

PREFERRED VENDOR AGREEMENT

THIS NON-EXCLUSIVE PREFERRED VENDOR AGREEMENT (this “**Agreement**”) is entered into effect as the purchase date (the “**Effective Date**”) of the Products by and between **KAIVAL BRANDS INNOVATIONS GROUP, INC.**, a Delaware corporation (“**Distributor**”), and the purchaser of the Products (“**Preferred Vendor**”). Distributor and Preferred Vendor are each referred to herein as a “**Party**” and collectively, the “**Parties**.”

RECITALS

WHEREAS, Bidi Vapor, LLC, a Florida limited liability company (“**Manufacturer**”), is in the business of developing electronic nicotine delivery systems and related components (all such products whether now or hereafter made available for sale by Manufacturer being hereinafter referred to as “**Products**”).

WHEREAS, Distributor has entered into that certain Exclusive Distribution Agreement dated March 9, 2020 (as the same may be amended or otherwise modified from time to time, the “**Distribution Agreement**”) with Manufacturer pursuant to which Manufacturer has granted Distributor an exclusive worldwide right to distribute the Products for sale and resale.

WHEREAS, subject to the terms and conditions of this Agreement, Preferred Vendor wishes to be appointed, and Distributor is willing to appoint Preferred Vendor, as a non-exclusive Preferred Vendor of the Products solely to legal purchasers of the Products being hereinafter referred to as “**Authorized Customers**”).

NOW, THEREFORE, in consideration of the foregoing premises and the mutual representations and agreements set forth herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Distributor and Preferred Vendor, intending to be legally bound, hereby agree as follows:

1. APPOINTMENT; NO EXCLUSIVITY; MARKETING AND SUPPORT.

A. Appointment; No Exclusivity. Subject to the terms and conditions set forth in this Agreement, Distributor hereby appoints Preferred Vendor as a non-exclusive Preferred Vendor of the Products solely to Authorized Customers. Preferred Vendor accepts the appointment as one of Distributor’s non-exclusive Preferred Vendors of the Products solely to Authorized Customers and agrees to buy for resale, upon the terms and conditions set forth herein solely to Authorized Customers. Distributor represents and warrants that the appointment of and sale of Products to Preferred Vendor under this Agreement does not violate any obligations or contracts of Distributor.

B. Marketing and Support. Distributor will be solely responsible to provide Preferred Vendor with all branding, logos and marketing materials to be utilized by Preferred Vendor in connection with Preferred Vendor’s marketing and promotion of the Products; provided, however, Preferred Vendor shall bear all expenses related to reproduction and distribution of the same:

- i. Preferred Vendor shall at all times conduct its business in a manner that will reflect favorably on Manufacturer, Distributor and the Products and will not engage in any deceptive, misleading, illegal or unethical business practice.
- ii. Preferred Vendor will comply with all applicable laws and regulations and will not assist or participate in any violation of laws or regulations applicable to Manufacturer, Distributor or Preferred Vendor.

Preferred Vendor shall be responsible for all expenses incurred by it in connection with the implementation and performance of its duties and obligations under this Agreement, including, without limitation: (i) salaries or compensation for its personnel; (ii) costs and expenses associated with establishing and maintain its sales organization and offices; and (iii) marketing, advertising and promotion expenses.

2. PRICING.

A. Prices. Distributor has a legitimate interest in ensuring that a minimum price be maintained for all sales by a Preferred Vendor of its Products. Accordingly, Distributor will establish minimum pricing for all sales by Preferred Vendor of its Products to Authorized Customers (“**Minimum Price**”) and Preferred Vendor will not sell any Products to Authorized Customers below the applicable Minimum Price. The Minimum Price per Product is denoted online for Wholesale at www.wholesale.bidivapor.com, and for Retail the Minimum Price is \$12.99 per Unit. As used herein, a “**Unit**” means each Product as may ultimately be packaged and sold by Distributor to a Retail customer. Prices do not include, and Distributor shall not be responsible for any required federal, state or local sales or other taxes, duties, export or custom charges, VAT charges, brokerage or other fees.

