

PTRA

WARNING: Professional advice may be required before using this Specimen Agreement. The Association is not engaged in rendering legal advice, and strongly suggests you consult with your attorney before entering into any agreement because of differences in state laws.

SUB-REPRESENTATIVE AGREEMENT

THIS AGREEMENT made and entered into as of this _____ day of _____, 20___, by and between _____, a business entity (the "Company"), and _____, an (individual) (a corporation) residing or having its principal place of business at _____ (the "Representative").

WITNESSETH:

WHEREAS, the Company is acting as an agent for manufacturers of complex and sophisticated products, and

WHEREAS, the Representative desires to serve the Company as an independent sales representative subject to the terms and conditions hereinafter set forth, and

WHEREAS, the Company desires to retain the services of the Representative as an independent sales representative subject to the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration the receipt of which is hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

1. **Appointment of Representative.** The Company hereby grants to the Representative authority to solicit orders for the Company from accounts specifically assigned to the Representative by the Company or in a given geographic area with respect to those products for which the Company currently or in the future acts as an agent pursuant to the terms of this Agreement. The Territory is specified in Schedule A attached hereto and made part hereof. The products assigned to Representative are specified in Schedule B attached hereto and made part hereof.

2. **Acceptance of Appointment.** The Representative accepts the appointment specified in Section 1 above and agrees to devote his/her/its time, attention and best efforts needed to promote the sale of the Products pursuant to the terms of this Agreement.

3. **Rejection of Orders.** The Company may at its sole option, without the Company suffering any liability to the Representative for lost compensation, refuse or reject, either in whole or in part, any order obtained by the Representative or may cancel or consent to the cancellation of any such order, either in whole or in part, after acceptance of the order. All orders obtained by the Representative shall be subject to written approval and acceptance by the Company.

4. **Relationship with Company.** Representative may represent companies other than Company (provided Paragraphs 17 and 20 are complied with); shall perform services for Company in such manner and at such times as Representative determines: may engage other persons to perform services for Company (so long as they comply with all the terms and conditions of this Agreement) and shall submit no call or similar reports to Company. Company makes no guarantee to Representative that Representative will attain any level of profitability or any profitability as a result of his/her/its relationship with Company.

5. **Term.** This Agreement shall remain in effect until terminated in accordance with the provisions hereinafter set forth.

6. **Sales Terms.** The prices, delivery schedules and all other terms relating to the sale of products and services offered by the Representative shall be determined solely by the Company except that the Representative may quote prices for the Products and services related to the Products set forth in written estimates prepared by the Company. The Representative shall not have authority to bind the Company in any contract with any third party.

7. **Compensation.** In full consideration for the services to be rendered by the Representative hereunder, the Representative shall receive with respect to those items of the Products for which he/she/it obtained the orders, and which are subsequently sold pursuant to such orders (the "Sold Products"), a commission the "Commission") of (%) of the gross profit or commissions paid to the Company (less applicable freight charges, sales or use taxes, and installation or service costs not covered by a service contract) from the sale of the Products into Representative's Territory. This commission rate is subject to change at the discretion of the Company. Commissions paid or credited to the Representative shall be subject to back charges for returned goods, bad debts, collection expenses and other similar expenses.

8. **Terms of Payment.** The commission with respect to any sale shall be due and payable to the Representative within thirty (30) days after the Company receives its commission or payment with respect to such sale. Partial payments of the commission with respect to any sale

shall be due and payable to the Representative within thirty (30) days after receipt of a partial payment or commission by the Company with respect to such sale.

9. **Drawing Account.** The Company may allow the Representative a drawing account of \$_____ per month to be paid to the Representative on the first day of each month. All amounts paid to the Representative pursuant to the terms of this Section 9 shall be deducted from the compensation to be paid to the Representative pursuant to the terms of Section 8 hereof prior to the payment of any such compensation. In the event that at any time or from time to time the outstanding balance of the drawing accounts equals or exceeds \$10,000, the monthly draw may be decreased or eliminated at the option of the Company until such time as the outstanding balance has been reduced below \$10,000. Upon termination of this Agreement, the outstanding balance in the drawing account shall constitute a liability of the Representative to be promptly repaid to the Company.

