



DELIVERING STRATEGIC SOLUTIONS ACCA'S 2000 ANNUAL MEETING

NON-EXCLUSIVE DISTRIBUTION AGREEMENT Brazil

(Rev.)

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THIS AGREEMENT, effective this day of _____, sets forth the mutual promises, understandings, and agreements of _____ ("SUPPLIER") a corporation organized under the laws of the State of _____ with offices at _____, represented by _____, and _____, ("DISTRIBUTOR"), a corporation organized under the laws of the Federative State of Brazil with its place of business at _____, City of _____, State of _____, Brazil, registered with the Ministry of Finance under No. _____, represented by _____, as follows:

WHEREAS, SUPPLIER is in the business of the manufacture, sale, and distribution of office equipment, photocopiers, facsimile machines, and other business machines, as well as parts and supplies ("Products"), throughout Central and South America, and DISTRIBUTOR is in the business of the sale, distribution, and service of various types of business machines and office products in Brazil; and

WHEREAS, SUPPLIER has for many years promoted and marketed its Products and has developed favorable customer approval and good will for the Products, and DISTRIBUTOR believes that the good name and reputation of the Products can be established in Brazil because there is a demand for the Products and because the high quality of the Products would provide DISTRIBUTOR a competitive advantage over other similar products; and

WHEREAS, DISTRIBUTOR, represents that it already has or intends to acquire office space and storage facilities, office equipment, installations, furniture and fixtures, transportation vehicles, and other equipment for use in the ordinary course of its existing business and not for purposes of this Agreement, and that the same will be adequate and sufficient to enable DISTRIBUTOR to perform its duties and responsibilities under this Agreement; and

WHEREAS, DISTRIBUTOR represents that it has already hired or intends to hire without reference to this Agreement sufficient number of qualified personnel to carry out DISTRIBUTOR'S business, including the functions and duties required by this Agreement, and that DISTRIBUTOR does not rely on this Agreement for the purpose of employing or requiring the employment of any employees or contractors; and

WHEREAS, DISTRIBUTOR already enjoys a good business reputation in Brazil and has substantial good will in its existing business, neither of which are dependent upon distributing SUPPLIER Products or performing any services hereunder for SUPPLIER; and

WHEREAS, DISTRIBUTOR and SUPPLIER recognize and agree that at some future time SUPPLIER might decide to sell Products directly into Brazil without further utilizing the services of DISTRIBUTOR, or simultaneously with the distribution of Products by DISTRIBUTOR, but DISTRIBUTOR nevertheless desires to be a distributor of Products and enter into this Agreement because DISTRIBUTOR believes that it can earn profits from the relationship without regard to SUPPLIER's entry into the Brazilian market, and that experience distributing SUPPLIER Products will be helpful in the general development of its own reputation and business;

NOW, THEREFORE, the parties hereto hereby promise and agree as follows with respect to the distribution of Products:

1. Appointment Of Distributor

1.01. ***Appointment:*** SUPPLIER hereby appoints DISTRIBUTOR as an independent and non-exclusive distributor for the distribution and service of Products. As used in this Agreement, the terms "distribution" and "distribute" shall include the sale, lease, or other transfer of Products to Customers within the Territory, all as described in this Agreement.

1.02. ***Acceptance:*** DISTRIBUTOR hereby accepts such appointment; agrees to comply with all of the terms

and conditions of this Agreement; and agrees to comply with all policies and procedures adopted by SUPPLIER for its Distributors relating to the distribution and service of Products.

1.03. **Other Distributors And Customers:** Nothing in this Agreement, or in any subsequent course of conduct of the parties, shall prevent, restrict, or limit SUPPLIER from selling, leasing, or otherwise providing Products to other Distributors within Brazil, or to persons or entities other than DISTRIBUTOR, within Brazil. The appointment of DISTRIBUTOR is not exclusive, and DISTRIBUTOR'S rights with respect to SUPPLIER and the Products are only as expressly set forth herein.

1.04. **Direct Sales By SUPPLIER:** The parties agree and acknowledge that nothing in this Agreement, or in any subsequent course of conduct of the parties, shall prevent, restrict, or limit SUPPLIER from directly selling, leasing, or otherwise providing Products to Customers within the Territory, or any other place within Brazil, and SUPPLIER reserves the right to do so. In the event that SUPPLIER determines to directly enter the market for the distribution of Products within the Territory, or within Brazil, DISTRIBUTOR'S rights and obligations shall be as set forth in paragraph 13.03 of this Agreement.

1.05. **No Conflict Of Interests:** DISTRIBUTOR represents and warrants that at the time of execution of this Agreement it has no conflict of interests that might or could interfere with the full and faithful performance of its duties and obligations under this agreement, and that it will not acquire or be subject to any such conflict of interests during the term of this Agreement.

2. Products, Territory, Authorized Establishments, And SUPPLIER Policies

2.01. **Products:** DISTRIBUTOR shall purchase from SUPPLIER, pursuant to the terms and conditions of this Agreement, various types of business machines and office equipment, appliances, instruments, parts, and supplies ("Products"), all of which are more fully described in "Attachment A," which is attached hereto and incorporated herein.

2.02. **Changes In Product Line:** SUPPLIER reserves the right at any time, and without prior notice to DISTRIBUTOR, to delete or add any Products to the product lines distributed by DISTRIBUTOR pursuant to this Agreement. Any such deletion or addition shall not be a change in or modification of this Agreement, but rather shall be a method of operation under this Agreement that is fully expected and anticipated by DISTRIBUTOR at the time of execution of this Agreement. SUPPLIER may modify any product line, develop new Products, and discontinue old Products in such manner as it chooses.

2.03. **Territory And Limitations Thereon:** (a) All of DISTRIBUTOR'S distribution and service activities shall be carried out and performed only within DISTRIBUTOR'S principal area of sales and service (hereinafter referred to as "Territory"), a description of which is attached hereto, incorporated herein, and marked "Attachment B."

(b) DISTRIBUTOR shall not distribute, transfer, export, or service Products outside the Territory, and shall not sell, lease, or otherwise transfer Products to any person or entity DISTRIBUTOR knows, or has reason to believe, will sell or export Products outside the Territory for commercial purposes. DISTRIBUTOR shall only distribute Products to, and service Products for, persons and entities that acquire the Products for their own personal or business use within the Territory, or for subsequent distribution within the Territory ("Customers").

2.04. **Authorized Establishments And Limitations Thereon:** (a) DISTRIBUTOR shall distribute Products only from those locations within the Territory where DISTRIBUTOR is authorized by SUPPLIER to carry out its business activities under this Agreement ("Authorized Establishments"), a list and description of which is attached hereto, incorporated herein, and marked "Attachment C." Service of Products may be performed in Authorized Establishments, or at Customers' premises, or at other commercially reasonable locations.

(b) DISTRIBUTOR will ensure that all Authorized Establishments are adequate to carry out the business activities that are necessary for DISTRIBUTOR to perform the terms and conditions of this Agreement. DISTRIBUTOR shall, at its own expense, operate and maintain all Authorized Establishments in the manner and condition that maximizes the distribution of Products. DISTRIBUTOR will indemnify, defend, hold harmless, and reimburse SUPPLIER for any liabilities incurred or payments made by SUPPLIER in the event that the laws of Brazil are applied to impose taxes, fees, costs, fines, penalties, or any other form of financial obligation upon SUPPLIER in connection with any Authorized Establishment.

(c) DISTRIBUTOR shall not distribute, market, service, promote, or advertise from the site of any Authorized Establishment any Products that are not approved by SUPPLIER. Under no circumstances shall DISTRIBUTOR distribute, market, service, promote, or advertise within the Territory any products that are competitive with any SUPPLIER Products.

2.05. **Changes And Modifications:** The provisions of Attachments A, B, and C of this Agreement may be amended by written notice to DISTRIBUTOR by SUPPLIER, and any such amendments shall be and be deemed to be incorporated into this Agreement as superseding any prior provisions.

2.06. **SUPPLIER Policies And Procedures:** DISTRIBUTOR shall comply with the terms, conditions, and requirements of all current SUPPLIER Sales and Service Policies and Procedures, however named or denominated, that have been communicated in writing by SUPPLIER to DISTRIBUTOR.

