

NDC DISTRIBUTOR SALES ADMINISTRATION AGREEMENT

This Agreement, dated _____, 200__ (the "Effective Date") is between National Distribution & Contracting, Inc. ("NDC"), a Delaware corporation having a principal place of business at 402 BNA Drive, Suite 500, Nashville, Tennessee, 37217, and _____, a _____ corporation having a principal place of business at _____ ("Distributor").

WHEREAS, NDC has computer systems, staff, and experience in providing Sales Administration services in the healthcare supply industry and desires to provide those services to Distributor; and

WHEREAS, Distributor desires to retain NDC to provide Sales Administration services.

NOW, THEREFORE, in consideration of the mutual promises contained herein and intending to be legally bound hereby, the parties agree as follows:

1. **DEFINITIONS.**

The System. NDC's proprietary computer software programs and processes used for collecting, managing, processing, and distributing sales administration data.

Data. Any and all proprietary information provided by Distributor to NDC from time-to-time pursuant to this Agreement for inclusion and processing in or through the System including, without limitation Distributor's customer lists, Distributor's product catalogue and Distributor's shipping and invoice data. The term Data does not include any information, however obtained, that is not proprietary to the Distributor, including data, information, or graphical depictions of products provided to the Distributor by any manufacturer, which are in turn provided to NDC by the Distributor.

Distributor Host System. The computer system used by the Distributor to send and receive information to and from the System.

NDC Warehouse. The warehouse and other facilities through which NDC fulfills medical supply orders and other purchases.

Warehouse Vendors. Medical supply vendors utilizing NDC's warehouse services and approved by NDC. The current list of approved Warehouse Vendors is attached as **Exhibit A**.

2. **TERM.**

NDC will provide the sales administration services described below (collectively, the "Services") to Distributor under the terms of this Agreement beginning in the month of _____, 200__ and continuing for a period of one (1) year (the "Term"). The Term of this Agreement will renew for successive one (1) year renewal periods unless written notice to the contrary is given by either party within sixty (60) days of the expiration of the Term or any renewal thereof.

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3. SERVICES.

The Services will be comprised of the following:

- (a) Maintenance of Distributor's rebate contract terms and contract notification Data in accordance with information submitted to NDC by Warehouse Vendors pursuant to contracts under which Distributor is designated as an "authorized Distributor" by the Warehouse Vendor;
- (b) Electronic delivery of contract notification Data to Distributor from each Warehouse Vendor for intended sales of product through the NDC Warehouse;
- (c) Processing of Distributor's end-user rebate claims with Warehouse Vendors, for valid sales of product through the NDC Warehouse;
- (d) Processing of Distributor's end-user sales trace data, for Vendor's products, per certain Vendor program requirements;
- (e) Issuance of credit to Distributor for rebate claims due from Warehouse Vendors;
- (f) Monthly forwarding of **all** sales trace/rebate Data with respect to Distributor's sales to Warehouse Vendors in the required format;
- (g) Processing of Distributor's data as required for access to Group Purchasing Organization (GPO) contracts, a fee is assessed for these services.

NDC will electronically provide Distributor with the required formats for electronically submitting Data to NDC. Additional services, if any, must be described in a separate Agreement, which includes (i) the scope of work to be performed, (ii) an estimate of time and material costs for completion, (iii) a description of deliverables to Distributor and (iv) terms of remuneration to NDC. Each separate Agreement for additional services must be signed by both parties, and upon execution will become a part of the Services and subject to the terms of this Agreement.

4. NDC OBLIGATIONS.

NDC agrees to:

- (a) assist the Distributor with the understanding of certain technical requirements related to providing the Data to NDC including, without limitation, data formats and transmission protocols;
- (b) use commercially reasonable efforts to make the System fully operational, secure and available on business days from 8:00 AM – 5:00 PM, Central Standard Time, Monday – Friday;
- (c) operate and maintain the System, and maintain all computer and telecommunications equipment and resources, including, without limitation,

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hardware, software, communications lines, and support services necessary to perform the Services;

- (d) provide training, know-how, consulting, technical support and assistance as reasonably requested by Distributor in connection with the performance of its obligations or enjoyment of its rights under this Agreement; keep confidential the Data except as required by manufacturers, national group purchasing organizations, and other third-parties in the performance of the Services; provided, however, that NDC may use the Data for its own purposes and may provide information included within the Data in the aggregate to third parties for advertising, promotion, market research and related uses. Notwithstanding the foregoing, NDC shall not include the individual customer names of Distributors with the disclosure to third parties of any such information, nor shall NDC disclose individual Distributor cost or sell price information, collectively, to any third-party.

