

DISTRIBUTION AGREEMENT
(With Non-Compete, Non-Solicitation Provisions)

This Distribution Agreement (hereinafter, "Agreement") is hereby made as of this ____ day of _____, 20____ by and between **KNOWLES DISTRIBUTING, LLC**, and **R & J DISTRIBUTING, LLC**, a Georgia limited liability company (hereinafter, "Knowles"), and _____ (hereinafter, "Driver").

WITNESSETH:

WHEREAS, Knowles and R & J are distributors of food products.

WHEREAS, Knowles and R & J desire to contract with various drivers for delivery of the Products within specified territories; and

WHEREAS, Driver desires to enter into a contract for the delivery of the Products within one such territory.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Term.** Subject to the provisions of Section 11 of this Agreement, the term of this Agreement shall be for a period of one year from the date of this Agreement (the "Initial Term"), and shall thereafter be automatically renewed from year to year (thereafter a "Renewal Term"), unless notice that this Agreement shall not be renewed shall have been given by either party to this Agreement to the other not less than ninety (90) days prior to the expiration of the Initial Term or any Renewal Term.
2. **Territory.** The term "Territory" as used in this Agreement shall mean the geographic area described in Exhibit "A", attached to this Agreement and incorporated by reference in this Agreement. Driver shall be the sole and exclusive distributor of the Products in the Territory during the term of this Agreement. Driver accepts such appointment and agrees to act as the sole and exclusive distributor of the Products in the Territory upon the terms and subject to the conditions contained herein. Without the prior documented consent of Knowles and R & J, Driver shall not make any sales or distribution of the Products outside the Territory.
3. **Territory Fee.** As payment for processing, Driver shall pay a percentage of the total bill of sales for invoiced products set by Knowles and R & J Distributing.
4. **Best Efforts.** Driver shall exert his best efforts: (i) to develop the full sales potential of the Territory; (ii) to provide service to the customers of Knowles and R & J, which he services within the Territory on a basis consistent with good industry practice; and (iii) to maintain the established reputation and goodwill of the Products in the marketplace. Driver is encouraged to develop individual business relationships with the customers of Knowles and R & J, which he services, to use those relationships to maximize sales, and to grow Knowles and R & J's business by developing new customers.

5. **Report of Sales.** Driver shall keep Knowles and R & J updated on all sales of the Products in the Territory by Driver according to Knowles and R & J's instructions.

6. **Return of Product.** Driver shall not be entitled to return to Knowles and R & J any Products: (i) which Driver is unable to sell; (ii) which Driver removes from his customers in accordance with the freshness dates on those Products; or (iii) which become damages, due to any cause, after receipt by Driver. Driver shall not be entitled to return to Knowles and R & J only those Products which are damaged before receipt by Driver, or which, because of improper manufacture, deteriorate in quality and thereby become unfit for sale prior to the freshness dates on those Products.

7. **Perishability.** Driver specifically understands and acknowledges that the Products are perishable in nature and are marketable only for a limited period of time as specified by the freshness dates on the Products. Driver agrees that certain freshness standards must be met in order to protect the reputation of the Products and to ensure that no deterioration in the quality of the Products occurs. Accordingly, Driver agrees to remove Products from Driver's customers in accordance with the freshness dates on those Products.

8. **Termination.**

(a) Either party may terminate this Agreement at any time for any reason with ten (10) days' notice to the other party of such termination.

(b) Upon termination of this Agreement, all indebtedness between Knowles, R & J, and Driver shall become due and payable. Further, Driver shall continue to be responsible for the Products which Driver sold to Knowles and R & J's customers which he services if those Products become damages before sale or are removed from Driver's customers in accordance with the freshness dates on those Products.

9. **Insurance.** Driver agrees to maintain liability insurance as reasonably required by Knowles and R & J. Driver specifically agrees to maintain:

(i) commercial vehicle liability insurance with combined single limits in the minimum amount of One Million Dollars (\$1,000,000.00) for bodily injury and property damage; and

(ii) business general liability insurance with combined single limits in the minimum amount of One Million Dollars (\$1,000,000.00).