2.07. **Demonstration Products:** From time to time SUPPLIER may make certain types of Products available to DISTRIBUTOR in order to enable DISTRIBUTOR to demonstrate such Products in its Authorized Establishments. SUPPLIER may offer prices and payment terms for such demonstration Products that are different from corresponding prices and payment terms for Products sold to DISTRIBUTOR for subsequent distribution within the Territory. DISTRIBUTOR'S obligation to make payments for demonstration Products is subject to this Agreement, and SUPPLIER'S rights and remedies provided herein with respect to requiring and securing payment for Products sold to DISTRIBUTOR for subsequent distribution shall also apply to demonstration Products. DISTRIBUTOR expressly agrees that SUPPLIER may retain title to any demonstration Products in order to secure payment of the purchase price thereof.

3. Sales Quota And Distribution Operations

3.01. **Sales Quota:** DISTRIBUTOR shall purchase Products from SUPPLIER in quantities and amounts that are equal to the Sales Quota. For purposes of this Agreement, the term "Sales Quota" means the U.S. dollar amounts of purchases of Products, and the quantities or units of Products, that are determined by SUPPLIER at periodic intervals, not more frequently than thirty (30) days, by written notification to DISTRIBUTOR. At SUPPLIER's option, the Sales Quota may be measured by U.S. dollar amounts of Products purchased by DISTRIBUTOR, or by units of Products purchased by DISTRIBUTOR, or by a combination of both methods, and may be changed from one method to another method at SUPPLIER's option.

3.02. **Determination Of Sales Quota:** Each Sales Quota shall be deemed to be accepted by, and be binding upon, DISTRIBUTOR unless DISTRIBUTOR, within thirty (30) days after receipt of any written notification of a Sales Quota, notifies SUPPLIER in writing that it does not accept the Sales Quota. In such event, the parties shall attempt to reach an agreement with respect to the Sales Quota, and if, in the judgement of either party, an agreement cannot be reached, then either party may terminate this Agreement by giving thirty (30) days written notice to the other party. If the parties do not reach an agreement, and neither party gives notice of termination as set forth above, then the applicable Sales Quota shall be the Sales Quota that was effective immediately prior to the Sales Quota that is not agreed upon, plus an additional amount of twenty (20%) percent of the numbers of units and U.S. dollar amounts of purchases specified in such prior Sales Quota.

3.03. **Business Growth And Mutual Benefit:** (a) DISTRIBUTOR shall, in all activities with respect to the

distribution and service of Products, promote, build, and support the reputation of SUPPLIER, and shall use its best efforts to enable SUPPLIER'S goodwill, reputation for quality, and customer satisfaction that exists for SUPPLIER Products in other countries to be developed and established within Brazil.

(b) DISTRIBUTOR agrees that any benefits received by SUPPLIER from the growth of SUPPLIER'S business reputation and goodwill in Brazil are also benefits to DISTRIBUTOR because of opportunities for DISTRIBUTOR to distribute additional Products and to receive additional income from such increased distribution. DISTRIBUTOR'S compensation for performing the obligations set forth in subparagraph (a) of this paragraph shall be (1) the consideration set forth in this Agreement, (2) the gross income received by DISTRIBUTOR from the general distribution and service of Products, and (3) the gross income received by DISTRIBUTOR that specifically results from DISTRIBUTOR'S activities pursuant to subparagraph (a) hereof. DISTRIBUTOR further agrees that the opportunity to receive income, and the actual receipt of income, from the distribution and service of Products constitutes sufficient and adequate compensation and payment for the performance of all of DISTRIBUTOR'S work pursuant to this Agreement.

3.04. No Other Financial Obligations: DISTRIBUTOR shall not have or claim to have, by virtue of DISTRIBUTOR'S activities pursuant to this Agreement, any financial or other interest in any goodwill related to the Products, or in any value added to the Products, or to the business reputation of SUPPLIER in Brazil. It is further agreed and understood that the income received by DISTRIBUTOR pursuant to this Agreement has been conclusively determined by the Parties to be in amounts that are full, fair, complete, and adequate compensation in all respects without regard to goodwill, and that such income is in lieu of, and an alternative to, any other payments which DISTRIBUTOR might claim as a result of termination or nonrenewal of this Agreement.

4. Service And Maintenance Requirements

4.01. Product Services And Service Procedures: (a) DISTRIBUTOR shall hold itself out to perform, and shall perform at its expense, all necessary installation, service, repair, and maintenance functions and responsibilities ("Product Services") with respect to Products that are distributed by or on behalf of DISTRIBUTOR in the Territory. All Product Services shall conform to service policies, procedures, guidelines, and instructions ("Service Procedures") established by SUPPLIER. Service Procedures may be modified by SUPPLIER by written notice to DISTRIBUTOR.

(b) Notices may refer to or describe Product Services and Service Procedures by other names or titles, such as but not limited to "Sales and Service Policies and Procedures." Such other names and titles that are used by SUPPLIER will be sufficient to make clear that the same are intended to be within DISTRIBUTOR'S duties and responsibilities under this Agreement.

4.02. Spare Parts And Supplies: DISTRIBUTOR shall establish and maintain at each Authorized Establishment an inventory of spare parts, components, and supplies for the Products in such types and quantities as are necessary to provide adequate Product Services for the Products as set forth in the Service Procedures. In providing Product Services DISTRIBUTOR shall use and utilize only spare parts, components, supplies, specialized tools, and related materials which SUPPLIER shall supply to DISTRIBUTOR at DISTRIBUTOR'S expense, and DISTRIBUTOR shall not, without the express written permission of SUPPLIER, use or utilize any spare parts, components, supplies, specialized tools, or related materials other than those supplied by SUPPLIER.

4.03. Conditions To Provide Services; Training: DISTRIBUTOR shall maintain a staff of qualified technicians and service personnel in sufficient numbers and availability to adequately provide the Product Services described in paragraph 4.01 of this Agreement. All technicians and other service personnel that

perform Product Services must complete such training and instructional courses as SUPPLIER shall determine. Training and instruction may be performed by SUPPLIER or by a third party designated by SUPPLIER, and shall be provided at times and locations selected by SUPPLIER. SUPPLIER may determine the level and types of training and instruction necessary prior to the commencement of distribution of Products by DISTRIBUTOR from any Authorized Establishment, prior to the introduction of new products or models, or at any other time.

4.04. *Service Records:* DISTRIBUTOR shall maintain, in accordance with Service Procedures, a complete record of sales, leases, and transfers of Products to Customers, a complete history of Product Services with respect to each sale, lease, or transfer of Products by DISTRIBUTOR, and shall maintain such other records as may be required by Service Procedures. SUPPLIER may at all reasonable times, and during all normal business hours, inspect and review DISTRIBUTOR's service facilities and service records for the Products, and make copies of all such records. SUPPLIER will keep DISTRIBUTOR'S service records confidential, and will only use such records for purposes related to proper and adequate service for the Products.

4.05. *Continuation Of Product Services By DISTRIBUTOR:* (a) Except as provided in paragraph 4.06 hereof, DISTRIBUTOR shall, upon nonrenewal or termination of this Agreement, continue to perform for the period described in subparagraph (b) of this paragraph, all necessary Product Services in accordance with Service Procedures with respect to all Products distributed by DISTRIBUTOR prior to such nonrenewal or termination. SUPPLIER shall continue to supply to DISTRIBUTOR, and DISTRIBUTOR shall continue to purchase, at the then current retail list price, such spare parts and other items as are necessary to meet the requirements of paragraph 4.02 of this Agreement.

(b) DISTRIBUTOR'S obligations to provide Product Services pursuant to subparagraph (a) of this paragraph shall continue for a period of three (3) years after nonrenewal or termination of this Agreement, or such shorter period of time as determined by SUPPLIER; provided, however, that with respect to any Product that has been discontinued by SUPPLIER, DISTRIBUTOR'S obligation to provide such Product Services shall terminate at the earlier of three (3) years after nonrenewal or termination of this Agreement, or five (5) years after such Product was discontinued, or such earlier time as determined by SUPPLIER.

4.06. *Continuation Of Product Services By Third Party:* Notwithstanding paragraph 4.05 of this Agreement, upon nonrenewal or termination of this Agreement, SUPPLIER may designate another person or entity to perform the Product Services referred to in paragraph 4.05. Upon being notified thereof DISTRIBUTOR shall forthwith deliver to SUPPLIER, or to such other person or entity as directed by SUPPLIER, all records, documents, and other materials described in paragraph 4.04.

