



## COPY OF DISTRIBUTOR AGREEMENT

IN MAKING ANY PURCHASE DECISION, DISTRIBUTORS MUST RELY ON THEIR OWN EXAMINATION OF THE PERSON (S) OR ENTITY INVOLVED IN THIS BUSINESS RELATIONSHIP AND THE TERMS CONTAINED HEREIN, INCLUDING THE MERITS AND RISKS INVOLVED. IT IS RECOMMENDED FROM TOWER BEVERAGE USA, LLC THAT YOU CONSULT WITH YOUR ATTORNEY, ACCOUNTANT OR PROFESSIONAL ADVISOR PRIOR TO ENTERING INTO THIS AGREEMENT WITH THE COMPANY. YOU ARE NOT TO CONSTRUE THE CONTENTS OF THIS DOCUMENT OR ANY PRIOR OR SUBSEQUENT COMMUNICATIONS FROM TOWER BEVERAGE USA, LLC OR ANY OF ITS DIRECTORS, OFFICERS, EMPLOYEES OR REPRESENTATIVES AS LEGAL OR TAX ADVICE, OR AS INFORMATION NECESSARILY APPLICABLE TO YOUR PARTICULAR FINANCIAL SITUATION. ALL TOWER BEVERAGE USA, LLC'S FINAL PURCHASES INCLUDING MINIMUM REQUIRED PURCHASES, INVENTORY, SUPPLIES, SERVICES & MONTHLY CO-OP ADVERTISING SUBSCRIPTIONS ARE ALL NON-REFUNDABLE.

**THIS AGREEMENT**, made as of the \_\_\_\_\_ day of \_\_\_\_\_ Year \_\_\_\_\_ by and between Tower Beverage USA, LLC of 1 World Trade Center 85<sup>th</sup> floor New York, NY 10007. (The "Company") and, (The "Master Distributor") of: Address: \_\_\_\_\_, City: \_\_\_\_\_, State: \_\_\_\_\_ Zip: \_\_\_\_\_ Phone: \_\_\_\_\_ Email: \_\_\_\_\_.

### WITNESSETH:

**WHEREAS** the "Company" is engaged in the business of manufacturing and supplying "Products", and distributing same through independent "Distributors" in various areas; and

**WHEREAS** the "Distributor" shall have the primary responsibility to supply retailers in the attached market area, schedule annexed hereto as exhibit "A" and

**WHEREAS** in order to promote a more orderly and efficient distribution of the "Company's" "Products" in the market areas specified in the attached market area schedule exhibit "A", and to increase sales of the "Company's" "Products" and

**WHEREAS** the parties hereto desire to set forth the full understanding between them as to the rights, responsibilities, and obligations of each party hereunder.

**NOW, THEREFORE**, in consideration of the mutual covenants herein contained Tower Beverage USA, LLC, the "Company" and the "Distributor" here as follows:

### MARKET AREA:

The "Company" and the "Distributor" agree that competition will best be served, during the term hereof, if the "Distributor" uses his/her best efforts to supply the "Company's" "Products" to retailers within the attached market area, schedule annexed hereto as exhibit "A".



### **SALES RESPONSIBILITY:**

The “Distributor” will be responsible for handling re-orders of “all” company “Products” from retailers and other customers within the attached market area, schedule annexed hereto as exhibit “A” and to this end it will use its best efforts to develop and fully service new and existing retailers and customers supplied by Tower Beverage USA, LLC on their behalf. In the event the “Distributor” fails or refuses to serve any one or more customers in the manner herein specified, the “Distributor” may request the “Company” to direct another “Distributor” to service such outlet or outlets temporarily, or the “Company” itself may take over the servicing of such outlet or outlets on a temporary basis.

### **INVASION FEES AND COMMISSIONS:**

The “Company” agrees to compensate the “Distributor” for all “Company’s “Products” sold in the attached market area schedule annexed hereto as exhibit “A” through alternative distribution or drop shipped into large chains, big box stores etc. There will be an invasion fee (commission) paid on a quarterly basis direct to the “Distributor” at the rate of 10% of the “Company’s” “net” profit from all products sold/billed from the “Company” to large corporate accounts in the attached market area schedule annexed hereto as exhibit “A”.