Knowles and R & J may, from time to time, specify reasonable increases in the minimum amounts of insurance maintained by Driver.

It is specifically understood that the commercial vehicle liability insurance shall provide coverage on any vehicle which Driver might use in operations conducted pursuant to this Agreement, regardless of whether Driver owns such vehicle. Each insurance policy maintained by Driver shall: (i) be written on an occurrence basis and (ii) name Knowles and R & J as additional insureds.

10. **Independent Contractor.**

(a) The parties intend to create an independent contractor relationship between them and agree that Driver shall be an independent contractor for all purposes. Nothing herein shall be construed: (i) to be inconsistent with that relationship; (ii) as constituting Driver as the partner, agent, or employee of Knowles and R & J; or (iii) as authorizing Driver, or any agent, employee, or contractor of Driver, to create or assume any obligation or liability in the name of Knowles and R & J. Knowles and R & J are interested only in the results obtained under this Agreement and hereby specifically relinquishes any right to control the manner and means by which Driver achieves those results. Driver shall exercise his independent business discretion in determining the manner and means of achieving those results and in directing the activities of any agents, employees, or contractors of Driver.

(b) Driver shall operate as an independent business performing services on his own behalf and not on behalf of Knowles and R & J. Nothing in this Agreement shall be construed as requiring Driver to personally perform any services, and it is contemplated that Driver may hire, appoint or otherwise designate his own agents, employees, or contractors for purposes of performing any or all of Driver's obligations under this Agreement. Any agents, employees, or contractors of Driver shall be selected and engaged by Driver as determined by Driver. Driver shall be solely responsible for any acts or omissions of Driver's agents, employees, and contractors and for all compensation and benefits which may be due them. Driver shall indemnify and hold Knowles and R & J harmless from and against any and all claims of any agent, employee, or contractor of Driver.

(c) Driver shall hold himself out as an independent contractor and shall not be treated as an agent or employee of Knowles and R & J for federal tax purposes or for any other purpose. Driver shall be engaged in the operation of a food distribution business and shall not receive or be entitled to any wages, salary, commissions, other compensation, or employee benefits from Knowles and R & J. Driver shall comply with all laws applicable to Driver's business, shall obtain all appropriate licenses and registrations for that business, and shall pay all business or self-employment taxes applicable to Driver and that business. Knowles and R & J shall not be obligated to reimburse or compensate Driver for any expenses incurred by Driver. Either party may terminate this Agreement, immediately upon written notice to the other party, if a court, agency, or board of competent jurisdiction determines that Driver is not an independent contractor for any purpose.

11. **Claims.** All claims by Driver relating to Products must be made within seven (7) days after Driver learns the facts upon which such claims are based but in no event later than seventy-five (75) days after receipt of Products by Driver. All claims not made in writing within the time period specified shall be deemed waived.

12. **Limitation of Remedy.** Driver's exclusive remedy for all Product claims arising out of this Agreement shall be the replacement of defective Products, or, at the option of Driver or Knowles and R & J, return of the purchase price.

13. **Indemnification.** Driver assumes all risk and liability for and agrees to indemnify and hold Knowles and R & J harmless from and against any and all actions, suits, proceedings, claims, demands, losses, liabilities, damages and expenses of any kind (including attorneys' and experts' fees and sums reasonably expended in investigation and settlement of litigation, pending or threatened) arising out of or

in connection with: (i) any breach of this Agreement by Driver, or (ii) any negligence or intentional misconduct of, or any breach of any obligation assumed by Driver or any agent, employee, or contractor of Driver.

14. **Assignment.** Neither this Agreement nor any rights or interests hereunder may be sold, transferred or assigned by Driver without the prior written consent of Knowles and R & J. Any purported sale, transfer or assignment thereof by Driver without such consent shall be null and void. Such consent may be withheld or granted by Knowles and R & J in its sole discretion. Knowles and R & J may sell, transfer or assign this Agreement or any Knowles and R & J's rights or interests hereunder upon thirty (30) days' written notice to Driver.

