**PRODUCT DISTRIBUTION AGREEMENT**

This Product Distribution Agreement (the “Agreement”) is entered into as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20 \_\_\_\_\_ (the “Effective Date”) by and between \_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_ [corporation] [limited liability company] [etc.], with its principal offices at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [enter address] (the “Supplier”) and \_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_ [corporation] [limited liability company] [etc.], with its principal offices at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [enter address] (the “Buyer”). The Supplier and the Buyer may be referred to individually as a “Party” or collectively as the “Parties.”

RECITALS

WHEREAS, the Supplier is engaged in the business of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_; and

WHEREAS, the Supplier manufactures and wishes to Distribution to the Buyer those certain products more particularly set forth in Exhibit A attached hereto and made a part hereof (the “Products”) on the terms and conditions set forth below; and

WHEREAS, the Buyer wishes to purchase the Products supplied in accordance with the terms of this Agreement; and

WHEREAS, from time to time, the Parties may enter into various agreements pursuant to which the Buyer shall purchase and Supplier shall furnish additional Products; and

WHEREAS, the Parties want to establish purchasing procedures and the terms and conditions governing the above-referenced transactions;

WHEREAS, each Party is duly authorized and capable of entering into this Agreement.

NOW, THEREFORE, in consideration of the above recitals, and the mutual promises and benefits contained herein, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties hereby agree as follows:

1. TERM.

This Agreement shall be effective as of the Effective Date and continue for a period of \_\_\_\_\_\_\_\_\_\_\_ years (the “Term”). (Optional) [Unless otherwise terminated pursuant to Section 16 hereof, this Agreement shall renew automatically at the end of the Term for additional \_\_\_\_\_\_\_\_ year periods, unless either Party gives written notice of termination at least \_\_\_\_\_ days before the end of the Term or any renewal term.]

2. AGREEMENT OF PURCHASE AND SALE.

Pursuant to the terms and conditions of this Agreement, the Supplier agrees to sell to the Buyer, and the Buyer agrees to buy from the Supplier, the Products listed in Exhibit A hereto, in such amounts and at such prices as agreed by the Parties.

3. MINIMUM QUANTITIES.

During each [month][year] of the Term, the Buyer hereby agrees to buy a minimum of \_\_\_\_\_ [units][amounts] of the Product listed in Exhibit A from the Supplier (the “Minimum Quantities”).

4. FAILURE TO PURCHASE MINIMUM QUANTITIES.

If, without excuse either by law or expressly hereunder, the Buyer fails to purchase the Minimum Quantities from the Supplier and the Supplier is ready, willing, and able to tender the Product in such amounts, the Buyer shall pay the Supplier a sum of Rs.\_\_\_\_\_\_\_\_\_\_\_ as liquidated damages, within \_\_\_\_\_\_\_\_\_\_\_\_ days of the end of the period described in Section 3 hereof, in such form and manner as may be agreed by the Parties.

5. FAILURE TO DISTRIBUTION MINIMUM QUANTITIES.

If, without excuse either by law or expressly hereunder, the Supplier fails to Distribution the Buyer with the Minimum Quantities, and the Buyer is ready, willing, and able to buy the Product in such amounts, the Supplier shall pay the Buyer a sum of Rs.\_\_\_\_\_\_\_\_\_\_\_ as liquidated damages, within \_\_\_\_\_\_\_days of the end of the period described in Section 3 hereof, in such form and manner as may be agreed by the Parties.

6. (Optional) EXCEPTIONS TO PURCHASE REQUIREMENTS.

Notwithstanding anything to the contrary contained in this Agreement, the Buyer shall not be required to purchase Products from the Supplier if any of the following circumstances arise:

a. the Buyer must acquire Products on a temporary or emergency basis;

b. a customer of the Buyer expresses a preference for products supplied by a supplier other than the Supplier; or

c. the Supplier is unable or unwilling to Distribution the Buyer with Products in required quantities, or that meet the quality, delivery, or other requirements of this Agreement or of the Buyer’s customers (as determined by the Buyer in good faith).

