**SALES AGENCY AGREEMENT**

This SALES AGENCY AGREEMENT (the “Agreement”) is entered into effective as of (the “........”) between ............., a ............ corporation with principal offices at ............ (“Company”) and .............. , a ........*{partnership firm/ corporation}* with its principal place of business at ……….(“Agent”).

**1. DEFINITIONS**

1.1 “Products” initially shall mean those products listed in Annexure A attached hereto and any such additional products that Company may manufacture or sell. Products may be changed, discontinued, or added by mutual agreement of the Parties. Agent shall have the right of first refusal to represent any additional product, including Product upgrades and modifications, represented, sold, or marketed by Company.

1.2 “Territory” means the geographic areas listed on Annexure B hereto.

**2. APPOINTMENT AND AUTHORITY OF Agent**

2.1 Exclusive Sales Agent.

Subject to the terms and conditions herein, Company appoints Agent as Company’s exclusive sales Agent for the Products in the Territory, and Agent accepts such appointment.

2.2 Independent Contractors.

The relationship of Company and Agent established by this Agreement is that of independent contractor, and nothing contained in this Agreement shall be construed to (i) give either party the power to direct and control the day-today activities of the other, or (ii) constitute the parties as partners, joint venturers, co-owners or otherwise as participants in a joint undertaking, or (iii) allow Agent to create or assume any obligation on behalf of Company for any purpose whatsoever. All financial and other obligations associated with Agent’s business are the sole responsibility of Agent, Agent shall be responsible for, and shall indemnify and hold Company free and harmless from, any and all claims, damages or lawsuits (including Company’s attorneys’ fees) arising solely out of the acts or Agent, its employees or its agents.

**3. COMMISSION**

 3.1 Sole Compensation.

Agent’s sole compensation under the terms of this Agreement shall be a commission (“Commission”) as provided in Annexure C hereof on the net sales of all Products ordered, delivered or sold in the Territory.

3.2 Basis of Commission.

The Commission shall apply to all orders to the Territory, whether or not such orders were solicited by Agent. Commissions shall be computed on the net sales amount invoiced by Company to the customer, provided no commission shall be paid with respect to charges for handling, freight, taxes, C.O.D. charges, insurance, tariffs and duties, cash and trade discounts, rebates, amounts allowed or credited for returns, uncollected or uncollectible amounts, services, and the like.

3.3 Payment.

Commissions shall be paid in INR and shall be subject to all applicable governmental laws, regulations and rulings. Commission will be paid after deducting Tax Deduction at Source (TDS).

3.4. Time of Payment.

The Commission for a given order shall be earned by Agent when that order is placed. The Commission on a given order shall be due and payable ……. days after the end of the calendar month in which Company invoices and ships that order.

3.5. Commission Charge-Back.

Company shall have the right, while this Agreement is in effect, to write off as bad debts such overdue customer accounts as it deems advisable after notifying Agent and providing Agent the opportunity to attempt to induce payment. In each such case, Company may charge back to Agent’s account only any amounts previously paid to Agent. If such accounts are paid at any time, Agent shall be entitled to the applicable commissions.

3.6. Monthly Statements.

Company shall submit to Agent monthly statements of the commissions due and payable to Agent under the terms of this Agreement, with reference to the specific orders on invoices on which the commissions are being paid.

3.7. Inspection of Records.

Agent shall have the right, at its own expense and not more than once in any ……. month period, to authorize Agent’s independent auditors to inspect, at reasonable times during Company’s ordinary business hours, Company’s relevant accounting records to verify the accuracy of Commissions paid by Company hereunder.

**4. SALE OF THE PRODUCTS**

4.1 Prices and Terms of Sale.

Company shall provide Agent with copies of its current price lists, its delivery schedules, and its standard terms and conditions of sale, as established from time to time. Agent shall quote to customers only those authorized prices, delivery schedules, and terms and conditions, and shall have no authority to quote or offer any discount to such prices or change any such terms and conditions, without the consent of Company. Company may change the prices, delivery schedules, and terms and conditions, provided that it gives Agent at least …….*{in figures and words}* days prior written notice of any changes; however, such changes shall not affect any existing contacts or pricing agreements. Each order for a Product shall be governed by the prices, delivery schedules, and terms and conditions in effect at the time the order is accepted, and all quotations by Agent shall contain a statement to that effect.

4.2 Quotations.

The parties shall furnish to each other copies of all quotations submitted to customers.

4.3 Orders.

All orders for the Products shall be in writing, and the original shall be submitted to Company. Company shall promptly furnish to Agent informational copies of all commissionable orders sent by customers in the Territory.

4.4 Acceptance.

All orders obtained by Agent shall be subject to acceptance by Company at its principal office currently located at the address listed for Company at the beginning of this Agreement, and all quotations by Agent shall contain a statement to that effect. Agent shall have no authority to make any acceptance or delivery commitments to customers. Company specifically reserves the right to reject any order or any part thereof for any reasonable reason. Company shall send copies to Agent of any written acceptances on commissionable orders.