15. **No Representations or Guarantees.** Knowles and R & J make no representation or guarantee regarding the sales volume or profits which Driver may derive from business operations conducted pursuant to this Agreement. Driver has conducted his own investigation of the investment required to begin and continue Driver's business operations and of the opportunity for profit and risk of loss. Driver acknowledges and agrees that, in entering into this Agreement, he has not relied on any representation, warranty, or promise by Knowles and R & J, or any employee or agent of Knowles and R & J, other than the obligations of Knowles and R & J that are specifically set forth in this Agreement.

16. **Product Recall.** Driver shall cooperate fully and promptly with Knowles and R & J, manufacturer, the federal Food and Drug Administration and any other governmental authority in carrying out such actions as may be requested by Knowles and R & J, manufacturer, the federal Food and Drug Administration or such other governmental authority in connection with a product recall, market withdrawal, product recovery or return, or similar activity.

17. **Release.** Driver, for himself and for his legal representatives, heirs, successors and assigns, hereby releases and discharges Knowles and R & J and its officers, directors and employees from any and all claims, demands or liabilities, whether known or unknown, of any nature whatsoever, existing on the date of this Agreement.

18. **Non-Competition; Non-Solicitation.**

1. For the purposes of this Section, the following definitions shall apply:

(a) **Business.** The business of selling and distributing the Products as described herein.

(b) **Business Partner.** All merchants, vendors, service providers, advertisers, subscribers, or other entities contracting with Knowles and R & J to provide goods and/or services to Knowles and R & J Customers.

(c) **Competitor.** Any person, corporation, limited liability company, partnership, business or other entity engaged in activities or providing products or services that are the same, similar to, or competitive with the Business.

(d) **Confidential Information.** Information and the compilation of information related to the operation and business of Knowles and R & J that derives economic value, actual or potential, from not being generally known to or readily ascertainable by other persons or entities who can obtain economic value from its disclosure or use. Confidential Information includes, but is not limited to, the following:

proposals made to or prepared for existing or prospective Customers or Business Partners; the identity of and contact information for Knowles and R & J Customers and Business Partners; pricing information; identity of subcontractors and subcontractor fee agreements; compilations of information concerning existing or prospective Customers or Business Partners, including, but not limited to, any Customer or Business Partner lists, and subscriber lists; the composition or description of future products or services that are or may be provided by Knowles and R & J; financial, marketing, and sales information of Knowles and R & J; technical expertise; formulas; sales expertise; any and all technical and non-technical information including patent, copyright, trade secret, and proprietary information, techniques, sketches, drawings, models, design prototypes, inventions, know-how, processes, apparatus, equipment, algorithms, software programs, software source documents, and formulae related to the current, future and proposed products and services of Knowles and R & J; know how, including, but not limited to, the unique manner in which Knowles and R & J business is conducted; and payment arrangements. Confidential Information shall also include information that has been disclosed to Knowles and R & J, by any third party as to which Knowles and R & J have an obligation to the third party to treat as confidential. For purposes of this Agreement, Confidential Information shall also include Trade Secrets, as defined in the Georgia Trade Secrets Act of 1990, O.C.G.A. §10-1-761(4) and as further defined in O.C.G.A. § 13-8-51(3).

(e) Customer. Customer as used herein shall mean a subscriber, retailer, purchaser or other consumer of the Products or Knowles and R & J goods and/or services.

(f) Restricted Period. Restricted Period as used herein shall mean the Term of this Agreement, as defined in Section 1 above and continuing for two (2) years from the date of expiration or termination of this Agreement.

(g) Restricted Territory. Restricted Territory as used herein shall mean the commissaries which is outlined in Exhibit B.

2. Restrictive Covenants. In order to protect Knowles and R & J's legitimate business interests, as that term is defined in O.C.G.A. §13-8-51(9), Driver agrees to observe, abide, be bound by and comply with the following restrictive covenants:

(a) *Non-Competition Covenant*.