If any of the preceding circumstances occur, the Buyer shall be entitled to manufacture or buy Products from affiliates or other suppliers. Products purchased by the Buyer from any such alternate suppliers shall count towards the Minimum Quantities required under this Agreement.

7. INSPECTION AND ACCEPTANCE.

The Buyer will inspect any delivery of Products received from the Supplier, and will notify the Supplier of any defects within \_\_\_\_\_\_\_\_\_\_\_\_ days after the delivery date. If the Buyer fails to notify the Supplier of any such defects within such period, the shipment of Products shall be deemed accepted. The Buyer will allow the Supplier to inspect any Products alleged defective at the Buyer’s business site. At the request of the Supplier, the Buyer will ship any Products to the Supplier that the Buyer believes are defective; provided, however, that the Supplier shall pay for any freight charges related to such shipments. The Supplier agrees to replace all defective Products rejected by the Buyer or, at the Supplier’s option, to reimburse the Buyer for the full purchase price thereof, including any related shipping costs and taxes.

8. WARRANTY AND LIMITATION OF REMEDIES; DISCLAIMER.

a. The Supplier warrants that the Products supplied shall be free from defects in material and manufacture, conform to specifications set forth in Exhibit A, and conform to specifications set forth in any Purchase Order at the time of shipment. If any Product fails to conform to such specifications or any defect in material or manufacture appears within \_\_\_\_\_\_\_\_months from the date of shipment, the Supplier’s entire liability, and the Buyer’s exclusive remedy, shall be, at the Buyer’s option, either to repair or replace such defective Product within a reasonable time after written notification thereof and return of the defective Product after such repair or replacement to the Buyer.

b. THIS WARRANTY IS MADE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTY OF MERCHANTABILITY, THE IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, ANY IMPLIED WARRANTY ARISING OUT OF A COURSE OF DEALING OR OF PERFORMANCE, CUSTOM OR USAGE OF TRADE, EXCEPT OF TITLE AND AGAINST PATENT INFRINGEMENT.

9. (Optional) ISSUANCE OF PURCHASE ORDER.

From time to time, the Buyer shall provide written requests to the Supplier listing the goods it requires (each a “Purchase Order”). The Supplier is not required to Distribution Products until a specific Purchase Order is issued by the Buyer, and the Buyer is not obliged to buy Products from the Supplier until it submits a specific Purchase Order listing the Products it requires.

10. (Optional) CANCELLATION AND AMENDMENT OF PURCHASE ORDER.

The Buyer may, in whole or in part, cancel or amend any Purchase Order submitted to the Supplier by providing \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ days’ notice to the Supplier of such cancellation or amendment.

11. DELIVERY OF PRODUCTS / SHIPPING.

The Supplier shall deliver the Products to a location designated by the Buyer (the “Delivery Point”) within \_\_\_\_\_\_\_\_\_\_ days of receipt of a Purchase Order. The Supplier assumes responsibility for the Products, and all risk of damage, loss, or delay of the Products, until the Products are delivered at the Delivery Point. Once the Products are at the Delivery Point, the Buyer assumes all responsibility for and risk of damage to such Products.

12. PRICING.

The Supplier shall Distribution the Products to the Buyer at the prices specified in the price list in Exhibit B, attached hereto and made a part hereof. The price of each Product includes packaging costs, all applicable taxes, customs duties, export duties, or similar tariffs or fees that the Supplier may be required to pay or collect in connection with the performance of its obligations under, or in furtherance of, this Agreement. The Buyer will not be charged for insurance or storage of the Products.

13. PAYMENT TERMS.

The Supplier shall send invoices to the Buyer, and the Buyer shall remit payments to the Supplier, at the addresses listed in Section 24 hereto. The Buyer shall remit such payments within \_\_\_\_\_\_\_\_\_ days of its receipt of the Supplier’s invoice. (Optional) [The Supplier shall deliver the Products within \_\_\_days of its receipt of a Purchase Order.] Title in and to the Products shall pass from the Supplier to the Buyer on the Buyer’s payment to the Supplier of all fees relating to such Products.

14. (Optional) INTELLECTUAL PROPERTY.