B. Past Due Amounts. If any undisputed amount due Distributor by Preferred Vendor, for any reason, becomes past due, Distributor shall provide written notice to Preferred Vendor and, if such amounts remain outstanding for fifteen (15) calendar days following receipt of such notice, Distributor may at its option and without further notice withhold further shipments or deliveries of Products under this Agreement until such past due invoices are paid in full.

C. Taxes. Preferred Vendor shall be responsible for any national, state or local sales, use, value added, or other tax, tariff, duty or assessment levied or imposed by the United States or any foreign governmental authority arising out of or related to any of the transactions contemplated by this Agreement, including sales of Product to Preferred Vendor, other than taxes based upon Distributor’s income.

3. SHIPMENTS; PRODUCTS.

A. Shipment Terms; Title and Risk of Loss. All Products purchased by Preferred Vendor under this Agreement will be packaged for shipment in Distributor’s and/or Manufacturer’s standard containers, marked for shipment to either Preferred Vendor or the applicable Authorized Customer at the address specified by Preferred Vendor in the Purchase Order (the applicable destination being hereinafter referred to as the “**Destination**”). Title and risk of loss will pass F.O.B. Destination.

B. Acceptance of Shipments. Preferred Vendor shall have five (5) business days from the date of arrival of the shipment of the Products at the applicable Destination to inspect the Products and notify Distributor in writing of any discrepancies with respect to such Products, including but not limited to any discrepancies in the quantity or quality of the Products. Products with respect to which Preferred Vendor does not notify Distributor of any discrepancies in writing shall be deemed accepted by Preferred Vendor.

C. Adding or Deleting Products; Manufacturing Changes to the Products. Distributor shall have the right at any time to add or delete Products. Should Distributor want to make any changes to the Products, it shall first notify the Preferred Vendor at least three (3) calendar days before the change is implemented. Notwithstanding the foregoing, for changes required by regulatory or certification authorities or otherwise deemed necessary by Distributor for any reason, including health, safety, welfare, technology intellectual property, trade secret, competitive, materials sourcing, or other matters, Distributor will notify Preferred Vendor at least one (1) calendar day before the change is implemented.

4. INTELLECTUAL PROPERTY RIGHTS.

A. Manufacturer' Marks. Subject to the terms and conditions of this Agreement and the Distribution Agreement, during the term of this Agreement, Distributor hereby grants to Preferred Vendor a revocable, sublicensable, non-transferable, non-exclusive, limited license to use Manufacturer's logos, trademarks, and trade names, together with all branding and marketing materials created by or on behalf of Manufacturer in connection with the Products (collectively the "**Manufacturer IP**"), solely in connection with the marketing, advertisement and sale of the Products to Authorized Customers. Such license shall immediately terminate upon the expiration or termination of this Agreement. Preferred Vendor shall strictly comply with all standards of use for the Manufacturer IP and must at all times display appropriate trademark and copyright notices as instructed by Distributor. Preferred Vendor acknowledges and agrees that the Manufacturer IP and other intellectual property provided to Preferred Vendor by Distributor, if any, are the sole and exclusive property of Manufacturer and/or Distributor, as applicable. Preferred Vendor shall not acquire any right, title or interest under this Agreement in any patent, copyright, Manufacturer IP or other intellectual property right of any kind of either Manufacturer or Distributor. No implied license, patent, copyright or other intellectual property right of Manufacturer or Distributor is granted under this Agreement or otherwise. During the term of this Agreement and thereafter, Preferred Vendor shall not do anything that will in any manner infringe, impeach, dilute or lessen the value of the Manufacturer IP, patents, copyrights or other intellectual property of either Manufacturer or Distributor or the goodwill associated therewith or that will tend to prejudice the reputation of the Manufacturer or Distributor or the sale of any Products.

B. Preferred Vendor Marks. Subject to the terms and conditions of this Agreement, during the term of this Agreement, Preferred Vendor hereby grants Distributor a non-exclusive, royalty free license to use Preferred Vendor's logos, trademarks, and trade names (the "**Preferred Vendor Marks**") on Distributor's web sites and marketing materials. Such license shall immediately terminate upon the expiration or termination of this Agreement. Distributor shall strictly comply with all standards of use for the Preferred Vendor Marks and must at all times display appropriate trademark and copyright notices as instructed by Preferred Vendor.