(i) Without the prior written consent of Knowles and R & J during the Restricted Period, Driver agrees to not provide products or services within the Restricted Territory that are the same, similar to, or competitive with products or services Knowles and R & J provides, including, without limitation, engaging in any way in the Business. This covenant of non-competition shall prohibit Driver from establishing a competitive business to otherwise become a Competitor of Knowles during the Restricted Period.

(ii) Without the prior written consent of Knowles and R & J, during the Restricted Period, Driver agrees not to solicit employment or accept employment, whether for compensation or not, to serve as an employee, officer, director, trustee, partner, independent contractor, consultant, or owner of a Competitor located within the Restricted Territory. This covenant of non-competition shall also prohibit Driver from establishing a competitive business to otherwise become a Competitor of Knowles and R & J during the Restricted Period, within the Restricted Territory.

(iii) Driver acknowledges and agrees that he may use his general knowledge, skills, and talents without violating the foregoing or any other provisions of this Section 2 and that, therefore, the restrictions shall not, consistent with O.C.G.A. §13-8-50, et seq., or any successor statute, constitute an

unlawful restraint on trade or categorical prohibition on Driver's right and ability to obtain employment or earn a living.

(b) *Non-Solicitation Covenant.*

(i) Without the prior written consent of Knowles and R & J, during the Restricted Period, Driver shall not, on behalf of himself or a Competitor, either directly or indirectly, solicit or attempt to solicit business from any of Knowles and R & J actual or prospective Customers or Business Partners with whom or with which Driver had material contact in furtherance of Knowles and R & J Business.

(ii) Without the prior written consent of Knowles and R & J, during the Restricted Period, Driver shall not, either directly or indirectly, for himself or the benefit of a Competitor (i) solicit, recruit, retain, hire, employ, or contract for or attempt to solicit, recruit, retain, hire, employ, or contract for the services of any executive, manager, sales representative, or other employee or agent of Knowles and R & J; or (ii) persuade, influence, counsel, encourage or attempt to persuade, influence, counsel, or encourage any such person to resign from, terminate, or modify any relationship with Knowles and R & J.

(c) *Non-Disclosure Covenant.* Driver agrees (x) to hold in strict trust and confidence for Knowles and R & J, and to not disclose to any third party without prior written consent of Knowles and R & J, the Confidential Information, whether it is tangible or intangible and (y) not to use the Confidential Information for Driver's personal benefit or for the benefit of any third party. Driver's obligations under this Section 2(c) as it relates to Confidential Information that is a trade secret under applicable law shall apply as long as the Confidential Information remains a trade secret under the law, and Driver's obligations under this Section 2(c) as it relates to Confidential Information that does not constitute trade secrets under applicable law shall apply for as long as the Confidential Information remains confidential. This restriction shall not apply to (i) any Confidential Information that has otherwise lawfully become public information through no breach of this Agreement; or (ii) disclosure of such Confidential Information as required by court order.

(d) *Fairness and Reasonableness of Restrictions.* Driver recognizes and agrees that (i) the obligations set forth in this Section 2 are independent, severable, and ancillary to an otherwise enforceable series of agreements by and between Knowles, R & J, and Driver; (ii) the duration, scope, and geographic area applicable to these obligations are fair, reasonable, and necessary to protect Knowles and R & J's legitimate business interests; (iii) adequate consideration has been received by Driver in exchange for his agreement to abide by and observe the obligations contained herein; (iv) these obligations do not prevent Driver from earning a livelihood; and (v) compliance with these obligations is necessary to prevent irreparable harm to Knowles and R & J. If, however, any court of competent jurisdiction finds the provisions of this Section 2, or any of them, to be invalid or unenforceable in any respect, then such provision(s) shall be interpreted, modified, "blue-penciled", or rewritten by the court to include as much of the initial intent of the provision(s) as will be valid and enforceable, but shall not be modified to be more restrictive than as set forth herein.