The Buyer will use the Supplier’s trademarks or trade names both on the Products and in the advertising for the Products. The Supplier will cooperate with the Buyer’s marketing, advertising, and packaging personnel to coordinate use of the Supplier’s trademarks or trade names, and any other text that mentions the Supplier. The Buyer is not entitled, either by implication or otherwise, to any title or interest in any trademark, trade name, logo, design, or copyright developed by the Supplier in connection with the Products.

15. (Optional) CONFIDENTIALITY.

Except as may be required in the marketing of the Products or with the Supplier’s prior written consent, the Buyer shall not, either directly or indirectly, in whole or in part, use or disclose to any person, firm, corporation, or other entity, any of the Supplier’s confidential information, which may include (but not be limited to) records, customer lists, data, formula, documents, drawings, inventions, methods, or processes. Information about the Products that is revealed during the Term is confidential and shall be protected from disclosure.

16. TERMINATION.

This Agreement may be terminated:

a. By either Party, at any time, on provision of \_\_\_\_\_\_\_\_\_\_\_\_\_ (\_\_\_\_) days’ written notice to the other Party.

b. By either Party, at any time, for a material breach of any provision of this Agreement by the other Party, if the other Party’s material breach is not cured within \_\_\_\_\_\_\_\_\_\_\_\_\_\_ (\_\_\_\_) days of its receipt of written notice thereof.

c. By either Party at any time, without prior notice, if the other Party has instituted a proceeding seeking relief under the Bankruptcy Code or similar law, makes an assignment for the benefit of creditors, or admits in writing its inability to pay its debts as they become due.

17. DEFAULT AND REMEDIES.

If either Party terminates this Agreement because of the other Party’s default, the non-breaching Party, in addition to all rights it has under this Agreement, shall have the right to exercise any and all remedies available at law or in equity. All rights and remedies are cumulative, and the election of one remedy shall not preclude another. Any termination shall be without prejudice to accrued rights. Specifically, a termination due to default of delivery or payment for the Products required hereunder shall not in any manner affect or terminate the rights and obligations of the Parties that have accrued hereunder prior or subsequent to such default in delivery or payment. Notwithstanding the expiration or termination of this Agreement, the obligations intended to survive termination or expiration of this Agreement shall continue in full force and effect.

18. FORCE MAJEURE.

The Supplier and the Buyer shall not be considered in default hereunder or be liable for any failure to perform or delay in performing any provisions of this Agreement in the customary manner to the extent that such failure or delay is caused by any reason beyond its control, including any act of God, fire, explosions, hostilities, or war (declared or undeclared), strike or work stoppage involving either Party’s employees, or governmental restrictions; provided, however, that the Party declaring force majeure shall give prompt written notice to the other Party of the commencement, nature, and termination of the force majeure condition. The Party whose performance has been interrupted by such circumstances shall use every reasonable means to resume full performance of this Agreement as promptly as possible.

18. INDEMNIFICATION.

The Supplier shall at all times indemnify, defend, and hold harmless the Buyer against all claims, actions, damages, losses, liabilities, and expenses, including reasonable outside attorneys’ fees, arising out of or caused by any breach of any of the representations, undertakings, or agreements made by the Supplier in connection with:

a. any claim of breach of any express or implied warranty or negligence or strict liability, product liability, or similar theory in connection with the production, design, sale, or use of any of the Products purchased by the Buyer;

b. (Optional) any claims of patent or trademark infringement, or other violation of intellectual property rights, of third persons in connection with the production, design, sale, or use of any of the Products purchased by Buyer hereunder or the use of the trademarks, trade names, logos, or other intellectual property pertaining thereto; and

c. any and all other claims and liabilities of every kind or character whatsoever arising out of, or related to, the production, design, sale, or use of the Products purchased by the Buyer hereunder, unless the same result solely from the Buyer’s gross negligence or knowing violation of law.

The Buyer shall at all times indemnify, defend, and hold harmless the Supplier against all claims, actions, damages, losses, liabilities, and expenses, including reasonable outside attorneys’ fees, arising out of or caused by any breach of any of the representations, undertakings, or agreements made by the Buyer under or pursuant to this Agreement.