Distributor acknowledges and agrees that the Preferred Vendor Marks and other intellectual property provided to Distributor by Preferred Vendor, if any, are the sole and exclusive property of Preferred Vendor. Distributor shall not acquire any right, title or interest under this Agreement in any patent, copyright, Preferred Vendor Marks or other intellectual property right of any kind of Preferred Vendor. No implied license, patent, copyright or other intellectual property right of Preferred Vendor is granted under this Agreement or otherwise. During the term of this Agreement and thereafter, Distributor shall not do anything that will in any manner infringe, impeach, dilute or lessen the value of the Preferred Vendor Marks, patents, copyrights or other intellectual property of Preferred Vendor or the goodwill associated therewith or that will tend to prejudice the reputation of the Preferred Vendor.

C. Sale of Counterfeit Products. Preferred Vendor agrees that Distributor and Manufacturer have invested substantial money, time, and interest to protect Manufacturer IP, and Preferred Vendor is aware that the value of Products is harmed by the availability around the world of counterfeit, fraudulent, fake, or knock-off versions of Products (“**Counterfeit Products**”). Preferred Vendor agrees that the knowing or unknowing distribution of Counterfeit Products will cause irreparable harm to Distributor and Manufacturer. The knowing or unknowing sale of Counterfeit Products by Preferred Vendor is subject to immediate termination of this Agreement under section 7(A).

5. INDEMNIFICATION.

A. Indemnity Obligations for Intellectual Property Infringement. Distributor agrees to defend, indemnify and hold harmless Preferred Vendor from and against any and all claims, losses, damages, suits, expenses (including reasonable attorneys’ fees) and costs (collectively “**Claims**”) brought or alleged by a third party that the Manufacturer IP or any Products sold to Preferred Vendor infringe any U.S. patent, trademark or copyright. Preferred Vendor shall reasonably cooperate with Distributor, its insurance company and its legal counsel in its defense of such Claims. If the use or sale of any Products furnished under this Agreement is enjoined as a result of a Claim, Distributor shall either obtain on behalf of the Preferred Vendor the right to continue to use or sell such Products, substitute an equivalent product reasonably acceptable to Preferred Vendor in its place, or reimburse Preferred Vendor the purchase price of the Products, costs incurred by Preferred Vendor as a result of such cancellation, and any and all losses or costs incurred as a result of Preferred Vendor’s breach of any purchaser order or other agreement with its customers. Notwithstanding the foregoing, this indemnity shall not apply or cover any Claims based upon any infringement or alleged infringement of any patent, trademark or copyright resulting from the alteration or unauthorized use of any Manufacturer IP or Products by Preferred Vendor or a Preferred Vendor representative or the combination of any Products with any other products or the combination of any Manufacturer IP with any other mark, if such infringement claim would have been avoided but for such alteration, combination or unauthorized use by Preferred Vendor or any Preferred Vendor representative. Preferred Vendor shall also have the right to participate in the defense of any such action and have the right to hire its own legal counsel at Preferred Vendor’s expense. This indemnity shall not cover any Claims in which Preferred Vendor fails to provide Distributor with prompt written notice of the Claim which lack of notice materially prejudices the defense of the Claim.

B. Preferred Vendor agrees to defend, indemnify and hold harmless Distributor from and

against any and all Claims brought or alleged by a third party based upon any infringement or alleged infringement of any patent, trademark or copyright resulting from the alteration or unauthorized use of any Manufacturer IP or Products by Preferred Vendor or a Preferred Vendor representative or the combination of any Products with any other products or the combination of any Manufacturer IP with any other mark, if such infringement claim would have been avoided but for such alteration, combination or unauthorized use by Preferred Vendor or any Preferred Vendor representative. **Preferred Vendor shall indemnify Distributor for the sale of any Counterfeit Products, including loss of sales, loss of profits, and loss of reputation.** Distributor shall reasonably cooperate with Preferred Vendor, its insurance company and its legal counsel in its defense of such Claims. Distributor shall also have the right to participate in the defense of any such action and have the right to hire its own legal counsel at Preferred Vendor's expense. This indemnity shall not cover any Claims in which Distributor fails to provide Preferred Vendor with prompt written notice of the Claim which lack of notice materially prejudices the defense of the Claim.

