

# MANUFACTURER'S AGENT AGREEMENT

## TABLE OF CONTENT

	PAGE
RECITALS .....	8
<b>0.00 INTERPRETATION .....</b>	<b>8</b>
0.01 Definitions .....	8
0.01.01 Activities .....	8
0.01.02 Agreement .....	9
0.01.03 Best Effort .....	9
0.01.04 Breach .....	9
0.01.05 Client .....	9
0.01.06 Change in Control .....	9
0.01.07 Confidential Information .....	10
0.01.08 Encumber or Encumbrance .....	10
0.01.09 Force Majeure .....	10
0.01.10 Fundamental Provisions .....	11
0.01.11 Intellectual Property .....	11
0.01.12 Legal Representatives .....	11
0.01.13 Net Value .....	11
0.01.14 Order .....	11
0.01.15 PARTY .....	11
0.01.16 Person .....	11
0.01.17 Prime Rate .....	12
0.01.18 Product(s) .....	12
0.01.19 Related Person .....	12
0.01.20 Territory .....	12
0.02 Precedence .....	12
0.03 Jurisdiction .....	12
0.03.01 Governing Law .....	12
0.03.02 Non-compliance .....	13
(a) Severability .....	13
(b) Substitute Provision .....	13
0.04 Miscellaneous .....	13
0.04.01 Cumulative Rights .....	13
0.04.02 Time and Dates .....	13
(a) Time of the Essence .....	13
(b) Computation of Time .....	13
(c) Delays .....	14
0.04.03 Financial References .....	14
0.04.04 References within Agreement .....	14
0.04.05 Gender and Number .....	14

0.04.06	Headings .....	15
0.04.07	Presumptions .....	15
0.04.08	Knowledge .....	15
0.04.09	Approval .....	15
0.04.10	GAAP .....	15
<b>1.00</b>	<b>PURPOSE .....</b>	<b>15</b>
1.01	Grant .....	15
1.02	Conditions .....	16
1.02.01	Required by MANUFACTURER .....	16
1.02.02	Required by AGENT .....	16
1.02.03	Choice .....	16
<b>2.00</b>	<b>CONSIDERATION .....</b>	<b>16</b>
2.01	Commission .....	16
2.02	Revision .....	16
2.03	Conflicts .....	17
<b>3.00</b>	<b>TERMS OF PAYMENT .....</b>	<b>17</b>
3.01	Exigibility .....	17
3.01.01	Delay .....	17
3.01.02	Notice .....	17
3.01.03	Payment .....	17
3.02	Currency .....	17
3.03	Payment Location .....	17
3.04	Taxes .....	18
3.05	Contest .....	18
3.06	Interest .....	18
<b>4.00</b>	<b>SECURITY .....</b>	<b>18</b>
4.01	In favour of MANUFACTURER .....	18
4.02	In favour of AGENT .....	18
<b>5.00</b>	<b>MUTUAL REPRESENTATIONS AND WARRANTIES .....</b>	<b>18</b>
5.01	Status .....	19
5.02	Authority .....	19
5.03	Binding Agreement .....	19
5.04	Canadian Resident .....	19
5.05	Commission .....	19
5.06	Insurance .....	19
5.07	Nominee .....	20
5.08	Fundamental Provisions .....	20
5.09	Disclosure .....	20
<b>6.00</b>	<b>REPRESENTATIONS AND WARRANTIES OF THE MANUFACTURER .....</b>	<b>20</b>