### **SALES RECORDS AND RIGHT OF INSPECTION:**

Tower Beverage USA, LLC the “Company” will, always maintain full and complete sales records pertaining to all products sold in the attached market area, schedule annexed hereto as exhibit A”. The “Distributor’s” “CPA” has the right to examine the financial books and records of the “Company” so that he/she may ascertain the affairs of the “Company” are properly being conducted, and that he/she can verify sales records ensuring invasion fees and commissions are being paid in correct amounts to the “Distributor”.

### **ASSIGNABLE AGREEMENT:**

The “Distributor” can sell his/her developed area of responsibility 1 year from the time this agreement is signed. The “Company” will assist the “Distributor” selling his/her area of responsibility immediately upon receiving such request by certified mail.

### **SUGGESTED RETAIL PRICES:**

The “Company” may from time to time, suggest the prices at which the retailers should sell the “Company’s” “Products”, although it is always the privilege of the retailer to charge the end user what they consider to be fair market value.

### **REVISION OF PRICES:**

There will be no price increases for the first 18 months, beginning from the date of this agreement. Any or all price changes by the “Company” to the “Distributor” for the “Products” may, from time to time be revised upon, with at least 90 days advanced notification of such revision to the “Distributor”.



### **PACKAGE AND UNIT CHANGES:**

The “Company” may, at its sole discretion, modify the size of packaging on all its “Products”, the manner of packaging, the type of beverage, or style of packaging of the “Products” (including the number of containers for each unit for sale per case).

### **COMPANY - DISTRIBUTOR RELATIONSHIP:**

The “Distributor,” in its relation to the “Company”, will always be an independent contractor, and neither the “Distributor,” nor any of its business partners, employees, agents or servants shall under any circumstances be deemed to be the employees or agents of the “Company”. Neither the “Distributor” nor its business partners, employees, agents, or servants may make representations or bind the “Company” in any manner without the previously written authorization of the “Company”. The “Distributor” acknowledges that it is an independent contractor hereunder and not an employee of the “Company”. Accordingly, the “Distributor” shall be responsible for all Federal, State, and local income taxes, unemployment taxes, social security contributions, worker's compensation premiums, and all similar taxes and payments concerning the “Distributor” and/or any business partners, employees, agents, or servants thereof. The “Distributor” and its business partners, employees, servants, and agents shall not be eligible for any of the “Company’s” employee benefit programs, and the “Distributor” shall have no claim against the “Company” for sick leave, retirement benefits, social security, worker's compensation, disability, unemployment, or similar benefits. The “Distributor” shall be solely responsible for all expenses it incurs in the performance of its obligations hereunder, unless specifically agreed to be incurred by the “Company” in writing.

### **CO-OP PROMOTIONAL SUPPORT:**

In addition to the “Distributors” obligations herein contained, the “Distributor” agrees to pay a monthly advertising fee, for co-op advertising support. The “Company” requires all “Distributors” to subscribe. The monthly subscription fee contributes and helps subsidize additional press releases; advertising & promotional support provided by the “Company”. The monthly subscription fee is (\$100.00) for your area, as specified in the attached market area schedule annexed hereto as exhibit” A”.

### **ALLOCATION OF PRODUCTS:**

The “Company” shall use its best efforts to deliver the “Products” to the “Distributor”, but the “Company” shall not be liable for delays which are caused by events that are beyond its reasonable control including, but not limited to, acts of God, acts of “Distributor”, acts of civil or military authority, fires, casualties, accidents, strikes or other similar difficulties. In the event of a product shortage, the “Company” may allocate its available “Products” among its other “Distributors” and other customers in such manner, as it deems best without any liability or responsibility to the “Distributor” or their customers.