5. **DISTRIBUTOR OBLIGATIONS.**

Distributor agrees that:

- (a) Distributor will provide NDC with full sales trace Data on a timely basis and in an electronic format as specified by NDC. Data should be submitted at least monthly (daily and weekly submissions are preferred) and sales trace/rebate Data should be submitted no later than the 5th of the month after the sale of product;
- (b) Distributor will acquire and/or retain a Distributor Host System capable of providing the Data in the format(s) specified by NDC;
- (c) Distributor will allow NDC to conduct reasonable audits of Distributor records pertaining to the Data and the Services. This may require that NDC review Distributor's sales invoices, shipping and/or freight carrier documents, customer purchase orders and receipts relating thereto, as well as contract and end-user customer files. While routine audits will be based on sampling techniques, expanded testing may also be necessary and Distributor agrees that NDC may contact Distributor's customers to verify the quantities of product delivered. Audits shall be conducted upon reasonable advance notice during regular business hours, at Distributor's principal office (or such other locations where Distributor's records are normally maintained) and in such a manner as to not unduly interfere with Distributor's operations. If it is found that Distributor has not reported sales data accurately or has misrepresented sales data, the cost of the audit will be borne in full by Distributor. This cost may include charges for labor, outside consulting fees, and out-of-pocket expenses incurred during the course of the audit. Distributor shall reimburse NDC for such costs within thirty (30) days of receipt of invoice. NDC shall also have the right to offset any such costs from any account of Distributor maintained by NDC;

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- (d) Distributor will not short-pay invoices or take estimated or prospective rebates with respect to Warehouse Vendor products;
- (e) Distributor will notify NDC immediately of any System or Data-related problems;
- (f) Products sold by Distributor and subject to the Services under this Agreement will be sold only to end-users and not for resale by any customer. It will be considered a breach of this Agreement if Distributor has knowledge of, or has reason to know that Warehouse Vendor products have not been sold for a customer's own use;
- (g) Distributor may only claim rebates for products purchased from the NDC warehouse or directly from the manufacturer. If it is determined that product was not purchased from a vendor sanctioned source, rebate credit will not be issued and access to the Sales Administration program will be closed, permanently.
- (h) Distributor is responsible for accurate billing to its customers and for maintaining current contract Data with NDC;
- (i) Distributor will comply with all manufacturer and national group purchasing organization requirements and/or contract terms; inclusive of Vendor contract numbers, GPO contract numbers and GPO facility identifiers or LIC numbers;

6. REVOCABLE, NON-EXCLUSIVE LICENSE.

Distributor grants to NDC a non-exclusive license to receive, process, and integrate the Data into the System and to use the Data in accordance with the terms of this Agreement. All rights, title and interest to the Data shall remain the sole and exclusive property of Distributor and all rights not specifically granted to NDC under this Agreement are reserved to Distributor. The license hereby granted shall be revoked automatically upon termination of this Agreement.

7. FRAUDULENT REBATE REQUESTS.

If Distributor knowingly files a rebate claim containing false or misleading information or applies for a rebate for products for which no rebate is legally or contractually due, except when authorized, such rebate request will not be honored and Distributor's rights (but not its obligations) may be terminated under this Agreement. Any such termination shall be in addition to any other legal or equitable recourse or remedies to which NDC may be entitled under applicable law. If a rebate is honored and later discovered to be fraudulent or in error, Distributor shall be liable to NDC for the entire amount of the rebate, and appropriate charges will be made to Distributor's account. Distributors indemnify NDC against any manufacturer claims of fraudulent rebate requests.