6.01	Status.....	20
6.02	Authority.....	20
6.03	Binding Agreement.....	21
6.04	Insurance.....	21
6.05	Nominee.....	21
6.06	Fundamental Provisions.....	21
6.07	Disclosure.....	21
6.08	Quality.....	21
6.09	Intellectual Property.....	21
6.10	Compliance with Legislation.....	21
6.11	Production and Delivery.....	22
<b>7.00</b>	<b>REPRESENTATIONS AND WARRANTIES OF THE AGENT.....</b>	<b>22</b>
7.01	Status.....	22
7.02	Authority.....	22
7.03	Binding Agreement.....	22
7.04	Insurance.....	22
7.05	Nominee.....	22
7.06	Fundamental Provisions.....	23
7.07	Disclosure.....	23
7.08	Resources.....	23
7.09	Language.....	23
7.10	Contacts.....	23
7.11	Competition.....	23
<b>8.00</b>	<b>MUTUAL DUTIES AND OBLIGATIONS.....</b>	<b>23</b>
8.01	Confidential Information.....	23
8.01.01	Undertaking.....	24
8.01.02	End of Agreement.....	24
8.02	Insurance.....	24
8.02.01	Insured Risks.....	24
8.02.02	Amount of Coverage.....	24
8.02.03	Issuer.....	25
8.02.04	Co-insured.....	25
8.02.05	No Limitation.....	25
8.03	Indemnification.....	25
8.03.01	"Loss".....	25
8.03.02	Scope.....	25
8.03.03	Procedure.....	26
8.03.04	Deductible.....	26
8.03.05	Limitation on Claims.....	26
8.04	Non-solicitation of Staff.....	27
8.05	Disclosure of Agreement.....	27
<b>9.00</b>	<b>DUTIES AND OBLIGATIONS OF THE MANUFACTURER.....</b>	<b>27</b>

9.01	Exclusivity .....	27
9.01.01	Undertaking .....	27
9.01.02	Exception .....	28
9.02	Production and Supply .....	28
9.02.01	Quantity .....	28
9.02.02	Quality .....	28
9.02.03	Compliance with Legislation .....	28
9.02.04	Responsibility .....	28
9.02.05	Intellectual Property .....	28
9.03	Transportation and Delivery .....	29
9.04	Sale .....	29
9.04.01	Approval .....	29
9.04.02	Response .....	29
9.04.03	Commercial Proposal .....	29
9.05	Promotional Material .....	29
9.06	Technical Support .....	29
9.07	Communication with AGENT .....	30
9.07.01	Correspondance with Potential Clients .....	30
9.07.02	Competing Products .....	30
9.08	Account Management .....	30
9.09	Rendering Account .....	30
<b>10.00</b>	<b>DUTIES AND OBLIGATIONS OF THE AGENT .....</b>	<b>30</b>
10.01	Agency .....	30
10.01.01	Best Effort .....	30
10.01.02	Conduct .....	30
10.02	Representation Manual .....	31
10.03	Promotional Material .....	31
10.04	Rendering Account .....	31
10.04.01	Summary .....	31
10.04.02	Identification Number .....	31
10.04.03	Report .....	31
10.05	Competitive Watch .....	31
10.06	Compliance with the Territory .....	32
10.07	Negotiations .....	32
10.08	No Agreement .....	32
10.09	Entertainment Expenses .....	32
10.10	Non-Competition .....	32
10.10.01	Engagement .....	32
10.10.02	Other Products .....	32
<b>11.00</b>	<b>SPECIAL PROVISIONS .....</b>	<b>33</b>
11.01	Assignment .....	33
11.01.01	Prohibition .....	33