## **TERMINATION BY THE COMPANY:**

The “Company”, at its option, may terminate this Agreement by mailing to the “Distributor,” by certified or registered mail addressed to its last known address, a written notice terminating this Agreement effective not less than thirty (90) days after the date of notice, if:

- (a) The “Distributor” fails to properly carry out its obligations under this agreement.
- (b) The “Distributor” or their employees, agents or servants engages in conduct harmful to the interests of the “Company” or injurious to its reputation and goodwill of the “Company”.
- (c) The “Distributor” becomes insolvent or takes the benefit of any present or future insolvency statutes. Makes a general assignment for the benefit of creditors, files a voluntary petition in bankruptcy or a petition answer seeking an arrangement or reorganization. The readjustment of its indebtedness under the Federal Bankruptcy Laws, under any law or statutes of the United States or any States thereof, consents to the appointment of a receiver, trustee, or liquidator of all or substantially all of its property.
- (d) The “Distributor” by order or decree of a court, is adjudged, bankrupt, or an order is made approving a petition filed by any of its creditors or by any of its stockholders or any other third party, seeking its reorganization or the readjustment of its indebtedness under the Federal Bankruptcy Laws or under any law or statutes of the United States or any State thereof.
- (e) Except as otherwise specifically provided herein, the interest of the “Distributor” under this Agreement or any or all of the capital stock of a corporation is transferred to, passes to, or devolves to any other person or entity (other, than upon the death of the “Distributor” and the interest passes to an heir at law), or without the written permission of the “Company”.
- (f) “Distributor,” which is a partnership, and is dissolved.
- (g) By or pursuant to, or under authority of any legislative act, resolution, or rule, or any order or decrees of any court or governmental board, agency or officer, a receiver, trustee or liquidator takes possession or control of all or possession or control continues in effect for a period of fifteen (15) days.
- (h) The “Distributor” fails to punctually make any payment required hereunder when due to the “Company”, Distributorship.com or to any customer.
- (i) At any time the “Distributor” ceases to work for the “Company”, whatever the cause may be, including, but not limited to death or incapacity. Termination for this reason shall be final and binding upon the parties and shall not be subject to arbitration.



**TERMINATION BY THE COMPANY: (continued)**

The rights of termination described in subparagraphs (a) through (i) above shall be in addition to any other rights of termination provided in this Agreement, and in addition to any rights and remedies that the “Company” would have. The exercise by the “Company” of any of its rights of termination under subparagraphs (a) through (i) hereof, or otherwise, shall be without prejudice to any other such rights and remedies available to the “Company”. Before issuing any termination notice pursuant to the above, the “Company” will give the “Distributor” a reasonable opportunity to explain and or cure its conduct.

**ARBITRATION:**

Except as otherwise provided in this Agreement, any and all disputes or disagreements between the "Company" and the “Distributor” concerning the interpretation or application of the provisions of this Agreement (other than disputes or disagreements relating to revision of prices, deposits or markups), shall be determined by binding arbitration in accordance with the rules of the American Arbitration Association.

**TERM OF AGREEMENT:**

This agreement shall commence on the date hereof and will not expire, unless sooner terminated pursuant to the provisions hereof.

**WAIVER:**

No waiver of any of the provisions of this Agreement shall be binding upon any Party hereto unless in writing and signed by such party. No waiver of any provision of or default under this Agreement shall affect the right of any party hereto thereafter to enforce said provision or to exercise any right or remedy in the event of any other default, whether similar, unless the written waiver thereof expressly so provides.

**AGREEMENT COMPLETE:**

This Agreement is intended to and shall supersede any and all existing understandings or agreements between the “Company” and the “Distributor” and expresses fully the understanding and agreement between the “Company” and the “Distributor.” Both parties agree that there are no promises, terms, conditions, understandings, commitments, or obligations in respect of the subject matter of this Agreement, except as set forth herein.

**MODIFICATION AGREEMENT:**

This Agreement may not be modified, amended, or changed unless in writing, signed and dated by both of the parties.



**DISTRIBUTORS EXIT POOL:**

**DEFINITION**

1. The “Distributor Exit Pool” represents 25% of the Net Sales contributed by the “Distributor” to the sale price of the Tower Beverage USA, LLC Trademark and rights to a 3<sup>rd</sup> Party for products listed below. This portion is to be shared by any “Distributor” who sells the “Company’s Products” based on the” Distributors” sales as a percentage (subject to a maximum of 20%) of the overall sales of the Products.

**2. TERMINATION**

- a. Sale of Trademark and Rights to Products

In the event TOWER BEVERAGE USA, LLC sells the Trademark and or the rights to the Products and terminates this Agreement, the “Distributor” shall receive a payment as defined in section 1 above and as illustrated below.