5. Prices, Discounts, and Payments

5.01. *Subject To Change:* All prices and payment terms for Products purchased by DISTRIBUTOR pursuant to this Agreement are subject to change by SUPPLIER without advance notice; provided, however, that orders for Products placed by DISTRIBUTOR prior to the effective date of a price change shall not be subject to such price change. SUPPLIER may offer, modify, withdraw, and terminate discounts or other price incentives at such times and under such circumstances as it in its discretion determines. The effective date of any action taken pursuant to this paragraph shall be as determined by SUPPLIER.

5.02. *Purchase Price For Products:* The purchase price for Products sold to DISTRIBUTOR hereunder shall be in accordance with SUPPLIER'S then current price list for distributors, less any discount or other price incentive that is applicable depending upon the transaction.

5.03. *Payment Of Purchase Price:* (a) DISTRIBUTOR shall pay to SUPPLIER the full amount of the purchase price of the Products on or before the due date of any invoice with respect to such Products. SUPPLIER may require payment in advance for any shipment of Products by tendering the invoice to

DISTRIBUTOR prior to shipment. The purchase price for each invoice shall be payable in U.S. dollars unless a different currency is specified by SUPPLIER for any specific invoice.

(b) SUPPLIER may, at its option, require payment by irrevocable letter of credit issued or confirmed by a bank in the United States acceptable to SUPPLIER. The amounts payable under such letters of credit shall be payable on sight against delivery by SUPPLIER of documents showing that the Products subject to the purchase order and secured by the letter of credit have been delivered to a carrier at the designated F.O.B. destination.

(c) The terms and provisions of this Agreement with respect to payment by DISTRIBUTOR for Products shall also apply to payment by DISTRIBUTOR for the spare parts and supplies described in paragraph 4.02 hereof.

5.04. *Unpaid Amounts; No Waiver:* (a) Any amounts that are unpaid after the due date of any invoice will bear interest at an annual rate equal to one percent above the then highest prime rate of interest charged by any bank operating in New York, New York that is selected by SUPPLIER at the time. If, however, such rate is higher than the highest rate of interest lawfully chargeable under local law, then the rate of interest shall be the maximum lawful rate of interest.

(b) At any time that DISTRIBUTOR has not paid the full amount of any invoice by its due date SUPPLIER may, at its option, decline to sell additional Products to DISTRIBUTOR until all invoices due are paid in full. SUPPLIER may also, at its option without waiver of any rights to receive full and prompt payment of unpaid invoices or any future invoices, continue to supply Products or continue to make parts and supplies available on terms determined by SUPPLIER.

5.05. *Cost Components Of Prices; Shipment:* (a) All prices are F.O.B. the applicable SUPPLIER facility for Products as designated by SUPPLIER. SUPPLIER may provide Products from its stock or the stocks of any affiliated company, and may, at its discretion, cause such affiliated company to ship the Products from its facility, F.O.B. that facility.

(b) DISTRIBUTOR shall be responsible for all transportation and freight costs, insurance premiums, taxes, fees, duties, inspection costs, and all other liabilities, charges, or expenses incurred, charged, or payable after SUPPLIER has placed the Products in the custody of a carrier at the place of shipment to DISTRIBUTOR. DISTRIBUTOR agrees to indemnify, defend, hold harmless, and reimburse SUPPLIER with respect to all costs, taxes, fees, fines, penalties, judgments, awards, and other expenses and liabilities to which SUPPLIER is or could be subject with respect to claims or other matters that relate to the time after the Products have been placed in the custody of any such carrier.

5.06. *Credit Risks:* DISTRIBUTOR shall be responsible for all credit risks with respect to, and for collecting payment for, all Products distributed in Brazil, whether or not DISTRIBUTOR has made full payment to SUPPLIER for such Products. The inability of DISTRIBUTOR to collect the purchase price for any such Products shall not affect the obligation of DISTRIBUTOR to make full and timely payment to SUPPLIER for the Products. Paragraph 16.07 of this Agreement shall not apply to this paragraph, or to any of DISTRIBUTOR'S payment obligations under paragraphs 5.03 and 5.04 of this Agreement.

5.07. *Acceptance Of Orders By SUPPLIER:* All orders for Products submitted by DISTRIBUTOR to SUPPLIER are subject to SUPPLIER's acceptance thereof. SUPPLIER hereby reserves its right to refuse any order, as well as to cancel any order or part thereof after having accepted the same, for reasons relating to DISTRIBUTOR's credit, payment history or current financial condition, or for any other reason deemed sufficient by SUPPLIER. No prior course of dealing between the parties shall create or be deemed to have created any obligation on the part of SUPPLIER to accept any order from DISTRIBUTOR for Products, and the fact that SUPPLIER has accepted any orders from DISTRIBUTOR in the past may not be relied upon by DISTRIBUTOR as a basis for expecting that any future orders from DISTRIBUTOR will be accepted by

SUPPLIER.

6. Delivery, Inspection, Loss

6.01. Risk Of Loss; Inspection Prior To Departure: SUPPLIER shall have no responsibility for any damage, loss, casualty, shortage, or nonconformity with respect to the shipment of any Products after such Products have been placed in the custody of a carrier as described in paragraph 5.05 of this Agreement. Upon DISTRIBUTOR'S request SUPPLIER will give written notice to DISTRIBUTOR when any specific shipment is to be placed in the custody of a carrier, and SUPPLIER will cooperate with DISTRIBUTOR in the event DISTRIBUTOR desires, at DISTRIBUTOR's expense, to inspect any such shipment prior to the time that the carrier has sealed the vessel or has otherwise taken action that would render inspection impractical.

6.02. Failure Or Delay In Shipment: SUPPLIER shall not be liable in any respect for failure to ship Products or for delay in shipment or arrival of Products where such failure or delay is due wholly or in part to any shortage or curtailment of material, labor, transportation or utility services, or to any labor or production difficulty in SUPPLIER's plants or those of its suppliers, or to any cause beyond SUPPLIER's control or without SUPPLIER's fault or negligence. In the event of shortages of Products, or the unavailability of Products, SUPPLIER may in its sole discretion decrease or suspend sales or deliveries, or allocate the shipment of Products among its distributors and other purchasers, including DISTRIBUTOR, in such manner as SUPPLIER deems appropriate.

6.03. Inspection Upon Arrival: DISTRIBUTOR shall inspect the Products within ten (10) days after they are received in Brazil, and shall, within five (5) days after such inspection notify SUPPLIER in writing of any shortage or other nonconformity if, in any respect, the Products that arrived in Brazil are not the Products that were ordered by DISTRIBUTOR. In the absence of such written notice, it shall be conclusively presumed that the Products shipped by SUPPLIER conform to the orders placed by DISTRIBUTOR. DISTRIBUTOR shall be responsible for making any claim for damage, loss, casualty, or shortage to the applicable carrier or carriers.

7. Warranties, Product Registration, Indemnity, And Return Of Products

7.01. SUPPLIER'S Warranty To DISTRIBUTOR: SUPPLIER shall from time to time advise DISTRIBUTOR in writing of any express warranty or warranties applicable to any Products. Such warranties may be limited to a particular Product or Product line, or may be more general as determined by SUPPLIER. Such warranty or warranties given by SUPPLIER shall not under any circumstances extend to, apply to, or be available to, any Customer, or to any person or entity in Brazil other than DISTRIBUTOR. DISTRIBUTOR is expressly prohibited from offering, giving, or extending any warranty or warranties for or on behalf of SUPPLIER to any Customer, or other person or organization, and DISTRIBUTOR represents that it will not do so.

7.02. DISTRIBUTOR'S Warranty To Customers: DISTRIBUTOR shall, at its own expense, offer, give, provide, and extend to each Customer in the Territory, without regard to acceptance thereof by the Customer, DISTRIBUTOR'S own warranty or warranties, which shall be at least equivalent to and no less extensive than the warranty or warranties given by SUPPLIER to DISTRIBUTOR.