11.01.02	Effect of Breach .....	33
11.01.03	Exception.....	33
11.02	Force Majeure .....	33
11.02.01	No Default .....	33
11.02.02	Duty .....	33
11.02.03	Rights of Other PARTY .....	33
11.03	Relationship .....	34
11.03.01	Independent Contractors .....	34
11.03.02	No Control over Performance .....	34
11.03.03	No Authority to Bind .....	34
11.04	Further Assurances .....	34
11.05	Other Remedies .....	34
11.05.01	Choices .....	34
11.05.02	No Limitations .....	35
11.06	Prescription .....	35
11.07	Intellectual Property.....	35
<b>12.00</b>	<b>GENERAL PROVISIONS .....</b>	<b>35</b>
12.01	Notice.....	35
12.02	Dispute Resolution.....	35
12.02.01	Good Faith Negotiations .....	35
12.02.02	Mediation .....	36
12.02.03	Arbitration.....	36
12.03	Election .....	36
12.04	Counterparts.....	36
12.05	Amendment.....	36
12.06	Waiver of Rights.....	36
12.07	Electronic Transmission .....	37
12.08	Language.....	37
<b>13.00</b>	<b>TERMINATION .....</b>	<b>37</b>
13.01	Mutual Consent.....	37
13.02	Unilateral Termination.....	37
13.03	Without Notice.....	37
13.04	Prior Notice.....	38
13.05	Change of Control.....	38
13.06	Consequences of Termination .....	38
13.06.01	Delivery .....	38
13.06.02	Return .....	38
13.06.03	Commercial Names and Trade-marks.....	38
13.06.04	Documents.....	38
<b>14.00</b>	<b>EFFECTIVE DATE.....</b>	<b>39</b>
14.01	Retroactivity .....	39

14.02 Execution ..... 39

14.03 Deferral ..... 39

**15.00 DURATION ..... 39**

15.01 Probationary or Trial Period ..... 39

15.02 Initial Term ..... 39

15.03 Renewal ..... 39

    15.03.01 First Renewal ..... 39

    15.03.02 Subsequent Renewals ..... 40

15.04 Survival ..... 40

15.05 Non Renewal ..... 40

**16.00 SCOPE ..... 41**

**LIST OF SCHEDULES**

	<b>PAGE</b>
<b>SCHEDULE A – EXCERPT FROM A RESOLUTION OF THE MANUFACTURER.....</b>	<b>42</b>
<b>SCHEDULE B – EXCERPT FROM A RESOLUTION OF THE AGENT .....</b>	<b>43</b>
<b>SCHEDULE 0.01.18 - PRODUCT .....</b>	<b>44</b>

○○○○○



www.eailex.com

MANUFACTURER'S AGENT AGREEMENT entered into in the City of ....., Province of ..... (insert name of province), Canada.

BETWEEN: V1 ..... (name of individual), ..... (occupation), domiciled and residing at ..... (insert civic number and street name), in the City of ..... (insert name of city), Province of ..... (insert name of province), ..... (postal code);

OR

V2 ..... (corporate or business name), a legal person duly incorporated pursuant to the ..... Act (name of statute under which the corporation was incorporated), having its principal place of business at ..... (insert civic number and street name), in the City of ..... (insert name of city), Province of ..... (insert name of province), ..... (postal code);

OR

V3 ..... (corporate or business name), a legal person duly incorporated pursuant to the ..... Act (name of statute under which the corporation was incorporated), having its head or registered office at ..... (insert civic number and street name), in the City of ..... (insert name of city), Province of ..... (insert name of province), ..... (postal code), represented by ..... (name of representative), its ..... (title of representative), duly authorized for the purposes hereof;

OR

V4 ..... (corporate or business name), a legal person, duly incorporated pursuant to the ..... Act (name of statute under which the corporation was incorporated), having its head or registered office at ..... (insert civic number and street name), in the City of ..... (insert name of city), Province of ..... (insert name of province), ..... (postal code), and duly registered under number ..... ( ..... ) in accordance with ..... (insert name of statute pursuant to which the entity is registered), represented by ..... (name of representative), its ..... (title of representative), duly authorized for the purposes hereof as he/she so declares [or as indicated in the resolution of the [sole director or board of directors]];

HEREINAFTER REFERRED TO AS "MANUFACTURER";

AND: ..... (identification of the agent);

HEREINAFTER REFERRED TO AS "AGENT";

MANUFACTURER	AGENT

HEREINAFTER COLLECTIVELY REFERRED TO AS THE "PARTIES".