4.5 Credit Approval.

Company shall have the sole right of credit approval or credit refusal for its customers in all cases.

4.6 Collection.

It is expressly understood by Agent that full responsibility for all collection rests with Company, provided, at Company’s request, Agent will provide reasonable assistance in collection of any accounts receivable. In the event that Agent, with the approval of Company, purchases Products from Company and resells said Products to its own customers, Agent shall have the sole right of credit approval or credit refusal for its own customers and full responsibility for all collection for such customers rests with Agent.

4.7 Inquiries from Outside the Territory.

Agent shall promptly submit to Company, for Company’s attention and handling, the originals of all inquiries received by Agent from customers outside the Territory.

4.8 Product Availability.

Company shall not be responsible to Agent or any other party for its failure to fill accepted orders, or for its delay in filling accepted orders, when such failure or delay is due to a cause beyond Company’s reasonable control.

**5. ADDITIONAL OBLIGATIONS OF AGENT**

5.1 Annual Quota Commitment.

Within …….. days of the Effective Date and within …….. days before the start of each subsequent calendar year, Company may assign to Agent an annual quota. Any annual quota must be fair and reasonable, taking into account factors including but not limited to sales in prior years, the competitive and economic situation in the Territory and marketplace, and Company’s market share nationally and in the Territory.

5.2 Promotion of the Products.

Agent shall, at its own expense, promote the sale of the Products in the Territory. Agent may hire or contract with sales Agents or service personnel to promote the Products and perform the duties hereunder.

5.3 Facilities.

Agent shall provide itself with, and be solely responsible for, (i) such facilities, employees, and business organization, and (ii) such permits, licenses, and other forms of clearance from governmental or regulatory agencies, if any, as it deems necessary for the conduct of its business operations in accordance with this Agreement.

5.4 Customer and Sales Reporting.

Agent shall, at its own expense, and in a manner consistent with the sales policies of Company: (a) attend a reasonable number of trade shows as Company requests; (b) provide adequate contact with existing and potential customers within the Territory on a regular basis; and (c) assist Company in assessing customer requirements for the Products.

5.5 Customer Service.

Agent shall diligently assist its customers’ personnel in using the Products and shall perform such additional customer services as good salesmanship requires and as Company may reasonably request.

5.6 Product Complaints.

Agent shall promptly investigate and monitor all customer and/or regulatory complaints and/or correspondence concerning the use of the Product in the Territory. Agent shall immediately notify Company of all such complaints and/or correspondence in accordance with the following:

(a) Agent shall advise Company of all complaints relating to incidents of serious and unexpected reactions to the Product as promptly as possible but not more than …….. calendar days following the date Agent receives such complaint;

(b) All complaints other than those related to incidents of serious and unexpected reactions to the Product shall be reported to Company within …….. calendar days following the date Agent receives such complaint.

(c) For purposes of this Section 5.6, a reaction shall be deemed to be “unexpected” if it is one that is not listed in the current package insert for the Product approved by Company and a reaction shall be deemed to be “serious” if it is fatal or life threatening, requires inpatient hospitalization, prolongs hospitalization, is permanently disabling, or requires intervention to prevent impairment or damage.

5.7 Expense of Doing Business.

Agent shall bear the entire cost and expense of conducting its business in accordance with the terms of this Agreement.

5.8 Representations.

Agent shall not make any false or misleading representations to customers or others regarding Company or the Products. Agent shall not make any representations, warranties or guarantees with respect to the specifications, features or capabilities of the Products that are not consistent with Company’s documentation accompanying the Products or Company’s literature describing the Products.

**6. ADDITIONAL OBLIGATIONS OF COMPANY**

6.1 Training by Company.

Company shall provide sales training to Agent’s personnel at periodic intervals, with the frequency and content of the training to be determined by Company. When possible, such training shall be given at Agent’s facilities, but it may be necessary to provide training at a geographically central location near but not in the Territory.

6.2 Regulatory Approvals.

Company shall be responsible for obtaining all approvals necessary to distribute the Products in India.

6.3 Materials.

Company shall provide Agent with marketing and technical information concerning the Products as well as reasonable quantities of brochures, instructional material, advertising literature, demonstration product samples, and other Product data at no charge.

6.4 Telephone Marketing and Technical and Sales Support.

Company shall provide a reasonable level of telephone marketing and technical support to Agent and its Agents. Company shall use its best efforts to support Agent’s sales and marketing activities.

6.5 Delivery Time.

Company shall use its best efforts to fulfill delivery obligations as committed in acceptances.

6.6 New Developments.

Company shall promptly inform Agent of new product developments relating to the Products.

**7. TRADEMARKS**

During the term of this Agreement, Agent shall have the right to indicate to the public that it is an authorized Agent of the Products and to advertise (within the Territory) such Products under the trademarks, marks, and trade names that Company may adopt from time to time (“Trademarks”). Agent shall not alter or remove any Trademark applied to the Products. Except as set forth in this Article 7, nothing contained in this Agreement shall grant to Agent any right, title or interest in the Trademarks.