7.03. No Other Warranties; DISCLAIMER: THERE SHALL BE NO OTHER WARRANTIES GIVEN BY SUPPLIER, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, OR ANY OTHER OBLIGATION ON THE PART OF SUPPLIER WITH RESPECT TO ANY OF THE PRODUCTS, EXCEPT THE EXPRESS WARRANTY OR WARRANTIES DESCRIBED IN AND GIVEN ONLY TO DISTRIBUTOR PURSUANT TO SUPPLIER'S AGREEMENT WITH DISTRIBUTOR (PARAGRAPH 7.01). SUPPLIER DOES NOT OFFER ANY WARRANTIES OF ANY KIND TO CUSTOMERS IN BRAZIL. THIS

EXCLUSION OF WARRANTIES TO CUSTOMERS IN BRAZIL COVERS ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND WARRANTIES OF FITNESS FOR ANY PARTICULAR PURPOSE. ANY CLAIM BY CUSTOMERS IN BRAZIL BASED ON ANY WARRANTY SHALL BE MADE TO DISTRIBUTOR AND NOT TO SUPPLIER.

7.04. SUPPLIER'S Obligations Under Warranty: In any event, and notwithstanding anything herein to the contrary, SUPPLIER's liability under any express warranties made by SUPPLIER to DISTRIBUTOR shall be discharged by replacing or repairing any part or parts which prove defective under normal and proper use within the effective period of the warranty if shown to be defective by proper evidence that is submitted by DISTRIBUTOR to SUPPLIER. In cases where SUPPLIER has given an express warranty to DISTRIBUTOR with respect to any Product and repair or replacement of parts is not practical, SUPPLIER'S liability shall not in any case exceed the purchase price actually paid by DISTRIBUTOR to SUPPLIER for such Product. SUPPLIER shall have no liability whatsoever for any special, indirect, incidental, or consequential damages or losses under any circumstances.

7.05. No Liability To DISTRIBUTOR; Indemnity: (a) Except as set forth in subparagraphs (b) and (c) of this paragraph, if DISTRIBUTOR shall be liable to any Customer or other person or entity for injury or damages relating to any Product, whether such liability is based upon tort, contract, warranty, or any other theory under the laws of the United States or Brazil, or any political subdivision of either, DISTRIBUTOR shall have no claim against SUPPLIER for contribution or payment of such liability, and DISTRIBUTOR hereby waives, disclaims, and renounces its right to make any such claim against SUPPLIER.

(b) Subject to subparagraph (c) of this paragraph, SUPPLIER agrees to indemnify, defend, hold harmless, and reimburse DISTRIBUTOR with respect to all liabilities, damages, costs, expenses, judgements, and reasonable attorneys fees incurred by DISTRIBUTOR arising out of personal injury or property damage caused by any defect in the design or manufacture of any Product that was not at any time known to DISTRIBUTOR, or was not at any time reasonably discoverable by DISTRIBUTOR.

(c) SUPPLIER'S obligation to indemnify DISTRIBUTOR as described in subparagraph (b) of this paragraph shall exist only if (1) DISTRIBUTOR provides SUPPLIER with prompt written notice of the claim or action that could result in DISTRIBUTOR'S liability, (2) DISTRIBUTOR provides SUPPLIER the opportunity to supervise and control the defense of the claim or action, including the opportunity to select and direct local counsel, (3) DISTRIBUTOR fully cooperates with and assists SUPPLIER in such defense, and provides to SUPPLIER all information known to DISTRIBUTOR about the claim or action, and (4) in the event DISTRIBUTOR'S liability arises because of settlement of the claim, SUPPLIER has approved the terms and conditions of the settlement.

(d) DISTRIBUTOR agrees to indemnify, defend, hold harmless, and reimburse SUPPLIER with respect to all liabilities, damages, costs, expenses, judgements, and reasonable attorneys fees incurred by SUPPLIER arising out personal injury or property damage caused by any Product for any reason other than a defect in design or manufacture referred to in subparagraph (b) of this paragraph.

7.06. Termination Of Warranties And Indemnity: Notwithstanding any other provision of this Agreement, or any course of conduct to the contrary, any and all of SUPPLIER'S warranties shall immediately cease, terminate, and have no legal effect, and SUPPLIER'S obligation to provide indemnity under subparagraphs (b) and (c) of paragraph 7.05 shall immediately cease, terminate, and have no legal effect, in the event that any of the following occurs:

(a) Any Products, parts thereof, or any structural components or appurtenances with respect thereto are altered or modified without the express written consent of SUPPLIER.

- (b) The serial number or any other identification number or mark of any Product, accessory part thereto, or component has been altered or made unidentifiable.
- (c) Any products are used or operated under circumstances for which the Products were not designed, contemplated, or intended by SUPPLIER to be used.
- (d) Any Products are used or operated in combination with any products or materials not supplied by SUPPLIER.
- (e) Any Products are used or operated in accordance with improper instructions or directions provided by DISTRIBUTOR or any person or organization under DISTRIBUTOR'S control, or DISTRIBUTOR or any person or organization under DISTRIBUTOR'S control has failed to give proper instructions or directions with respect to the use or operation of any Products.
- (f) The injury, loss, or damage claimed by any Customer or third party has resulted, in whole or in part, from the fault or negligence of DISTRIBUTOR or any person or organization under DISTRIBUTOR'S control.

7.07. Notification To Customers: DISTRIBUTOR shall include the provisions of paragraph 7.03 of this Agreement, in both the English and Portuguese languages, in each and every contract it enters into with a Customer with respect to distribution of Products, and shall take any other action required or permitted by the law of Brazil that is necessary to make clear to all Customers that SUPPLIER does not extend any warranty to any Customer with respect to any Product, and that the only warranties that are intended to exist and that exist for Customers are the warranties of DISTRIBUTOR and are not warranties of SUPPLIER.

7.08. Return Of Products: DISTRIBUTOR shall not return any Products to SUPPLIER without prior approval of SUPPLIER. DISTRIBUTOR shall not directly or indirectly authorize or encourage any Customer to return any Products to SUPPLIER without prior approval of SUPPLIER. If any Product is returned to SUPPLIER by any Customer of DISTRIBUTOR following DISTRIBUTOR's instructions, suggestions, or failure to discourage the same when the opportunity arises, all costs and expenses incurred by SUPPLIER, and the risk of any loss or damage to the Products in connection therewith, shall, subject to any of SUPPLIER's warranties to DISTRIBUTOR on the Products, be invoiced to and paid by DISTRIBUTOR. Notwithstanding the foregoing, DISTRIBUTOR may return expired Products provided they are returned to SUPPLIER within thirty (30) days following the expiration date, and provided further that the Products have not been previously sold, leased, loaned, or used as a demonstration product by DISTRIBUTOR or any other person or organization and, where applicable, are still in their original package form or container.

8. Reports

8.01. Monthly Reports: DISTRIBUTOR shall furnish to SUPPLIER, promptly after the end of each month, a detailed, accurate, and comprehensive report showing DISTRIBUTOR'S inventory of Products at the beginning and end of the month, its purchases and sales during the month, pending orders at the end of the month with Customers, and pending orders at the end of the month with SUPPLIER. Such reports shall be considered as representations by DISTRIBUTOR, and any misrepresentation, omission, or concealment of any facts or information, will constitute grounds, at SUPPLIER's discretion, to terminate this Agreement.

8.02. Other Reports: DISTRIBUTOR shall send SUPPLIER such other monthly or periodical reports and information as SUPPLIER shall require, and shall comply with such other standards of performance and instructions as may be reasonably issued or required by SUPPLIER.

8.03. Sales Forecast: DISTRIBUTOR shall submit to SUPPLIER, at least thirty (30) days before the end of each calendar year, its forecast of sales in the Territory by individual Product, and units thereof, for the next

calendar year.

9. Compliance With Law, Product Registration, Third Parties

9.01. **Compliance With Local Law:** DISTRIBUTOR shall obtain, and warrants that it will obtain, all permits, licenses, authorizations, and approvals required by the laws of Brazil, or any other appropriate governmental authority within Brazil, to perform the duties and responsibilities required by this Agreement. DISTRIBUTOR agrees to indemnify, defend, hold harmless, and reimburse SUPPLIER with respect to all fees, taxes, fines, penalties, judgments, awards, and other costs to which SUPPLIER is or could be subject as a result of the failure of DISTRIBUTOR to comply with the terms of this paragraph.

9.02. **Product Registration:** (a) DISTRIBUTOR shall cooperate in obtaining any registrations or approvals of Products, and amendments thereof, that may be required by the law of Brazil for the distribution of Products in the Territory. Costs of registration or approval shall be paid by DISTRIBUTOR.