RECITALS

THE PARTIES MAKE THE FOLLOWING REPRESENTATIONS:

- (A) MANUFACTURER manufactures ..... (description of the product) and it wishes to ensure the wider distribution of such Product;
- (B) MANUFACTURER wishes to entrust the promotion of its Product to agents acting within different territories;
- (C) AGENT is an independent intermediary actively working to promote ..... (description of the type of products) products and it wishes to work on promoting MANUFACTURER's Products;
- (D) It is the intent of the PARTIES to establish a complementary work relationship between them and they wish, for such purpose, to establish a continuous collaboration and constant consultation climate to allow for the elaboration of production, marketing and distribution policies for MANUFACTURER's Products able to ensure the maximal penetration on the target market;
- (E) The PARTIES wish to set out in writing the terms of their agreement regarding such purpose;
- (F) It is the intent of the PARTIES that their agreement be construed as a contract by mutual agreement.

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

0.00 INTERPRETATION

0.01 Definitions

Unless otherwise indicated, capitalized words and expressions appearing in the Agreement shall be interpreted or construed as follows:

0.01.01 Activities

MANUFACTURER	AGENT

means ..... (identify business sector) of ..... (identify subject person);

**0.01.02 Agreement**

means this agreement including its recitals and schedules, any related or ancillary agreement or document identified therein, as well as any amendment made thereto from time to time by the PARTIES in compliance with Section 12.05; the terms "herein", "hereof", "hereto", "herewith", "hereunder", "hereby" and other similar terms, when used in the Agreement, shall generally refer to the agreement as a whole rather than to a specific part thereof, unless otherwise indicated in the text;

**0.01.03 Best Effort**

means the efforts which a prudent Person desirous of achieving a result would use in similar circumstances to maximize, to the extent reasonably practicable, the probability that a result will occur and includes state of the art as it relates to any trade or profession in addition to generally acknowledged best practices in a field of activity;

**0.01.04 Breach**

means any misrepresentation, inaccuracy, error, omission, non-compliance, infringement, failure, claim or other circumstance relating to a representation, warranty, covenant, obligation or other provision of the Agreement leading to:

- (a) any infringement of the Agreement; or
- (b) any claim by any Person or other occurrence or circumstance which (i) is inconsistent with a covenant, obligation or other provision of the Agreement and (ii) causes damage to such Person;

**0.01.05 Client**

Means any client which purchases the Product through AGENT's services;

**0.01.06 Change in Control**

means, in relation to any PARTY to the Agreement whose legal status is that of a business corporation, any one of the following events:

- (a) the direct or indirect acquisition by any Person or entity of securities of such a corporation representing more than FIFTY PERCENT (50%) of the corporation's voting rights;

MANUFACTURER	AGENT

- (b) an agreement for the sale or disposition of all or substantially all of such a corporation's assets;
- (c) a reorganization of such corporation leading to an assignment of a PARTY's rights in the Agreement to a Related Person;
- (d) a merger of such a corporation; or
- (e) the approval by the shareholders of such a corporation of a plan for its complete liquidation;

**0.01.07 Confidential Information**

means any commercial, technical, scientific, financial, legal, personal or other information disclosed by a PARTY relating to the disclosing PARTY's business activities, strategies or opportunities, Intellectual Property, suppliers, customers, financial condition or employees which, at the time of disclosure, is designated as confidential, is disclosed in confidence, or would be understood by the receiving PARTY, exercising reasonable business judgment, to be confidential, but excludes:

- (a) information known to the receiving PARTY before the date on which it is received;
- (b) information known by the public or available to the public before the date on which it is received;
- (c) information which becomes known by or available to the public after the date on which it is received and which does not result from a breach of confidentiality on the part of the receiving PARTY;
- (d) information received at any time by a Person not bound to one of the PARTIES by an undertaking of confidentiality with regard to such information;
- (e) information independently produced by the receiving PARTY;
- (f) personal information provided by an individual when such information is being used for the purpose for which it has been previously disclosed or any other purpose permitted by Law;

**0.01.08 Encumber or Encumbrance**

encumber means to create or grant an encumbrance and encumbrance means a legal cause of preference, a dismemberment of ownership rights, an ownership modality, a restriction on the right to sell or a security interest;

**0.01.09 Force Majeure**

MANUFACTURER	AGENT