MISCELLANEOUS COMMON CLAUSES FOR CONTRACTS

This agreement, dated this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_ is entered into by and between the following parties:

1.(Joe Smith, Jane Smith, Smith Corporation, their officers, directors, employees, agents and successors (hereinafter collectively referred to as “SMITH”); and

2.Gonzalez Trust, its agents, beneficiaries, associations, subsidiaries (hereinafter collectively referred to as “TRUST”).

Legal Representation

Each party acknowledges that they have had their separate counsel review this agreement or that they have knowingly and voluntarily waived the right to have counsel review this agreement.

Entire Agreement

This agreement contains the entire understanding among the parties and supercedes any prior or contemporaneous agreements, whether written or oral. There are no representations, agreements, arrangements or understandings, oral or written, between and among the parties, relating to the subject matter of this agreement, that are not fully expressed herein.

This Agreement, together with any documents executed pursuant to this Agreement, constitutes the entire Agreement between the parties pertaining to the subject matter contained in it and supercedes all prior and contemporaneous agreements, representations, and understandings of the parties, whether written or oral.

Governing Law

All questions with respect to the construction of this agreement and the rights and liabilities of the parties hereto shall be governed by the laws of the state of California. Parties hereby agree that California shall be the forum of choice for all legal matters, and that any disputes or conflicts arising from or relating to this agreement shall be resolved according to California Law.

The parties hereby expressly acknowledge and agree that this Agreement is entered into in the State of [STATE] and, to the extent permitted by law, this Agreement shall be construed and enforced in accordance with the laws of the State of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ .

Authority

Both parties represent and warrant that the Board of Directors for their respective corporations have met, approved this transaction, and have given full authority to the undersigneds to enter into this agreement.

Survival of Obligations

This agreement, and any obligation created thereby, shall survive the voluntary or involuntary termination of this agreement or the voluntary or involuntary dissolution of Company.

Pending Actions

There is no judgment, levy, action, order, governmental investigation, or proceeding, pending or threatened against Seller, of any type whatsoever which is known to Seller and affects the Business, except as has been disclosed in writing by Seller to buyer.

Arbitration

Any controversy relating to this Agreement shall be submitted to and settled by binding arbitration in accordance with the rules of the American Arbitration Association which are in effect at the time the demand for arbitration is filed. The Parties shall have all rights of discovery allowable in a California civil case in the arbitration. Such arbitration shall be before a one-member panel of arbitrators from the American Arbitration Association, or as mutually agreed upon by the parties.

Effect of Headings

The subject headings of the paragraphs and subparagraphs of this agreement are included for convenience only and shall not affect the construction or interpretation of any of its provision.

Waiver

No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

Modification and Waiver

No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by both parties hereto. No waiver of any other provisions hereof (whether or not similar) shall be binding unless executed in writing by both parties hereto, nor shall such waiver constitute a continuing waiver.

Attorney’s Fees

If any legal action, Arbitration or other proceeding is sought for the enforcement of this Agreement, or because of any alleged breach, dispute, default or misrepresentation in connection with any of the provisions of this Agreement, the successful or prevailing party shall be entitled to recover reasonable attorney’s fees and other costs incurred in that action or proceeding.

In the event that a dispute arises with respect to this Agreement, the party prevailing in such dispute shall be entitled to recover all expenses, including, without limitation, reasonable attorney’s fees and expenses, incurred in ascertaining such party’s rights or in preparing to enforce, or in enforcing, such party’s rights under this Agreement, whether or not it was necessary for such party to institute suit.

Execution in Counter Parts

This Agreement may be executed in any one or more counter parts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

Confidentiality

Neither party shall disclose, disseminate or reveal any confidential or proprietary information disclosed by either party during the course of this transaction without the prior written consent of disclosing party. For purposes of this agreement, any information shall be deemed confidential or proprietary if so designated by either party in writing prior to the disclosure of such information.

Each party acknowledges that, during the term of this Agreement, it may be entrusted with confidential or proprietary information relating to the business or operations of the other party. Each party will protect the other’s confidential or proprietary information from unauthorized dissemination and will use the same degree of care that such party uses to protect its own confidential or proprietary information. Neither party will use the other’s confidential or proprietary information for purposes other than those necessary to further the purpose of this Agreement. Neither party will disclose to any third party the other’s confidential or proprietary information without the prior written consent of the disclosing party. Should either party be required under applicable law, rule or regulation, or pursuant to the order of any court or governmental entity or legal process of any governmental entity or court to disclose such information, such party shall use commercially reasonable efforts to: (a) give at least ten (10) days prior written notice of such disclosure to the disclosing party; (b) limit such disclosure to the extent practicable; and (c) make such disclosure only to the extent so required. The parties’ obligations hereunder with respect to confidential or proprietary information shall survive the termination of this Agreement.

Assignment

This Agreement may not be assigned without prior notice by either party, and subject to the mutual consent and approval of any such assignment.

This Agreement is of a personal nature and may not be assigned.

Number and Gender

Whenever the singular number is used in this Agreement and when required by the context, the same shall include the plural.. The masculine gender shall include the feminine and neuter genders, and the word “person” shall include a corporation, firm partnership, or other form of association.

Severability

If any provision or provision of this Agreement shall be held to be invalid, illegal or unenforceable for any reason whatsoever:

A)The validity, legality and enforceability of the remaining provisions of this Agreement shall not in anyway be affected or impaired thereby; and

B)To the fullest extent possible, the provisions of this Agreement (including, without limitation, each provision of any section of this Agreement containing any such provision held to be invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested by the provisions held invalid, illegal or unenforceable.

Term and renewal

a. The initial term of this Agreement shall begin on the effective date of this Agreement and shall end at midnight three (3) years thereafter unless sooner terminated in accordance with other provisions of this Agreement. Each twelve (12) month period of said term shall be considered as a Contract Year.

b. If, in the final Contract Year of the initial term, Distributor has maintained its exclusive rights under this Agreement, the parties agree to an optional renewal of this Agreement for an additional three (3) years.

Non-compete

a. Distributor agrees that, during the term of this Agreement and for a period of three (3) years after termination of this Agreement for any reason whatsoever, it will not directly or indirectly sell products which compete with the Product or use the same trademarks, without the express written consent of the Company.

Trademarks, proprietary rights and confidentiality

In the course of performing this Agreement, the parties may disclose to each other information concerning their respective businesses, confidential know how and trade secrets as may be necessary to further the purposes of this Agreement. All such information, confidential know how and trade secrets disclosed hereunder shall remain the sole property of the party disclosing them, and the receiving party shall have no interest in or rights with respect thereto except as expressly set forth in this Agreement. The parties agree to maintain all such confidential information in confidence and to take all reasonable precautions to prevent any unauthorized disclosure of such information.

The foregoing restrictions on appropriation and disclosure shall survive for \_\_\_\_\_\_\_\_\_\_ years after the termination of this Agreement. In the event of a breach of the foregoing provisions, the non-defaulting party shall be entitled to equitable and injunctive relief in addition to any other available remedies.

INDEMNIFICATION Each party (“Indemnifying Party”) shall protect, indemnify, and hold harmless the other party, its directors, officers, employees, subsidiaries and assigns against any and all loss, damage, claim, demand, suit, proceeding, action and expense (including attorney’s fees) whatsoever arising out of any breach or default under this Agreement by the Indemnifying Party.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (eg. Independent Contractor) agrees hereby to indemnify and hold harmless \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (eg. My Company Name) from any and all claims, suits, judgments, costs or damages of any kind which may arise out of the performance of his duties hereunder.