19. (Optional) ARBITRATION.

Any controversy or claim arising out of or relating to this Agreement, or the breach, termination or invalidity of this Agreement shall be settled by arbitration in accordance with the rules of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ . The arbitrator(s) shall be bound by the Agreement and shall interpret the Agreement in accordance with the applicable laws of the United States and the internal laws of the state of \_\_\_\_\_\_\_\_. Any award, order, or judgment made pursuant to such arbitration shall be deemed final and shall be entered and enforced in any court of competent jurisdiction.

20. SUCCESSORS AND ASSIGNS.

All references in this Agreement to the Parties shall be deemed to include, as applicable, a reference to their respective successors and assigns. The provisions of this Agreement shall be binding on and shall inure to the benefit of the successors and assigns of the Parties.

21. ENTIRE AGREEMENT.

This Agreement constitutes the final, complete, and exclusive statement of the Agreement of the Parties with respect to the subject matter hereof, and supersedes any and all other prior and contemporaneous agreements and understandings, both written and oral, between the Parties.

22. MODIFICATION.

This Agreement may be supplemented, amended, or modified only by the mutual agreement of the Parties, and such agreement must be in writing and signed by both Parties.

23. NOTICE.

Any notice or other communication provided for herein or given hereunder to a Party hereto shall be in writing and shall be given in person, by overnight courier, or by mail (registered or certified mail, postage prepaid, return-receipt requested) to the respective Parties as follows:

If to the Supplier:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

If to the Buyer:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

24. GOVERNING LAW.

This Agreement shall be governed by the laws of the state of\_\_\_\_\_\_\_\_\_\_\_\_\_\_. If litigation results from or arises out of this Agreement or the performance thereof, the Parties agree to reimburse the prevailing Party’s reasonable attorneys’ fees, court costs, and all other expenses, whether or not taxable by the court as costs, in addition to any other relief to which the prevailing Party may be entitled.

25. SEVERABILITY.

Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be invalid, illegal, or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other provision or any other jurisdiction, but this Agreement will be reformed, construed, and enforced in such jurisdiction as if such invalid, illegal, or unenforceable provisions had never been contained herein.

.

26. COUNTERPARTS/ELECTRONIC SIGNATURES.

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument. For purposes of this Agreement, use of a facsimile, e-mail, or other electronic medium shall have the same force and effect as an original signature.

27. AFFIRMATION OF THE PARTIES.

The Parties affirm that they have entered into this Agreement freely, voluntarily, and without reliance on any promises, representations, or other statements not contained in this Agreement and that they have read and understood this Agreement.

28. HEADINGS.

Headings used in this Agreement are provided for convenience only and shall not be used to construe meaning or intent.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first above written.

SUPPLIER [SUPPLIER’S NAME]

By:

Name:

Title:

ACKNOWLEDGMENT

OF NOTARY PUBLIC

State of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ )

County of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_, before me, the undersigned Notary Public, personally appeared before me [NAME], personally known to me or proved to me on the basis of satisfactory evidence to be the individual who signed the foregoing document as the [OFFICER TITLE] of the [SUPPLIER] and acknowledged to me that [he] [she] executed the same in [his] [her] authorized capacity, and that by such signature, the person executed the instrument.

WITNESS my hand and official seal.

Signature of Notary Public: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

My Commission Expires: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

BUYER [BUYER’S NAME]

By:

Name:

Title:

ACKNOWLEDGMENT

OF NOTARY PUBLIC

State of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ )

County of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_, before me, the undersigned Notary Public, personally appeared before me [NAME], personally known to me or proved to me on the basis of satisfactory evidence to be the individual who signed the foregoing document as the [OFFICER TITLE] of the [BUYER] and acknowledged to me that [he] [she] executed the same in [his] [her] authorized capacity, and that by such signature, the person executed the instrument.

WITNESS my hand and official seal.

Signature of Notary Public: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

My Commission Expires: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

EXHIBIT A

PRODUCT LIST

[Attach copy of Product List]

EXHIBIT B

PRICE LIST

[Attach copy of Price List]