

Government of Himachal Pradesh
Food, Civil Supplies and Consumer Affairs Department

NOTIFICATION

No. FDS-F (10)-4/2019

DATED 24-07-2019

In Pursuance of the Guidelines issued by the Government of India, Ministry of Consumer Affairs, Food and Public Distribution, Department of Consumer Affairs vide G.S.R. 1013(E), New Delhi dated 26th October, 2016, the State Government (Government of Himachal Pradesh), hereby, issues the following guidelines for regulating the business of Direct Selling and Multi-Level Marketing (MLM) and strengthen the existing regulatory mechanism on Direct Selling and Multi-Level Marketing (MLM), for preventing fraud and protecting the legitimate rights and interests of consumers, namely:-

- 1. Short title, extent and Commencement:** (1) These Guidelines may be called the Himachal Pradesh State Direct Selling Guidelines, 2019.
- (2) These shall extend to whole of Himachal Pradesh.
- (3) They shall come into force on the date of their publications in the Rajpatra (e- Gazette), Himachal Pradesh.

2. Definitions. - In these Guidelines, unless and otherwise required,-

- (a) **“Act”** means the Consumer Protection Act, 1986 (68 of 1986);
- (b) **“Consumer”** shall have the same meaning as provided under the Consumer Protection Act, 1986(68 of 1986);
- (c) **“Cooling-off Period”** means the duration of time counted from the date when the direct seller and the direct selling entity enter into an agreement under Clause 4 and ending with date on which the contract is to be performed and within which the direct seller may repudiate the agreement without being subject to penalty for breach of contract;
- (d) **“Director Food”** means Director (Food), Directorate of Food, Civil Supplies and Consumer Affairs, Government of Himachal Pradesh.
- (e) **“Direct Seller”** means a person appointed or authorized, directly or indirectly, by a Direct Selling Entity through a legally enforceable written contract to undertake direct selling business on principal to principal basis.
- (f) **“Direct Selling”** means marketing, distribution and sale of goods or providing of services as a part of network of Direct Selling other than under a pyramid scheme :

Provided that such sale of goods or services occurs otherwise than through a "permanent retail location" to the consumers, generally in their houses or at their workplace or through explanation and demonstration of such goods and services at a particular place:

- (g) **"Direct Selling Entity"** means an entity, not being engaged in a pyramid scheme, which sells or offers to sell goods or services through a direct seller :

Provided that "Direct Selling Entity" does not include any entity or business notified otherwise by the Government for the said purpose from time to time.

- (h) **"Goods"** means goods as defined in the Sale of Goods Act, 1930 (3 of 1930) and "Service" means service as defined in the consumer protection Act, 1986(68 of 1986);
- (i) **"Money Circulation Scheme"** has the same meaning as defined under the Prize Chits and Money Circulation Schemes (Banning) Act, 1978 (43 of 1978);
- (j) **"Network of Direct Selling"** means a network of direct sellers at different levels of distribution, who may recruit or introduce or sponsor further levels of direct sellers, who they then support:

Explanation. - "Network of direct selling" shall mean any system of distribution or marketing adopted by a direct selling entity to undertake direct selling business and shall include the multi-level marketing method of distribution.

- (k) **"Prospect"** means a person to whom an offer or a proposal is made by the Direct Seller to join a Direct Selling opportunity;
- (l) **"Pyramid Scheme"** means a multi layered network of subscribers to a scheme formed by subscribers enrolling one or more subscribers in order to receive any benefit, directly or indirectly, as a result of enrolment, action or performance of additional subscribers to the scheme. The subscribers enrolling further subscribers(s) occupy higher position and the enrolled subscriber(s) lower position, thus, with successive enrolments, they form multi-layered network of subscribers:

Provided that the above definition of a "Pyramid Scheme" shall not apply to a multi layered network of subscribers to a scheme formed by a Direct Selling Entity, which consists of subscribers enrolling one or more subscribers in order to receive any benefit, directly or indirectly, where the benefit is as a result of sale of goods or services by subscribers and the scheme/financial arrangement complies with all of the following:

- i. It has no provision that a Direct Seller will receive remuneration or incentives for the recruitment / enrolment of new participants.
- ii. It does not require a participant to purchase goods or services :
 - (a) for an amount that exceeds an amount for which such goods or services can be expected to be sold or resold to consumers;
 - (b) for a quantity of goods or services that exceeds an amount that can be expected to be consumed by, or sold or resold to consumers;

- iii. It does not require a participant to pay any entry/registration fee, cost of sales demonstration equipment and materials or other fees relating to participation;
- iv. It provides a participant with a written contract describing the "material terms" of participation:
- v. It allows or provides for a participant a reasonable cooling-off period to participate or cancel participation in the scheme and receive a refund of any consideration given to participate in the operations:
- vi. It allows or provides for a buy-back or repurchase policy for "currently marketable" goods or services sold to the participant at the request of the participant at reasonable terms;
- vii. It establishes a grievance redressal mechanism for consumers, more particularly described in Clause 8 herein.