C. Distributor's Additional Indemnity Obligations. Notwithstanding anything herein to the contrary, in addition to all other rights and remedies available at law or in equity, Distributor hereby agrees to defend, indemnify and hold harmless Preferred Vendor from and against any and all third party Claims (i) arising out of any defects in any Products existing at the time such Products are sold by Distributor to Preferred Vendor, or (ii) arising out of the negligent acts or omissions or willful misconduct of Distributor, its employees, agents or representatives with respect to the Products or its performance of this Agreement. Preferred Vendor shall reasonably cooperate with Distributor, its insurance company and its legal counsel in its defense of such Claims. Preferred Vendor shall also have the right to participate in the defense of any such action and have the right to hire its own legal counsel at Preferred Vendor's expense. This indemnity shall not cover any Claims in which Preferred Vendor fails to provide Distributor with prompt written notice of the Claim which lack of notice materially prejudices the defense of the Claim.

D. Preferred Vendor's Indemnity Obligations to Distributor. Preferred Vendor hereby agrees to defend, indemnify and hold harmless Distributor, its affiliates and their respective officers directors, employees and agents from and against any and all Claims (i) arising out of the negligent acts or omissions or willful misconduct of Preferred Vendor, its employees, agents or representatives with respect to its performance of this Agreement, sale of Products, or otherwise, (ii) arising out of the alteration or modification of the Products or Distributor IP by Preferred Vendor or its employees, agents or representatives, or (iii) alleging that the Preferred Vendor's Marks infringe or otherwise violate the intellectual property rights of a third party. This indemnity shall not cover any Claims in which Distributor fails to provide Preferred Vendor with prompt written notice which lack of notice prejudices the defense of the Claim. Distributor shall also have the right to participate in the defense of any such action and have the right to hire its own legal counsel at Distributor's expense.

E. Settlement of Claims. In no event shall a party seeking or entitled to indemnification from a Party hereunder settle, compromise, agree to a judgment or take any similar action with respect to any Claim without the written consent of the Party from whom indemnification is sought.

6. LIMITATION OF LIABILITY.

EXCEPT FOR THE PARTIES' INDEMNIFICATION OBLIGATIONS UNDER SECTION 5 OF THIS AGREEMENT, IN NO EVENT SHALL EITHER PARTY BE LIABLE UNDER THIS AGREEMENT TO THE OTHER PARTY FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, STATUTORY, SPECIAL, OR PUNITIVE DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, LOSS OF USE, LOSS OF TIME, INCONVENIENCE, LOSS BUSINESS OPPORTUNITIES, DAMAGE TO GOOD WILL OR REPUTATION, OR LOSS OF DATA, REGARDLESS OF WHETHER SUCH LIABILITY IS BASED ON BREACH OF CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, AND EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR SUCH DAMAGES COULD HAVE BEEN REASONABLY FORESEEN.

7. TERMINATION.

A. Termination for Breach. Either Party may terminate this Agreement at any time in the event of a material breach by the other Party that remains uncured after fifteen (15) calendar days following written notice thereof. Such termination shall be effective immediately and automatically upon the expiration of the applicable notice period, without further notice or action by either Party. Termination shall be in addition to any other remedies that may be available to the non-breaching Party.

B. Termination for Financial Insecurity. Either Party may terminate this Agreement and any outstanding Purchase Orders (to the extent Products have not already been delivered to the carrier for shipment) immediately at its option upon written notice if the other Party: (i) becomes or is declared insolvent or bankrupt; (ii) is the subject of a voluntary or involuntary bankruptcy or other proceeding related to its liquidation or solvency, which proceeding is not dismissed within sixty (60) calendar days after its filing; (iii) ceases to do business in the normal course; or (iv) makes an assignment for the benefit of creditors. This Agreement shall terminate immediately and automatically upon any determination by a court of competent jurisdiction that either Party is excused or prohibited from performing in full all obligations hereunder, including, without limitation, rejection of this Agreement pursuant to 11 U.S.C. §365.

