhoon, earthquake,  
lightning, explosion, and problems related to the inability of computers (used  
by either the parties or their vendors) to properly recognize or process data as  
a result of any wide-spread computer related problems or viruses. Upon giving  
written notice to the other party, the party affected by an event of Force  
Majeure will be released without any liability on its part from the performance  
of its obligations under this Agreement, but only to the extent and only for the  
period that its performance of such obligations is prevented by the event of  
Force Majeure. An event of Force Majeure will not relieve or affect in any way  
either party's obligation to pay all amounts due and owing under this Agreement.  
  
 14.8 Waiver. The failure of NMPR or Distributor to exercise any of their  
rights under this Agreement, or to insist on strict compliance by the other  
party, and no custom or practice of the parties at variance with the terms of  
this Agreement, will constitute any waiver of either party's right to demand  
exact compliance with the terms of this Agreement. A waiver by either party of  
any specific default will not affect or impair the right of that party with  
respect to any subsequent default of the same or different nature, nor will any  
delay or omission to exercise any right arising from a default affect or impair  
the rights of that party with respect to such default or any subsequent default.  
  
 14.9 Headings. All titles and headings used in this Agreement are for  
convenience in reference only and should not be used to interpret or construe  
this Agreement.  
  
 14.10 Counterparts. This Agreement may be executed in two or more  
counterparts, each of which when taken together will constitute one instrument.  
  
 14.11 Injunctive Relief. Notwithstanding any other provision of this  
Agreement, the parties hereto understand and agree that the data sharing  
provisions of Section 10.2, the remedy of indemnity payments provided herein and  
other remedies at law would be inadequate in the case of any breach of the  
provisions of the Confidentiality and Non-Competition Agreement or this  
Agreement, and the parties hereto agree that the aggrieved party will be  
entitled to equitable relief, including the remedy of specific performance,  
without posting of bond or other security, with respect to any breach or  
attempted breach of such provisions.  
  
 14.12 NMPR Right to Distributor Sales Reports; Right to Audit. From time  
to time during the Term of this Agreement and for one (1) year thereafter, NMPR  
may, in its sole and complete discretion, require Distributor to furnish to  
NMPR, within seven (7) business days of any written request, complete  
Distributor sales reports, related data and necessary information to back up any  
payments made (or which should have been made) to NMPR arising hereunder based  
on sales of the Products or otherwise (each, a "Distributor Report"); however,  
such request may not include any information which is aged more than three (3)  
  
  
  
years from the date of the request. Should NMPR disagree with the content of any  
Distributor Report furnished to it, NMPR and its representatives shall, at any  
time during business hours and without prior notice to Distributor, have the  
right to inspect and audit any business books and records, bookkeeping and  
accounting records and sales and income tax records of Distributor relating in  
any way to this Agreement. Distributor agrees to fully cooperate with  
representatives and independent accountants hired by NMPR to conduct any such  
inspection or audit. If an inspection or audit discloses an understatement of  
payments or nonpayment due to NMPR under this Agreement, Distributor shall pay  
NMPR, within fifteen (15) days after receipt of the NMPR inspection or audit  
report, the amount of the understatement, plus interest from the date originally  
due until the date of payment, and Distributor shall reimburse NMPR for the cost  
of the audit or inspection, including the charges of attorneys and any  
independent accountants and the travel expenses, room and board and compensation  
of NMPR employees. These remedies are in addition to our other remedies and  
rights under this Agreement or applicable law and the right to audit will  
continue for one (1) year following termination of this Agreement.  
  
 IN WITNESS WHEREOF, the parties have caused this Agreement to be executed  
by their duly authorized officers or employees.  
  
  
NEOMEDIA MICRO PAINT REPAIR INC.  
  
By: /s/ Xxxxxxx X. Xxxxxx  
 --------------------------------  
  
Name: Xxxxxxx X. Xxxxxx  
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Title: President & CEO  
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DISTRIBUTOR:  
  
WITHO-AS  
  
By: /s/ Marten Wigst0l  
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Name: Marten Wigst0l  
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Title: Chairman of the Board  
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