(b) All Product registrations and approvals shall be the property of SUPPLIER. In the event that any Product registrations or approvals must be obtained in the name of DISTRIBUTOR, DISTRIBUTOR shall, upon nonrenewal or termination of this Agreement, either assign the registrations and approvals to SUPPLIER or surrender the same to SUPPLIER for cancellation, as directed by SUPPLIER.

9.03. **Use Of Third Parties By DISTRIBUTOR:** For purposes of this Agreement, all references to "DISTRIBUTOR" with respect to any of its duties and obligations hereunder shall also include and be deemed to include any other person or organization utilized by or on behalf of DISTRIBUTOR for the performance of such duties and obligations. Utilization by DISTRIBUTOR of such other persons or organizations shall not relieve DISTRIBUTOR of any of its duties or obligations hereunder. DISTRIBUTOR shall be responsible to SUPPLIER for ensuring that all such other persons or organizations perform the duties and obligations that DISTRIBUTOR itself would have with respect to SUPPLIER if DISTRIBUTOR were performing the functions, services or activities to which the duties or obligations relate. Nothing in this paragraph shall limit or restrict any remedies SUPPLIER would otherwise have at law or equity.

10. Proprietary Property; Patents

10.01. **License:** DISTRIBUTOR shall have a non-exclusive, revocable, nonassignable, and nontransferable license to use such trademarks, service marks, trade names, logos, intellectual property, and other confidential information (hereinafter "Proprietary Property") of SUPPLIER as are designated in writing by SUPPLIER for use by DISTRIBUTOR in performing services hereunder, and for no other purposes. Said written designation by SUPPLIER must refer to this paragraph in order to be effective or relied upon by DISTRIBUTOR. The license granted herein may be terminated, revoked, or modified by SUPPLIER at any time for any reason.

10.02. **No Transfer Of Interest:** DISTRIBUTOR agrees that SUPPLIER owns the Proprietary Property and that DISTRIBUTOR shall not acquire any right, title, or interest in the Proprietary Property anywhere in the world, other than the license to use the Proprietary Property as set forth herein. Any goodwill generated by such use shall inure to the benefit of SUPPLIER. DISTRIBUTOR shall not, by virtue of this Agreement, any usage by DISTRIBUTOR, or any action or inaction by SUPPLIER, acquire or be deemed to have acquired any legal, equitable, or other rights to or in the Proprietary Property. The rights of DISTRIBUTOR with respect to the Proprietary Property shall at all times be subordinate to and secondary to the rights of SUPPLIER with respect to the Proprietary Property.

10.03. **Prohibited Actions; Rights In Proprietary Property:** Without limiting any other provision of this Agreement, DISTRIBUTOR shall not, directly or indirectly, or in conjunction with any third party, do any of the following:

- (a) Register or attempt to register, in its own name or otherwise, in any country, the Proprietary Property, or any claimed right therein.
- (b) Apply, petition, or take any other action with respect to any governmental authority of any country or political subdivision for any permission or authority to use, or make any claim to, the Proprietary Property; provided, however, that this paragraph shall not be construed to prevent the registration of this Agreement to the extent required by law.
- (c) Do any other thing, whether an act or omission, that might affect, hamper, or impair ownership by SUPPLIER of its Proprietary Property, or its right to register the Proprietary Property in any country.

10.04. ***Prohibited Actions; Use Of Proprietary Property:*** Without limiting any other provision of this Agreement, DISTRIBUTOR shall not, directly or indirectly, or in conjunction with any third party, do any of the following:

- (a) Use the Proprietary Property in any manner which could, with respect to any third party, cause confusion or mistake, or could result in deception with respect to any of the Proprietary Property;
- (b) Use the Proprietary Property in such manner that it may become generic or diluted or otherwise lose its status as an exclusive trademark, trade name, or symbol of SUPPLIER.
- (c) Adopt or use any word or combination of words, or any design, symbol, logo, graphic interpretation, or combination thereof that is or may be deemed similar to the Proprietary Property.
- (d) Use the Proprietary Property in any manner which might adversely affect the reputation or diminish the goodwill of SUPPLIER, or mislead the public into believing that

DISTRIBUTOR is itself SUPPLIER, or an affiliate, subsidiary, branch, or any other part of SUPPLIER.

10.05. ***No Agency Or Representation:*** DISTRIBUTOR shall not, in using the Proprietary Property, or at any other time, directly or indirectly represent or imply, or allow any other party to represent or imply, that DISTRIBUTOR or such other party is acting in any capacity other than as an independent contractor as to SUPPLIER, and DISTRIBUTOR shall not use the Proprietary Property to hold itself out or present itself as an agent, sales representative, partner, joint venturer, or other affiliate of SUPPLIER.

10.06. ***Protection Of Proprietary Property:*** DISTRIBUTOR shall make every effort to control and protect the use of the Proprietary Property; shall use its best efforts to stop any unauthorized use thereof; and shall immediately advise SUPPLIER in writing of any such unauthorized use.

10.07. ***Breach:*** Any action by or on behalf of DISTRIBUTOR that is inconsistent with paragraphs 10.03 through 10.06 of this Agreement shall constitute a breach of the Agreement, and SUPPLIER shall have the right to immediately terminate this agreement without requirement for any judicial or extra-judicial notice or interpellation to DISTRIBUTOR; to seek any restraining order, injunction, or other equitable relief or equivalent thereof; and to recover damages for such breach.

10.08. ***Automatic Termination Of License:*** (a) The license granted hereunder shall automatically terminate upon the nonrenewal or termination of this Agreement without requirement for any judicial or extra-judicial notice or interpellation to DISTRIBUTOR, and shall also automatically terminate immediately upon receipt of

written notice by DISTRIBUTOR in the event that SUPPLIER elects to give notice to DISTRIBUTOR that the license is terminated.

(b) Notwithstanding and in addition to any other terms or provisions of this Agreement, the license granted hereunder shall also automatically terminate and be deemed to have automatically terminated (1) immediately prior to the time that any custom or usage, or any provision of any law of any country or political subdivision thereof, or any other facts or circumstances, would result in the acquisition by DISTRIBUTOR of any legal, equitable, or other rights to or in the Proprietary Property, and (2) immediately prior to the time that DISTRIBUTOR takes or attempts to take any action prohibited by the terms of paragraphs 10.03 through 10.06 of this Agreement, or attempts or purports to assign, or otherwise transfer any claimed rights in the Proprietary Property.

10.09. Patent Infringement: DISTRIBUTOR shall immediately notify SUPPLIER of any actual or threatened infringement of any patent on SUPPLIER Products, or of any legal action commenced or claim made in Brazil by any third party with respect to such patents. SUPPLIER will investigate and defend DISTRIBUTOR in all claims and actions against DISTRIBUTOR for any alleged infringement of any patent arising from the distribution or normal use of the Product. If DISTRIBUTOR gives SUPPLIER prompt and timely notice of any claims against DISTRIBUTOR, and allows SUPPLIER to fully deal with and defend such claims, SUPPLIER will pay any final judgments, costs, and expenses in connection with such claims or actions against DISTRIBUTOR.

11. Indemnity and Insurance

11.01. General Indemnity: Without regard to, separate from, and in addition to, any other provisions of this Agreement or other provisions of law, each party agrees to indemnify, defend, hold harmless, and reimburse the other party with respect to all liabilities, damages, costs, expenses, awards, fines, penalties, judgments, taxes, duties, imposts, reasonable, attorneys fees and any other monetary amounts of any nature whatsoever incurred by or claimed against one party as a result of the negligence of the other party, or incurred by or claimed against one party as a result of the failure of the other party to perform any of the duties, responsibilities, representations, warranties, functions, or obligations imposed by, created under, or arising out of this Agreement.

11.02. Insurance: If DISTRIBUTOR is covered by or purchases general liability insurance or other insurance to cover any risks of personal injury or property damage arising from or related to the use or operation of Products, DISTRIBUTOR shall obtain a quote or other statement of premium costs for adding SUPPLIER as an additional insured to the policy or otherwise bringing SUPPLIER within the policy coverage. DISTRIBUTOR shall inform SUPPLIER of the amount thereof, and shall provide SUPPLIER the opportunity to become an additional insured or otherwise be covered under the terms of the policy.