C. Cross Termination with the Distribution Agreement. Preferred Vendor acknowledges and agrees that the appointment by Distributor of Preferred Vendor of the distribution rights set forth in this Agreement are dependent upon the continuation of the Distribution Agreement. In the event the Distribution Agreement expires or is otherwise terminated for any reason, this Agreement shall immediately and automatically terminate without any further action of the Parties.

8. COMPLIANCE WITH LAWS. Preferred Vendor acknowledges and understands that the Products may be subject to restrictions upon export from the United States and upon resale after export. Preferred Vendor therefore represents and warrants that it shall comply fully with all relevant regulations of the U.S. Department of Commerce, with the U.S. Export Administration Act, and with any other import and/or export control laws or regulations of the United States or any other jurisdiction.

9. GENERAL TERMS.

A. Force Majeure. Neither Party shall be liable hereunder for any failure or delay in the performance of its obligations under this Agreement if such failure or delay is on account of causes beyond its control, including labor disputes, civil commotion, war, fires, floods, inclement weather, governmental regulations or controls, casualty, government authority, strikes, or acts of God, in which event the non-performing party shall be excused from its obligations for the period of the delay and for a reasonable time thereafter. Each Party shall use reasonable efforts to notify the other Party of the occurrence of such an event within three (3) business days of its occurrence. Notwithstanding anything to the contrary contained herein, in no event shall the COVID-19 pandemic or government actions taken in connection with the same (or any future pandemic or government actions taken in connection with the same) constitute an event of force majeure under this Section 9.D. or otherwise prohibit or restrict Distributor's rights to terminate this Agreement.

B. Governing Law; Venue; Jury Waiver. This Agreement shall be governed by the laws of the State of Florida, without giving effect to the principles of conflicts of law of such state and shall be binding upon the Parties hereto in the United States and worldwide. Any claims or legal actions by one Party against the other arising under this Agreement or concerning any rights under this Agreement shall be commenced and maintained in any state or federal court located in Orange County, Florida. Both Parties hereby submit to the jurisdiction and venue of any such court. THE PARTIES FURTHER AGREE, TO THE EXTENT PERMITTED BY APPLICABLE LAW, TO WAIVE ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY CLAIM, COUNTERCLAIM OR ACTION ARISING FROM THE TERMS OF THIS AGREEMENT.

C. Attorney's Fees. If either Party incurs any legal fees associated with the enforcement of this Agreement or any rights under this Agreement, the prevailing Party shall be entitled to recover its reasonable attorney's fees and any court, arbitration, mediation, or other litigation expenses from the other Party.

D. Survival. The provisions of this Agreement which by their sense and context should survive any termination or expiration of this Agreement, including without limitation sections 5 (indemnification), 6 (limitation of liability), 8 (compliance with laws) and 9 (general terms) shall so survive.

E. Authorized Signatories. It is agreed and warranted by the Parties that the individuals signing this Agreement on behalf of the respective Parties are authorized to execute such an agreement. No further proof of authorization shall be required.

F. Severability. If any provision or portion of this Agreement shall be held by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remaining provisions or portions shall remain in full force and effect.

G. No Strict Construction. This Agreement shall not be construed more strongly against either party regardless of which party is more responsible for its preparation.

H. Counterparts. This Agreement may be executed by facsimile and in one or more

counterparts, each of which will be deemed to be an original, but all of which together will constitute one and the same instrument, without necessity of production of the others. **IN THE EVENT THAT THE PARTIES ARE UNABLE TO PHYSICALLY EXECUTE THE CONTRACT WITHIN 10 DAYS OF THE EFFECTIVE DATE, THEN THE AGREEMENT SHALL BE DEEMED TO HAVE BEEN SIGNED BY ALL PARTIES.**

I. Entire Agreement; Modification; Waiver. This Agreement is the entire agreement between the Parties with respect to the subject matter and supersedes any prior agreement or communications between the Parties hereto, whether written or oral. This Agreement may be modified only by a written amendment signed by authorized representatives of both Parties. No waiver of any term or right in this Agreement shall be effective unless in writing, signed by an authorized representative of the waiving Party. The failure of either Party to enforce any provision of this Agreement shall not be construed as a waiver or modification of such provision, or impairment of its right to enforce such provision thereafter.