8. FEES FOR SERVICES.

The fee for providing the Services outlined in Section 3 above are included in Distributor's annual membership fee paid to NDC and/or its affiliates, with the exception of GPO access and data processing. A one-time access fee for GPO Agreements, of \$500.00, is assessed, prior to

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Distributor access to GPO Agreements. A monthly Sales Administration processing fee, is assessed, in the amount of \$100.00, only when data is reported, on GPO Agreements. Fees for any additional services will be specified in a separate Agreement. Provided complete Data is submitted, in the NDC required format no later than the 5th of the month following the sale of product, NDC will credit Distributor's account for rebate claims, no later than the 15th of the month after sale of product. In the event that rebate claims so credited are not reimbursed to NDC by the manufacturer within ninety (90) days, Distributor will reimburse NDC for the full amount. Also, any denied rebates will be reimbursed by the Distributor to NDC, within thirty (30) days of invoice, from NDC.

9. WARRANTIES.

NDC represents and warrants to Distributor that:

- (a) the System will be functional and that NDC will employ commercially reasonable efforts to ensure that the System is operational and secure;
- (b) the System, and the performance of this Agreement, shall not infringe or violate any copyright, patent, trademark, service mark, trade secret, or any other proprietary right or contract right of any third party; and
- (c) the use of the System as contemplated by this Agreement will not violate any law or regulation.

Disclaimer of Warranty. EXCEPT AS EXPLICITLY SET FORTH IN THIS AGREEMENT, NDC MAKES NO REPRESENTATION OR WARRANTY WITH RESPECT TO ANY SERVICES OR PRODUCTS PROVIDED HEREUNDER AND SPECIFICALLY DISCLAIMS ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

10. LIMITATION OF LIABILITY.

NDC shall not be liable to Distributor under this Agreement for any indirect, incidental, consequential, special or exemplary damages (even if NDC has been advised of the possibility of such damages) including but not limited to, loss of revenue or anticipated profits or lost business. In addition, NDC shall not be liable for any damages resulting from any invalid rebate claims submitted by Distributor or on its behalf, and Distributor shall indemnify and hold NDC harmless from any and all damages that may be incurred as the result of any invalid rebate claim.

11. FORCE MAJEURE.

Neither party shall be liable in damages for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including, but not limited to Acts of God, government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected.

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12. TERMINATION.

In the event of a material breach of this Agreement by either party, the other party may terminate this Agreement on thirty (30) days' written notice to the breaching party unless the breach is cured within such thirty (30) day period. This Agreement shall also terminate immediately in the event that Distributor ceases to be a member in good standing of NDC or one of its affiliates.

13. ENTIRE AGREEMENT.

This Agreement contains the entire agreement of the parties with respect to the subject matter hereof, and there are no other promises or conditions in any other agreement with respect thereto whether oral or written. This Agreement supersedes any prior written or oral agreements between the parties with respect to the subject matter hereof.

14. AMENDMENT.

This Agreement may be modified or amended if the amendment is made in writing and is signed by both parties.

15. SEVERABILITY.

If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

16. WAIVER OF CONTRACTUAL RIGHT.

The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.

17. APPLICABLE LAW.

This Agreement, formation, construction, performance and all other matters shall be governed by the laws of the State of Tennessee.

18. CONFIDENTIALITY.

Distributor acknowledges that during the course of this Agreement, information that is confidential or proprietary may be disclosed to it by NDC, including, without limitation, software, technical processes and formulas, source code, product designs, sales, cost and other unpublished financial information, product and business plans, advertising revenues, usage rates, advertising relationships, projections, and marketing data (collectively, "Confidential Information"). Distributor agrees to use such Confidential Information only to carry out its obligations under this Agreement, and will not disclose the Confidential Information to anyone other than its employees who have a need to know such Confidential Information in connection

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with this Agreement. Distributor shall notify its employees of their confidentiality obligations with respect to the Confidential Information and shall require its employees to comply with these obligations.

19. NOTICES.

All notices required or permitted under this Agreement shall be in writing and shall be deemed delivered when delivered in person deposited in the United States mail, postage prepaid to the address below:

For NDC:

National Distribution & Contracting, Inc.
Attention: Sales Administration
402 BNA Drive
Suite 500
Nashville, TN 37217

For Distributor:

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date above.

NDC:

Distributor:

By: _____

By: _____

Title: Vice President, Sales Administration

Title: _____

Date: _____

Date: _____