12. Relationship Of The Parties

12.01. Independent Contractor: The relationship between SUPPLIER and DISTRIBUTOR is and shall be one in which DISTRIBUTOR shall distribute Products and provide services hereunder solely as an independent contractor. At no time shall DISTRIBUTOR, or any of its agents, employees, or contractors, or any other party utilized by DISTRIBUTOR, be or be deemed to be the agent, partner, joint venturer, representative, or employee of SUPPLIER. DISTRIBUTOR shall not have any power or authority to enter into any contract, agreement, or commitment on behalf of SUPPLIER, or to contractually bind SUPPLIER in any manner whatsoever, and DISTRIBUTOR represents that it will not attempt to do so. DISTRIBUTOR shall carry out at its own risk and responsibility, and on its own behalf, all distribution and service activities required by or performed pursuant to this Agreement.

12.02. Employees And Agents: All personnel performing functions hereunder with respect to the distribution

of Products and providing services with respect to Products shall be employees or contractors of DISTRIBUTOR, or any other person or organization that might be utilized by DISTRIBUTOR, and shall not be employees, contractors, or agents of SUPPLIER for any purpose, including but not limited to purposes under the laws of the United States, or any political subdivision thereof, or Brazil, or any other appropriate governmental authority within Brazil, with respect to unemployment insurance laws, social security or retirement laws, old age benefits, workmen' compensation laws, tax laws, laws relating to income or benefits, or any other laws. Such personnel are not eligible for, and SUPPLIER is not required to pay, any benefits or other emoluments that are available to or paid to employees of SUPPLIER.

12.03. Local Taxes And Costs; Indemnity: DISTRIBUTOR, and all other persons or organizations utilized by DISTRIBUTOR, shall, to the exclusion of SUPPLIER, be solely and exclusively responsible for the payment of all taxes, surtaxes, fees, and duties, including but not limited to income, employment, unemployment, property, excise, value added, sales, use, and other taxes and imposts, customs duties or taxes, stamp duties or taxes, registration fees, and any other governmental charges that are imposed by the Government of Brazil, or any other appropriate governmental authority within Brazil, with respect to the distribution of Products and services pursuant to this Agreement by DISTRIBUTOR, or by any other person or organization that is utilized by DISTRIBUTOR. DISTRIBUTOR agrees to pay such taxes, surtaxes, fees, duties, and other charges when they are due and payable, and further agrees to indemnify, defend, hold harmless, and reimburse SUPPLIER with respect to any liabilities incurred or payments made by SUPPLIER in the event the laws of Brazil, or any other appropriate governmental authority within Brazil, are applied to impose such taxes, surtaxes, fees, duties, or other charges, as well as any related costs, fines, penalties, or any other financial or legal obligation upon SUPPLIER with respect to the items described in this paragraph.

13. Term and Termination

13.01. Term And Renewal, Notice Of Nonrenewal: (a) This Agreement shall be in effect from and after the effective date hereof, and shall remain in effect until December 31 of the year in which this Agreement becomes effective ("Initial Term"). Renewal of this Agreement after the Initial Term, which may be for a period of one (1) year after the Initial Term, and for successive one (1) year periods ("Renewal Term"), shall be as provided in subparagraph (b) of this paragraph.

(b) At the expiration of the Initial Term, and at the expiration of any Renewal Terms that might arise as described herein, this Agreement may be renewed for an additional period of one (1) year if, prior to thirty (30) days before the expiration of the Initial Term, or prior to thirty (30) days before the expiration of any Renewal Term, as the case may be, SUPPLIER gives written notice to DISTRIBUTOR of its election that the Agreement shall be renewed. DISTRIBUTOR may, at its option and within fifteen (15) days after receipt of any notice of renewal, reject any notice of renewal by SUPPLIER, in which event the Agreement shall not be renewed. It is the intent of the parties that after the Initial Term this Agreement shall at all times be regarded and considered as an Agreement for one year and one year only, that there is no promise of or expectation of renewal, and that no renewal or series of renewals of this Agreement shall create or be regarded as creating any relationship between the parties for an indefinite period, or any period other than one (1) year.

(c) In the event that SUPPLIER determines not to renew this Agreement because SUPPLIER itself intends to enter the Brazilian market for selling SUPPLIER's Products as set forth in paragraphs 1.04 and 13.03 of this Agreement, SUPPLIER shall give written notice thereof to DISTRIBUTOR not later than sixty (60) days prior to the end of the Initial Term or the Renewal Term, whichever is applicable. This is the only circumstance under which notice of intent not to renew this Agreement shall be required.

13.02. Termination: Notwithstanding the provisions of paragraph 13.01, either party may terminate this Agreement effective immediately, without the need or requirement for any judicial or extra-judicial notice or interpellation to the other party, for breach of any provision of this Agreement, for the failure of any essential condition of this Agreement, for any material misrepresentation or concealment of data or information by

either party, or in the event either party becomes insolvent, is adjudicated bankrupt, makes an assignment for the benefit of creditors, goes into solvent liquidation, concordata, becomes subject to administration, adopts a resolution to implement any of the foregoing, or takes equivalent action under the laws of any applicable jurisdiction. The intent of the parties is that this paragraph constitutes and shall be construed as an express termination clause ("cláusula resolutoria expressa") as that term is known in Brazil.

13.03. *Nonrenewal Due To SUPPLIER'S Market Entry:* (a) SUPPLIER may, at any time, decide to distribute Products directly within the Territory or any other location within Brazil. SUPPLIER may not terminate this Agreement in order to directly enter the market, but may decide not to renew the Agreement by giving the notice required by subparagraph (c) of paragraph 13.01 hereof.

(b) SUPPLIER may also decide, at any time, to distribute Products directly within the Territory or any other location within Brazil, and to still give the notice of renewal provided by subparagraph (b) of paragraph 13.01 hereof. When SUPPLIER gives such notice of renewal SUPPLIER shall also inform DISTRIBUTOR of SUPPLIER'S intent to directly enter the market. In the event that SUPPLIER gives such notice of renewal, and DISTRIBUTOR does not reject the notice of renewal as set forth in subparagraph (b) of paragraph 13.01, this Agreement shall continue to be in full force and effect as to the parties unless amendments are mutually agreed upon.

(c) Except as provided in subparagraph (d) of this paragraph, if SUPPLIER does not renew this Agreement because of its own planned market entry pursuant to subparagraph (a) of this paragraph, and only in such event, SUPPLIER shall at the request of DISTRIBUTOR, and may at its own initiative, purchase from DISTRIBUTOR any or all of the new and unused Products, parts, and supplies in DISTRIBUTOR'S inventory at the same price or prices paid by DISTRIBUTOR to SUPPLIER for such Products, parts, and supplies. In addition, in such event and only in such event, and except as provided in subparagraph (d) of this paragraph, SUPPLIER shall also make a payment to DISTRIBUTOR in an amount determined as follows: . The payment provided by this paragraph shall be the only payment to which DISTRIBUTOR shall be entitled as a result of nonrenewal of this Agreement as a result of SUPPLIER'S entry into the Brazilian market to distribute its Products as described herein, and SUPPLIER shall have no responsibility to DISTRIBUTOR for any other compensation, indemnity, damages, or other amounts of money as a result of SUPPLIER'S entry into the Brazilian Market to distribute its Products.

(d) Notwithstanding the terms and requirements of subparagraph (c) of this Agreement, if SUPPLIER does not renew this Agreement because of its own planned market entry pursuant to subparagraph (a) of this paragraph, and if DISTRIBUTOR has not made all of the payments to SUPPLIER that are required to be made by DISTRIBUTOR pursuant to this Agreement, or if DISTRIBUTOR is indebted to SUPPLIER for any other reason, SUPPLIER may deduct said amounts from the payment to DISTRIBUTOR that is provided in subparagraph (c) of this paragraph. If, after said deduction of unpaid amounts and other indebtedness from such payment, there are still unpaid amounts or other indebtedness owed by DISTRIBUTOR to SUPPLIER, SUPPLIER may deduct said amounts from the aggregate purchase price paid by SUPPLIER to DISTRIBUTOR for any new and unused Products, parts, and supplies as set forth in subparagraph (c) of this paragraph.