(e) *Restrictive Covenants of the Essence.* The covenants in Section 2 are the essence of this Agreement. Such covenants shall be construed as independent of any other provision in this Agreement, and the existence of any claim or cause of action by Driver against Knowles, whether predicated on this Agreement or not, shall not constitute a defense to the enforcement of the restrictive covenants contained herein. Knowles and R & J shall at all times maintain the right to seek enforcement of these provisions whether or not Knowles has previously refrained from seeking enforcement of any such provision as to Driver or any other individual who has signed an agreement with similar provisions.

(f) *Effect of Breach and Injunctive Relief.* In the event of Driver's breach of this Agreement, Knowles and R & J shall be entitled to restitution for its direct and indirect losses arising from such breach. In addition to restitution, Driver acknowledges that the remedies at law for a violation of the restrictive covenants contained in this Agreement will be inadequate and that Knowles and R & J retain the right to injunctive or other equitable relief in order to prevent or mitigate damage resulting from Driver's violation. Driver shall and hereby does waive any and all defenses he may have to such equitable action on the grounds of lack of personal jurisdiction, adequacy of a legal remedy, or competence of the court to grant an injunction or other equitable relief.

(g) *Tolling.* In the event the enforceability of any of the terms of this Agreement shall be challenged in a court of competent jurisdiction and Driver is not enjoined from breaching one or more of the restrictive covenants, then if a court of competent jurisdiction finds that the challenged restrictive covenant(s) is enforceable, the time periods set forth herein shall be deemed tolled upon the filing of the lawsuit challenging the enforceability of the challenged restrictive covenant until the dispute is finally resolved and all periods of appeal have expired.

19. **Waiver.** The failure in any one or more instances of a party to insist upon strict performance of any provision of this Agreement or to exercise any right conferred in this Agreement shall not be construed as a waiver of such provision or right, and the waiver by either party of a breach of any provision of this Agreement shall not be construed as a waiver of a subsequent breach of that provision.

20. **Remedies Cumulative.** The rights and remedies of the parties under this Agreement shall be cumulative. No right or remedy under this Agreement shall be exclusive of any other right or remedy under this Agreement or provided by law or equity.

21. **Notices.** All notices required or permitted to be given under this Agreement shall be in writing. Such notices shall be deemed given when delivered by hand or when deposited in the United States mail.

. **Severability.** If any term or provision under this Agreement, or any portion of this Agreement, is held to be invalid or unenforceable, it shall not affect any other term or provision under this Agreement or any part of this Agreement.

22. **Survival.** All promises, covenants, agreements, representations and warranties contained in this Agreement shall survive the execution and delivery, and the subsequent termination, of this Agreement and the transactions contemplated under this Agreement.

23. **Entire Agreement.** Each party to this Agreement acknowledges that this Agreement constitutes all of the agreements between the parties hereto and that no representation, warranty, or other covenant is included except as set forth herein. No custom or practice of the parties at variance with the term hereof shall constitute a waiver of either party's right to demand compliance with the terms thereof.

24. **Successors.** This Agreement shall be binding upon and inure to the benefit of the parties to this Agreement and their legal representatives, heirs, successors and permitted assigns.

25. **Captions.** All section captions are used solely for the convenience of the parties and are not intended to be used in any way as a guide to the construction of this Agreement.

26. **Governing Law; Venue.** This Agreement shall be governed by, construed, interpreted and enforced in accordance with the laws of the State of Georgia. All parties agree that if suit is brought based

on any controversy or claim arising out of or relating to this Lease, the State or Superior Courts located in Houston County, Georgia shall have jurisdiction of such case or controversy and shall be the exclusive forum in which to adjudicate such case or controversy. The parties hereby consent to the exercise of jurisdiction and venue by such courts.

IN WITNESS WHEREOF, the parties to this Agreement have caused this Agreement to be duly executed as of the ____ day of _____, 20____.

DRIVER:

By: _____

Its: _____

KNOWLES DISTRIBUTING, LLC:

By: _____

Its: _____

R & J DISTRIBUTING, LLC:

By: _____

Its: _____

Exhibit "A"

Territory for _____

Exhibit "B"

Restricted Territory, per paragraph 18 (g) of Agreement

(Attach copy of service area map)