**EXAMPLE IS FOR ILLUSTRATIVE PURPOSES ONLY**

Trademark(s) and Rights to Products sells for	<b>\$750,000,000</b>
Previous 12 months Direct Sales made by Company	\$30,000,000
Previous 12 months collective Distributors Gross Sales	<b>\$70,000,000</b>
Total Company sales	\$100,000,000
Distributors Contributive Sales Percentage	70.00%
Total Distributor Contributive Dollars	\$525,000,000
Distributor Pool %	25.00%
Total Dollars to Distributor Pool	\$131,250,000

Maximum Distributor Payout % (to protect fair payouts) 20%

	Previous 12 month sales	Payout
Distributor 1	<b>\$17,000,000</b>	\$26,250,000
Distributor 2	<b>\$15,000,000</b>	\$26,250,000
Distributor 3	<b>\$12,000,000</b>	\$24,868,421
Distributor 4	<b>\$10,000,000</b>	\$20,723,684
Distributor 5	<b>\$7,000,000</b>	\$14,506,579
Distributor 6	<b>\$5,000,000</b>	\$10,361,842
Distributor 7	<b>\$2,500,000</b>	\$5,180,921
Distributor 8	<b>\$750,000</b>	\$1,554,276
Distributor 9	<b>\$500,000</b>	\$1,036,184
Distributor 10	<b>\$250,000</b>	\$518,092
	<b>\$70,000,000</b>	<b>\$131,250,000</b>



### **BINDING EFFECT:**

If any portions of this Agreement are found to be void or unenforceable, the remaining portions thereof shall be binding upon the parties hereto and shall be enforced with the same effect as though the void or unenforceable portions were deleted.

### **TOWER BEVERAGE USA, LLC'S REPUTATION:**

The "Distributor" acknowledges that the "Company's" reputation is of paramount importance. Accordingly, the "Distributor" will take no action of any kind that may reduce or diminish the good name and image of the "Company" or its products.

### **CONFIDENTIAL INFORMATION:**

The "Distributor" acknowledges that certain information of the "Company", such as the "Company's" sales manuals, price lists, customer list, trademarks, patents, product specifications, marketing techniques, servicing techniques, records, specifications, technical and non-technical information, suppliers, methods of buying and selling, trade secrets and other related information (herein defined as "confidential information") which the "Distributor" acknowledges, agrees and understands to be proprietary information belonging to the "Company", is of incalculable value to the "Company", which the "Company" is entitled to protect from competitors and other parties. Accordingly, the "Distributor" shall not disclose any such confidential information during the term of this Agreement, or upon its termination. The "Distributor" shall not use such confidential information in any way except in furtherance of this Agreement.

The "Distributor" acknowledges that the imposition of the above restraints is necessary and appropriate for the reasonable and adequate protection of the business of the "Company", and that the above restrictions are reasonable with respect to its subject matter, geographic area and length of time. Notwithstanding anything to the contrary herein contained, the "Distributor" recognizes that the covenants set forth in this Agreement are special and unique and in the event there is a breach by the "Distributor," at any time during the term of this Agreement, or within three years after the termination of this Agreement, the "Company" shall be entitled to injunctive and other equitable relief, and the "Company" shall be entitled to recover the loss, costs and expenses (including reasonable attorney's fees), which are incurred by it in securing such injunctive or other equitable relief.

### **NOTICES:**

Whenever either party desires or is required to give notice hereunder to any other party hereto, the same shall be emailed to or from [TowerBeverage85@gmail.com](mailto:TowerBeverage85@gmail.com) and shall be deemed sufficiently "given" when emailed and addressed to the receiving party at its last known email address. Any such notice, request or other communication shall be deemed given and be effective upon receipt at such email address.



**GOVERNING LAW:**

This Agreement shall be governed, interpreted, and construed under and pursuant to the laws of the State of New York. Any actions brought hereunder shall commence and proceed in the state of New York, regardless of conflicts of law.

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed by the respective representatives on the date set forth below.

ATTEST: \_\_\_\_\_

DISTRIBUTOR

\_\_\_\_\_

BY: \_\_\_\_\_

DATED: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

ATTEST: Tower Beverage USA, LLC

Bill Richards  
CEO

BY: \_\_\_\_\_

DATED: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

**EXHIBIT A)**

**Note:** Specified market area to be placed here along with current (Census.gov) approximate population.