**8. CONFIDENTIALITY**

Agent acknowledges that by reason of its relationship to Company hereunder it will have access to certain information and materials concerning Company’s technology, and products that are confidential and of substantial value to Company, which value would be impaired if such information were disclosed to third parties. Agent agrees that it will not use in any way for its own account or the account of any third party, nor disclose to any third party, any such confidential information revealed to it in written or other tangible form or orally, identified as confidential, by Company without the prior written consent of Company. Agent shall take every reasonable precaution to protect the confidentiality of such information. Upon request by Agent, Company shall advise whether or not it considers any particular information or materials to be confidential. In the event of termination of this Agreement, there shall be no use or disclosure by Agent of any confidential information of Company, and Agent shall not manufacture or have manufactured any devices, components or assemblies utilizing any of Company’s confidential information. This section shall not apply to any confidential information which is or becomes generally known and available in the public domain through no fault of Agent.

**9. INDEMNIFICATION**

The Company shall be solely responsible for the design, development, supply, production and performance of its products and the protection of its trade names and patents. The Company agrees to indemnify, hold the Agent harmless against and pay all losses, costs, damages or expenses, whatsoever, including counsel fees, which the Agent may sustain or incur on account of infringement or alleged infringements of patents, trademarks or trade names resulting from the sale of the Company's products, or arising on account of warranty claims, negligence claims, product liability claims or similar claims by third parties. The Agent shall promptly deliver to the Company any notices or papers served upon it in any proceeding covered by this Indemnification Agreement, and the Company shall defend such litigation at its expense. The Agent shall, however, have the right to participate in the defense at its own expense unless there is a conflict of interest, in which case, the Agent shall indemnify the Company for the expenses of such defense including counsel fees. The Company shall provide the Agent with a certificate of insurance evidencing the Agent an additional insured on the Company’s product liability insurance policy. This provision shall survive and remain in full force and effect after the termination or nonrenewal of this Agreement.

**10. TERM AND TERMINATION**

10.1 Term.

This Agreement shall continue in full force and effect for a period of ……. years from the date above, unless terminated earlier under the provisions of this Agreement. Thereafter, this Agreement shall be renewed automatically for successive additional ……. year terms under the same terms and conditions unless either party chooses not to continue the relationship and provides written notice ……. days prior to the natural expiration of the existing …….-year term.

10.2 Termination.

This Agreement may be terminated by as follows:

10.2.1. By Company if Agent fails to achieve its annual quota requirement.

10.2.2. By either party if the other party becomes insolvent or bankrupt, or files a voluntary petition in bankruptcy, or has had filed for an involuntary petition in bankruptcy (unless such involuntary petition is withdrawn or dismissed within ten days after filing) in which event termination may be immediate upon notice; or

10.2.3 By either party if the other party fails to cure any breach of a material covenant, commitment or obligation under this Agreement, within ……. days after receipt of written notice specifically setting forth the breach from the other party; or

10.2.4 By either party if the other party is convicted or pleads to a crime or an act of fraud that materially impacts on its performance or its fiduciary duties hereunder, in which event termination may be immediate upon notice.

10.3 Return of Materials.

All Confidential Information and other property belonging to Company shall remain the property of Company and will be immediately returned by Agent upon termination. Agent shall not make or retain any copies of any Confidential Information that may have been entrusted to it.

10.4 Return of the Products.

Upon the termination of this Agreement, Company shall repurchase any inventory and instrumentation of the Agent at Agent’s cost.

**11. MISCELLANEOUS**

11.1 Notices.

Any notice required or permitted by this Agreement shall be in writing and shall be sent by prepaid registered or certified mail, return receipt requested, addressed to the other party at the address shown above or at such other address for which such party gives notice hereunder. Such notice shall be deemed to have been given ……. days after deposit in the mail.

11.2 Assignment.

The parties may not assign or transfer this Agreement or any of its rights and obligations under this Agreement without the prior written consent of the other party, which shall not be unreasonably withheld. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns including purchasers of their assets constituting a bulk sale.

**12. NO MODIFICATION UNLESS IN WRITING**

No modification of this Agreement shall be valid unless in writing and agreed upon by both Parties.

**13. APPLICABLE LAW**

This Agreement and the interpretation of its terms shall be governed by and construed in accordance with the laws of the State of …….*{state}* ,India and subject to the exclusive jurisdiction of the courts located in India.

IN WITNESS WHEREOF, each of the Parties has executed this Agreement, both Parties by its duly authorized officer, as of the day and year set forth below.

…….*{signature}*

…….*{designation}*

…….*{*COMPANY NAME}

…….*{signature}*

…….*{designation}*

…….*{*AGENT NAME}

**ANNEXURE A**

**PRODUCTS**

**ANNEXURE B**

**TERRITORY**

**ANNEXURE C**

**COMMISSION SCHEDULE**