10. **Sale of Service Contracts.** The Representative agrees to use his/her/its best efforts to cause purchasers of the Products to purchase any service contracts offered with respect to the Products. No commission shall be paid with respect to service contracts sold by the Representative.

11. **Representative's Expenses.** The Representative shall be solely responsible for all travel and business expenses (including but not limited to automobile expenses, automobile insurance premiums, medical expenses, office expenses and transportation expenses) paid or incurred by him/her/it with respect to his/her/its activities under the terms of this Agreement. The Company may from time to time in its sole discretion reimburse the Representative for expenses incurred with respect to business meals, educational programs and trade shows which in the opinion of the Company will enhance the Representative's ability to sell the Products under the terms of this Agreement.

12. **Maintenance of Office.** The Representative shall maintain at his/her/its own expense an office separate from the offices occupied by the Company. The Company shall not be required to provide any office facilities or supplies to the Representative. In order to facilitate necessary communication with the Representative, he/she/it agrees that in the event he/she/it is not present in the office during normal business hours, he/she/it will notify the Corporation by telephone on a regular basis regarding where he/she/it can be reached for consultation or may provide a cell phone number or email address that is available at all times.

13. **Termination for Cause.** This Agreement may be terminated by the Company at any time for cause by giving written notice to the Representative. Termination under this Section 13 shall be effective immediately upon the giving of the necessary written notice. For purposes of this Section 13, "Cause" is hereby defined to include (i) dishonesty,(ii) criminal conduct (other

than minor traffic violations),(iii) the inability of the Representative to perform his/her/its duties for a period of more than 30 consecutive days due to illness, physical incapacity, or any or no reasons,(iv) a breach by the Representative of any of the terms of this Agreement, and (v) failure of Representative to use his/her/its best efforts for the benefit of Company.

14. **Termination Not for Cause.** The Representative and the Company may terminate this Agreement at any time on fourteen (14) days advance written notice. Termination under this section 14 shall be effective on the fifteenth (15th) day after the necessary written notice is given unless an earlier effective date is mutually agreed to by to the parties hereto.

15. **Effect of Termination Upon Commission.** Except to the extent provided below, on termination of this Agreement, the Representative shall have no further interest (including any interest in any commissions due thereon) in outstanding proposals, prospective orders or unfinished sales. The Representative shall be entitled to receive all commissions due and payable to him/her/it on orders placed prior to the effective date of termination as provided in paragraph 8, provided, however, that such commissions shall be applied to reduce any balance outstanding in the Representative's drawing account before any payment of such commissions shall be made to the Representative.

16. **Return of Corporate Property.** On termination of this Agreement, the Representative shall promptly deliver to the Company all samples, correspondence, quotations, plans, bid proposals, catalogues and price books and other things relating to the business of the Company, as well as items owned by the Company. The Representative will also provide Company with all computer maintained data relating to Company's or its customers or prospective customers business and will then purge the computer of all such data.

17. **Noncompetition Agreements.**

(a) The Representative covenants and agrees that for a period of one (1) year after the termination of this Agreement for any or no reason, he/she/it will not, directly or indirectly (whether as a sole proprietor, partner, substantial (over 5%) stockholder, director, officer, employee or in any other capacity as principal, employee or agent) compete with the Company within the territory or within which he/she/it was acting for the Company at the time of notice of termination or in any manner interfere with, disrupt or attempt to disrupt the relationship, contractual or otherwise, between the Company and any of its customers, suppliers or employees.

(b) The Representative agrees that for one (1) year after termination of this agreement for any or no reason, he/she/it will not, whether as an employee, independent agent, partner, owner, officer, or director of any business entity, be employed by or represent any manufacturer or other company that Company represented or acted for as an agent or distributor during any

portion of one year prior to the date of termination of this agreement.

(c) The Representative represents to the Company that his/her/its experience and abilities are such that he/she or its owners and principals can obtain employment in businesses different in nature from the businesses conducted by the Company, and that he/she or its owners and principals can obtain employment and would be willing to obtain employment outside the territory specified in subsection (a) above.