(e) The terms and requirements of subparagraph (c) of this paragraph shall have no force and effect, and SUPPLIER shall not be subject to any of such terms and requirements, in the event that SUPPLIER enters the Brazilian market but also gives notice of renewal of this Agreement as provided in subparagraph (b) of paragraph 13.03, and DISTRIBUTOR does not reject the notice of renewal.

13.04. *No Other Payments:* (a) Except as provided in subparagraph (c) of paragraph 13.03 of this Agreement, neither party shall be liable to or have any responsibility to the other party for payment of any compensation, indemnity, damages, or other amounts of money in the event that the other party elects not to renew this Agreement or terminates this Agreement pursuant to paragraphs 3.02, 13.01 or 13.02 hereof, irrespective of

the reasons or grounds for such nonrenewal or termination. Neither party shall be entitled to assert, and agrees not to assert, against the other party in connection with such nonrenewal or termination pursuant to paragraphs 3.02, 13.01 or 13.02 hereof, any claim, suit, demand, or cause of action that has heretofore accrued or may hereafter accrue for any indemnification, compensation, or other payment for any reason whatsoever, including, by way of example only and not in limitation, consequential or indirect damages; lost profits, lost income, or reduction of anticipated revenues or other sales; damage to reputation or business standing; reimbursement for or payment of expenditures or investments made in the business, or reorganization costs occasioned by termination; expenses and costs of arranging alternative lines of business; unjust enrichment; costs of commitments or other actions taken in reliance upon continuation of this Agreement; any expenses related to labor costs; taxes or fees of any kind; compensation for accrued good will or other intangible assets; or any other form of damages, losses, expenses, costs, or otherwise, even though such damages, losses, expenses, or costs are or were required by law to be incurred after termination. Each party hereby waives its rights to and in, and releases the other party from liability for, any such claims, suits, demands, and causes of action.

(b) Nothing in subparagraph (a) of this paragraph, or in any other part of this Agreement, shall relieve DISTRIBUTOR of any obligation to pay to SUPPLIER any purchase price for Products or any other amounts due to SUPPLIER by DISTRIBUTOR, or shall relieve either party from liability for failure to perform any of the terms or conditions of this Agreement.

13.05. *Winding-Up Of Affairs:* Upon nonrenewal or termination of this Agreement, each party shall work and cooperate with the other to effect and cause an orderly and suitable conclusion to the relationship between the parties hereunder. Upon nonrenewal or termination of this Agreement, each party shall, as soon as practicable and except as determined by SUPPLIER to be necessary to implement and give effect to paragraph 4.05 of this Agreement, return all property, including, but not limited to, advertising materials, sales aids, business forms, equipment, operating manuals, records, files, computer programs, and documents owned by the other party, and DISTRIBUTOR shall immediately cease and desist from using the Proprietary Property; provided, however, that SUPPLIER shall have a lien on all such property to secure the payment of any unpaid invoices, and may retain such property until such invoices are paid.

13.06. *Repurchase By SUPPLIER; Unpaid Amounts:* (a) Except as provided in subparagraph (b) of this paragraph, and subparagraph (c) of paragraph 13.03, upon nonrenewal or termination of this Agreement, DISTRIBUTOR shall first offer to SUPPLIER the option to purchase from DISTRIBUTOR any or all new and unused Products, parts, and supplies in DISTRIBUTOR'S inventory. SUPPLIER shall determine the price or prices at which it proposes to purchase any or all of such new and unused Products, parts, and supplies, and shall offer such price or prices to DISTRIBUTOR. If SUPPLIER and DISTRIBUTOR do not agree upon the prices for any such Products, parts, and supplies, DISTRIBUTOR shall then be free to dispose of those Products, parts, and supplies within the Territory under such terms as are determined by DISTRIBUTOR.

(b) If, upon termination or nonrenewal of this Agreement, DISTRIBUTOR is in possession of any Products, parts, or supplies, whether new or used, for which DISTRIBUTOR has not made payment in full to SUPPLIER, DISTRIBUTOR shall not distribute, sell, or otherwise dispose of such Products, parts, and supplies without the express written permission of SUPPLIER. If SUPPLIER has retained title to any of such Products, parts, or supplies, SUPPLIER may require DISTRIBUTOR to return the same to SUPPLIER at DISTRIBUTOR'S cost and expense, or may authorize DISTRIBUTOR to sell or otherwise dispose of the Products, parts, and supplies on terms determined by SUPPLIER. If SUPPLIER has not retained title to any Products, parts, or supplies, then with respect to those Products, parts, and supplies SUPPLIER shall have and be deemed to have a security interest in the same, and SUPPLIER shall have all the rights of a secured party under the governing law of this Agreement and, to the extent supplementary thereto, under the laws of Brazil. Nothing herein shall relieve DISTRIBUTOR of its obligation to make full payment for any unpaid Products, parts, and supplies, and SUPPLIER may continue to require full payment while at the same time

authorizing DISTRIBUTOR to sell the Products, parts, and supplies.

(c) Unless otherwise agreed, DISTRIBUTOR shall, at its expense, deliver to such SUPPLIER facility as SUPPLIER determines, any Products, parts, and supplies purchased hereunder by SUPPLIER or otherwise returned to SUPPLIER by DISTRIBUTOR. Any taxes or duties payable as a result of any such purchase or return of Products, parts, or supplies shall be the responsibility of and paid by DISTRIBUTOR. If SUPPLIER pays any such duties or taxes, SUPPLIER may offset and deduct the amounts thereof from the purchase price or may add the amounts to other amounts owed by DISTRIBUTOR. DISTRIBUTOR warrants that such Products, parts, and supplies will be free and clear of all encumbrances and claims, and DISTRIBUTOR agrees to defend, indemnify, reimburse, and hold SUPPLIER harmless from all claims by third parties with respect to such Products, parts, and supplies.

14. Governing Law and Arbitration

14.01. **Governing Law:** (a) Except for litigation in the courts of Brazil under circumstances where a Brazilian court would be required to apply the law of Brazil, and further subject to subparagraph (b) hereof, questions concerning the interpretation or meaning of this Agreement, its effect, or the rights, duties, and obligations of the parties hereunder, and the resolution of disputes between the parties, shall be governed by the substantive law of the state of Connecticut, but not its choice of law provisions. Except as provided in subparagraph (b) of this paragraph with respect to warranties and retention of title, the rights and responsibilities of the parties shall be governed by the Uniform Commercial Code as the same is in effect at all relevant times in the State of Connecticut.

(b) The parties agree that law of the State of Connecticut shall not be applied in such a way as to render ineffective the plain language of this Agreement with respect to the provisions herein relating to warranties. The parties further agree that the Uniform Commercial Code in effect in Connecticut shall not be interpreted or applied to prevent SUPPLIER from retaining title to any Products in order to secure payment of any purchase prices of said Products, and that with respect to the matter of retention of title to secure payment of any purchase price the law applicable to this Agreement shall be applied in such a manner that permits the parties to agree that SUPPLIER may retain title to any Products to secure DISTRIBUTOR'S payment obligations.

14.02. **Resolution Of Disputes:** (a) Except where arbitration is prohibited by the law of Brazil, disputes between the parties arising out of this Agreement, or concerning any rights or the performance of any duties, responsibilities, or obligations created by this Agreement, shall be exclusively and solely resolved by arbitration, conducted in the English language in the city of, at the option of the party seeking arbitration, Windsor, Connecticut, New York, New York, Washington, D.C., or Miami, Florida, by a sole arbitrator agreed to by the parties, or, in the absence of such agreement, by a panel of three (3) arbitrators selected pursuant to the rules of the American Arbitration Association for the selection of arbitrators.

(b) SUPPLIER may, at its option, utilize either arbitration, or litigation in the courts of either the United States or Brazil, to collect any amounts alleged to be due from DISTRIBUTOR for payment for Products, or for any other amount which is due and unpaid upon termination or nonrenewal of this Agreement. Nothing in subparagraph (a) shall preclude SUPPLIER from utilizing the equitable jurisdiction of any court to enforce or protect its rights under paragraphs 10.01 through 10.08 of this Agreement, or to join DISTRIBUTOR as a party in any litigation that is

commenced by any third party. The law of Brazil shall apply to any litigation in Brazil under this subparagraph.