(d) The Representative acknowledges that the periods of restriction and the geographic areas of restriction imposed by the provisions of subsection (a) are fair and reasonable and are reasonably required for the protection of the Company. In the event that any part of this Section shall be held to be unenforceable or invalid, the remaining parts thereof shall nevertheless continue to be valid and enforceable as though the invalid portions were not a part hereof. In the event that any of the provisions of the Section relating to territorial area of restriction or the period of time restriction are of a type which a court of competent jurisdiction shall deem unenforceable, the territorial area and time shall, for the purposes of this Section, be deemed to be the maximum area or time period which a court of competent jurisdiction deems valid and enforceable in any jurisdiction in which such court of competent jurisdiction shall be convened.

(e) The Representative agrees that any violation by him/her/it of the covenants contained in this Section is likely to cause irreparable damage to the Company and may, as a matter of course, be restrained by process issued out of a court of competent jurisdiction, in addition to any other remedies provided by law.

18. **Confidentiality.** During the term of this Agreement, and thereafter, the Representative will not, without the approval of the Company, directly or indirectly furnish or divulge the names of any customers of the Company, or of any prospective customer of the Company, or of any persons who have traded and dealt with the Company, nor shall the Representative disclose or furnish to any person, firm, or corporation any information about the Company's methods of conducting business, including by way of example and not by way of limitation of the foregoing, any information concerning the Company's pricing of goods or services or any other trade secrets of the Company.

19. **Representations by the Representative.** The Representative represents and warrants to the Company that:

(a) He/she/it is free to enter into this Agreement and that by so doing he/she/it is not violating any agreement or understanding, written or otherwise, with any third party, and

(b) No commission or other payment is owed to any third party with respect to the entering into of this Agreement by the Representative. In the event that any such commission or

other payment should be owed, the Representative shall be solely liable for its payment.

20. **Limitations on the Representative.** During the term of this Agreement, the Representative will make no representations or warranties to the purchasers or prospective purchasers of the Products, except those authorized by the Company, he/she/it will not pledge the Company's credit and he/she/it will not handle or represent products which, in the Company's sole judgment, are competitive with those sold by the Company. The Representative acknowledges that all sales accounts for the Products developed by the Representative or serviced by him/her/it during the term of this Agreement are the sole property of the Company to be allocated at any time among sales employees and representatives of the Company at the sole discretion of the Company.

21. **Performance as an Independent Contractor.** The Representative acknowledges that he/she/it shall perform under the terms of this Agreement as an independent contractor, and not as an employee of the Company. The Representative agrees that he/she/it will be solely liable for all state and federal taxes and deductions relating to his/her/its performance under the terms of this Agreement including federal social security payments, state unemployment insurance payments and worker's compensation payments. The Representative agrees to indemnify and hold the Company harmless with respect to any liability for the taxes and deductions specified in the preceding sentence. The Representative further acknowledges that he/she/it waives all claims for or benefits arising under or with respect to any profit sharing or pension plan maintained by the Company excepting only claims with respect to rights vested prior to the effective date of this Agreement. The Company acknowledges that subject to the limitations contained in Sections 17, 18 and 20 hereof, this Agreement does not restrict the right of the Representative to perform services for any other party.

22. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties relating to the subject matter hereof, and the parties hereto have no agreements, representations, or warranties oral or written relating to the subject matter of this Agreement which are not set forth herein. No amendments or modifications of this Agreement shall be valid unless made in writing and signed by the parties hereto.

23. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State in which Company has its principal place of business.

24. **Notice.** All notices to be sent to any party by the other party pursuant to this Agreement shall be sent by registered mail to the current respective addresses, which now are as follows:

(a) If to the Company, addressed to it as:
Company Name
Address
City/State/Zip

(b) If to the Representative, addressed to him/her/it as:

Only use this paragraph if necessary:

25. **Effective Date.** The parties hereto acknowledge that if they have been previously operating under an oral agreement, all terms thereof will be superceded by the terms of this Agreement. This agreement shall be deemed to be effective as of the date first written.

IN WITNESS WHEREOF, the Representative has executed this Agreement and the Corporation has caused this Agreement to be executed by its duly authorized representative on the day and year first above written.

THE CORPORATION:

Attest: _____

By: _____

Title: _____

THE REPRESENTATIVE:

Attest: _____

By: _____

Title: _____

SCHEDULE A

TERRITORY

The Company may, without incurring liability to Representative, make reasonable amendments to the Territory.

SCHEDULE B

PRODUCTS

The Company may amend the Representative's Products in the event that the principals that Company represents change, for operational efficiency, or to improve the Company's sales.