14.03. **Arbitration Procedure:** (a) Any arbitration proceeding pursuant to this Agreement shall be conducted pursuant to the arbitration rules of the United Nations Commission on International Trade Law

("UNCITRAL"). The American Arbitration Association shall perform the appointing and administrative functions as provided for in the rules of the American Arbitration Association for international commercial arbitration utilizing UNCITRAL rules. Any award shall be in U.S. Dollars, and may be enforced in the courts of the United States or Brazil, at the option of the enforcing party, pursuant to the laws of the United States or Brazil, as applicable, governing the enforcement of arbitral awards.

(b) Each Party hereby consents and submits to the jurisdiction of the courts of the United States and Brazil for purposes of enforcement of any arbitral award entered in favor of the other Party. Each Party hereby irrevocably and unconditionally waives, relinquishes, forgoes, and disclaims any rights that it has or might have under the law of the United States or Brazil (a) to avoid or not be bound by the terms and provisions of paragraph 14.02 and 14.03 of this Agreement, or (b) to avoid or not be bound by any arbitral award entered in any arbitration proceeding pursuant to such paragraphs, because, in either case, said paragraphs are not set forth in a separate agreement, or because the specific dispute is not identified, or because the arbitrators are not named, or because it is alleged to be more convenient to have the arbitration conducted under some other rules or legal system, or because it is more convenient or less expensive to conduct the arbitration at a different location, or because the courts in the country of either Party do not fully enforce or only conditionally enforce arbitral awards entered in an arbitration proceeding in the country of the other Party, or for any other reason that is not contrary to or against the public policy of the United States or Brazil.

14.04. **Judgments In Brazil:** In the event that SUPPLIER brings suit against DISTRIBUTOR in a court in Brazil in order to obtain payment of any amount due pursuant to this Agreement, DISTRIBUTOR agrees that any judgment entered by a court in Brazil may be denominated in U. S. Dollars. In the event that the law of Brazil requires any judgment to be denominated in local currency, DISTRIBUTOR agrees that any judgment entered in favor of SUPPLIER shall automatically be adjusted so that at all times the amount of the judgment calculated in local currency will not be less than the amount of such currency required to equal the number of U.S. Dollars that the judgment was equivalent to in local currency on the date the judgment was entered, at the official exchange rate. All taxes, costs, fees, and other expenses of remittance or payment of any such judgment shall be the responsibility of DISTRIBUTOR.

15. Management And Control

15.01. **Management:** The parties recognize and acknowledge that SUPPLIER is entering into this Agreement because Mr._of DISTRIBUTOR is a person in whom SUPPLIER has trust and confidence, and because SUPPLIER is relying upon his active participation and management in DISTRIBUTOR'S business activities in performing this Agreement.

15.02. **Control And Ownership:** SUPPLIER has also entered into this Agreement upon the belief and representation by Mr._that the following persons, whose personal qualities and anticipated participation in the performance of this Agreement on behalf of DISTRIBUTOR have been essential to the decision of SUPPLIER to enter into this Agreement, have agreed and represented to participate significantly in the ownership and management of DISTRIBUTOR:

NAME ADDRESS PERCENT PARTICIPATION

15.03. **Change In Management Or Control:** The withdrawal from active participation in the activities of DISTRIBUTOR by any of the persons indicated in paragraphs 15.01 and 15.02 of this Agreement shall constitute failure by DISTRIBUTOR to meet an essential condition of this Agreement, and shall create in SUPPLIER the right to terminate this Agreement pursuant to the provisions of paragraph 13.02 of this Agreement.

16. General Provisions

16.01. **Entire Agreement:** This Agreement is the entire agreement between the parties, and no other written or oral representations, agreements, promises, or understandings exist with respect to the subject hereof. This Agreement may not be, and shall not be considered to have been, modified or amended except as set forth in a written document signed by the parties, which written document shall specifically refer to this Agreement and to the paragraphs thereof which are being amended or modified.

16.02. **No Waiver:** No waiver of compliance with any provision of this Agreement, or failure to enforce any rights created by this Agreement, shall be considered or construed to be a waiver of any right to insist on compliance with such provision or to enforce such rights in the future, and shall not preclude the pursuit of any remedy with respect to the provision or rights claimed to have been waived or not enforced.

16.03. **Assignment:** Neither party shall, without the consent of the other as set forth in a written document that conforms to paragraph 13.01 hereof, assign, transfer, or otherwise delegate any rights, duties, responsibilities, or obligations under this Agreement.

16.04. **Successors:** This agreement shall be binding upon, and shall inure to the benefit of, all successor corporations or other entities with respect to the parties, and any successor corporation or other entity shall be obligated hereby to the same extent as its predecessor was bound hereby.

16.05. **No Invalidity:** If any paragraph, term, or provision of this Agreement is determined to be void or unenforceable by any judicial, administrative, or arbitral tribunal, such determination shall not affect the validity or enforceability of any other provision hereof.

16.06. **Official Text:** The official text of this Agreement shall be in the English language. A Portuguese language translation of this Agreement may be agreed upon by the parties and may be attached hereto and incorporated herein as Appendix A. This Agreement, however, will become effective and remain effective upon execution by the parties, whether or not the translation is completed at such time or is eventually attached. Any translation into Portuguese shall be made in accordance with the law of Brazil, and shall be used in all cases where a Portuguese language version of the Agreement is required by any court or governmental authority of Brazil. In the event of litigation in Brazil, and unless prohibited by the law of Brazil, any translation for use in court shall only be used and enforceable if two attorneys, admitted to practice in Brazil, one representing each party, shall certify in writing that the Portuguese translation is accurate and complete, and sets forth the meaning and intent of the English language text in all respects. In any event and in all circumstances, if there is an inconsistency between the English agreement and the Portuguese translation, the English agreement shall prevail.

16.07. **Force Majeure:** (a) If the performance of any duty or obligation hereunder is prevented or delayed, in whole or in part, by reason of or as a consequence of Acts of God, fire, flood, hurricane, typhoon, earthquakes, riots, war, governmental actions or failure to act, strikes, lockouts, or similar events or occurrences, then the affected Party shall have an additional period of time to perform such duty or obligation, which period shall be equal to the time of delay caused directly by the event or occurrence.

(b) Subparagraph (a) of this paragraph, except for the additional time afforded to the affected Party, shall not be applied to transfer the risk of such events or occurrences to the Party not having the obligation to perform, and shall not relieve the affected Party from performance, and the consequences of failure to perform, at the conclusion of the extended time period afforded the affected Party hereunder.

(c) If the provisions of subparagraph (a) of this paragraph are relied upon by one party to excuse timely performance hereunder because of the existence of one or more of the conditions set forth in such subparagraph, and if such condition or conditions continue to exist for more than ninety (90) days, then the other party may terminate this Agreement upon written notice to the party whose timely performance is claimed to be excused.

(d) Nothing in this paragraph 16.07 shall relieve, defer, or otherwise affect the obligation of DISTRIBUTOR to pay to SUPPLIER any amounts payable under any provision of this Agreement.

16.08. **Headings:** The paragraph headings contained in this Agreement are inserted for convenience only, and shall not affect in any way the meaning, application, or interpretation of this Agreement.

16.09. **Notices:** All notices, reports, and other communications required to be given under this Agreement shall be sent as follows:

As To SUPPLIER As To DISTRIBUTOR

16.10. **Counterparts:** This Agreement may be executed in one or more counterparts, and each counterpart, when fully executed with original signatures, shall be and be deemed to be an original copy of this Agreement.

16.11. **Authority To Sign:** Each party to this Agreement warrants and represents that the person who signs this Agreement on its behalf is fully and completely authorized to do so and to bind and commit each party to the terms and conditions of this Agreement. Each person who signs this Agreement warrants and represents

that such person has been authorized to do so as set forth in the first sentence of this paragraph.

IN WITNESS WHEREOF, the parties hereto and the witnesses listed below, have signed, and caused to be signed, this Agreement to be effective as of the day and year first above written.

SUPPLIER: DISTRIBUTOR:

By: By:

Print Name: Print Name:

WITNESSES: WITNESSES:

By: By:

Print Name: Print Name:

By: By:

Print Name: Print Name:

STATE OF :

COUNTY OF : SS:

SWORN TO AND SUBSCRIBED BEFORE ME, a Notary Public in and for the state and county set forth above, by , , and , who all signed and witnessed the foregoing instrument and affirmed that the same was their free act and deed, this , day of , 1997.

Notary Public:

My Commission Expires:

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