Explanation 1.- For the purposes of this proviso the term "material terms" shall mean buy-back or repurchase policy, cooling-off period, warranty and refund policy.

- (m) **"Remuneration System"** means the system followed by the direct selling entity to compensate the direct seller which illustrates the mode of sharing of incentives, profits and commission, including financial and non-financial benefits, paid by the direct selling entity to the direct sellers, on a monthly or periodic or yearly basis or both, as the case may be. This system, for every Direct Selling entity, shall:
 - i. have no provision that a direct seller will receive remuneration from the recruitment to participate in such direct selling;
 - ii. ensure that direct sellers shall receive remuneration derived from the sale of goods or services;
 - iii. clearly disclose the method of calculation of remuneration.
- (n) **"Saleable"** shall mean, with respect to good and / or services, unused and marketable, which has not expired, and which is not seasonal, discontinued or special promotional good and/ or services;
- (o) **"State"** means the State of Himachal Pradesh; and
- (p) **"State Government"** means the Government of Himachal Pradesh.

3. Conditions for the setting up of Direct Selling Business.- Every Direct selling entity intending to carry out direct selling business subsequent to the publication of the notification in the Gazette, shall within 90 days comply with the following set of conditions for the conduct of direct selling business, namely:-

- (a) It shall be a registered legal entity under the laws of India;
- (b) It shall provide a mandatory orientation session to all prospective direct sellers providing fair and accurate information on all aspects of the direct selling operation, including but not limited to the remuneration system and expected remuneration for newly recruited direct sellers;
- (c) It shall provide accurate and complete information to prospective and existing direct sellers concerning the reasonable amount of remuneration opportunity, and related rights and obligations;

- (d) It shall pay all dues and make withholdings from direct sellers in a commercially reasonable manner;
- (e) It shall notify and provide a full refund or buy-back guarantee to every direct seller on reasonable commercial terms which can be exercised within a period of 30 days, from the date of the distribution of the good or services to the direct seller;
- (f) It shall notify and provide to every direct seller a cooling-off period which entitles such direct seller to return any goods/ services purchased by the direct seller during the cooling-off period;
- (g) The promoter or key management personnel should not have been convicted of any criminal offence punishable with imprisonment in last 5 years by any Court of competent jurisdiction;
- (h) It shall have an office with identified jurisdiction of its operation in the State to enable the consumers and direct seller to acquaint themselves with price of products, return or replacement of products and efficient delivery of goods and services, and post-sale redressal of grievances.

4. Conditions for conduct of Direct Selling Business.- Every Direct Selling entity shall comply with the following conditions namely:-

- (a) It shall be the owner, holder, licensee of a trademark, service mark or any other identification mark which identifies, the entity with the goods to be sold or supplied or services to be rendered;
- (b) It shall issue proper identity document(s) to its Direct Sellers;
- (c) It shall maintain proper records either manual or electronic of their business dealings, with complete details of their goods, services, terms of contract, price, income plan, details of direct sellers, including but not limited to enrolment, termination, active status, earning etc;
 - (i) Every direct selling entity shall maintain a "Register of Direct Sellers" wherein relevant details of each enrolled-Direct Seller shall be updated and maintained;
 - (ii) The details of Direct Sellers shall include and not be limited to verify proof of address, proof of identity and Permanent Account Number (PAN);
- (d) It shall maintain proper and updated website with all relevant details of the entity, contact information, its management, products, product information, product quality certificate, price, complete income plan, terms of contract with direct seller and complaint redressal mechanism for direct sellers and consumers. The website should have space for registering consumer complaints and should ensure that grievances are addressed within 45 days of making such complaints;
- (e) It shall provide to all direct sellers their periodic account/ information concerning, as applicable, sales, purchases, details of earnings, commissions, bonus and other relevant data, in accordance with agreement with the direct sellers. All financial dues shall be paid and any withholding made in a commercially reasonable manner;
- (f) It shall monitor the value of the purchases of all its Direct Sellers/ Distributors on a monthly basis and once the purchase value crosses the VAT threshold; it must intimate the Direct Seller/ Distributor to pay the VAT;
- (g) A Direct Selling Entity shall not:

- i. Use misleading, deceptive or unfair recruiting practices, including misrepresentation of actual or potential sales or earnings, in their interaction with prospective or existing direct sellers;
- ii. Make any factual representation to a prospective direct seller that cannot be verified or make any promise that cannot be fulfilled;
- iii. Present any advantages of direct selling to any prospective direct seller in a false or deceptive manner;
- iv. Make or cause, or permit to be made, any representation relating to its direct selling business, including remuneration system and agreement between itself and the direct seller, or to the goods or services being sold by itself or by the direct seller which is false or misleading;
- v. Engage in, or cause or permit, any conduct that is misleading or likely to mislead with regard to any material particulars relating to its direct selling business, including remuneration system and agreement between itself and the direct seller, or to the goods or services being sold by itself or by the direct seller;
- vi. Use, or cause or permit to be used, fraud, coercion, harassment, or unconscionable or unlawful means in promoting its direct selling practice, including remuneration system and agreement between itself and the direct seller, or to the goods or services being sold by itself or by the direct seller;
- vii. Require its direct sellers to provide any benefit, including entry fees and renewal fees or to purchase any sales demonstration equipment or material in order to participate in its direct selling operations;
- viii. Provide any benefit to any person for the introduction or recruitment of one or more persons as direct sellers;
- ix. Require the direct sellers to pay any money by way of minimum monthly subscription or renewal charges;
- (h) Notwithstanding the distribution system adopted by a direct selling entity, the Direct Selling Entity shall be responsible for compliance of these Guidelines by any member of its network of direct selling, whether such member is appointed directly or indirectly by the Direct Selling Entity.

5. Conditions for Direct Selling contract between Direct Seller/ Distributor and Direct Selling Entity.-

1. Every Direct Selling entity shall execute a contract agreement, whether directly or indirectly, with Direct Sellers before enrolment:
 - (a) The Agreement shall be provided in a manner consistent with Section 10 of the Indian Contract Act, 1872(9 of 1872);
 - (b) In addition to the rights and obligations of parties to this agreement under these guidelines or any other law in force, parties shall have rights and obligations that are coextensive with rights and obligations of parties under the Indian Contract Act, 1872(9 of 1872);
2. The agreement shall be made in writing, describing the material terms of participation and shall:
 - (a) Not compel or induce the direct seller to purchase goods or services in an amount that exceeds an amount that can be expected to be sold to consumers within a reasonable period of time;

- (b) Allow or provide the direct seller a reasonable cooling-off period in which to cancel participation and receive a refund for goods or services purchased;
- (c) Allow for the termination of contract, with reasonable notice, in such instances and on such terms where a direct seller is found to have made no sales of goods or services for a period of up to two years since the contract was entered into, or since the date of the last sale made by the direct seller;
- (d) Allow or provide for a buy-back or repurchase policy for currently marketable goods or services sold to the direct seller at the said direct seller's request at reasonable terms.

6. Certain obligations of Direct Sellers.-

1. Direct Sellers engaged in direct selling should carry their identity card and not visit the customer's premises without prior appointment/approval;
2. At the initiation of a sales representation, without request, truthfully and clearly identify themselves, the identity of the direct selling entity, the nature of the goods or services sold and the purpose of the solicitation to the prospective consumer;
3. Offer a prospective consumer accurate and complete explanations and demonstrations of goods and services, prices, credit terms, terms of payment, return policies, terms of guarantee, after-sales service;
4. Provide the following information to the prospect/ consumers at the time of sale, namely:
 - (a) Name, address, registration number or enrollment number, identity proof and telephone number of the direct seller and details of direct selling entity;
 - (b) A description of the goods or services to be supplied;
 - (c) Explain to the consumer about the goods return policy of the company in the details before the transaction;
 - (d) The order date, the total amount to be paid by the consumer along with the bill and receipt;
 - (e) Time and place for inspection of the sample and delivery of good;
 - (f) Information of his/her rights to cancel the order and/ or to return the product in saleable condition and avail full refund on sums paid;
 - (g) Details regarding the complaint redressal mechanism;
5. A direct seller shall keep proper book of accounts stating the details of the products, price, tax and the quantity and such other details in respect of the goods sold by him/her, in such form as per applicable law.
6. A direct seller shall not,-
 - (a) Use misleading, deceptive and/ or unfair trade practices;
 - (b) Use misleading false, deceptive, and / or unfair recruiting practices, including misrepresentation of actual or potential sales or earnings and advantages of Direct Selling to any prospective direct seller, in their interaction with prospective direct sellers;
 - (c) Make any factual representation to a prospective direct seller that cannot be verified or make any promise that cannot be fulfilled;
 - (d) Present any advantages of Direct Selling to any prospective direct seller in a false and / or a deceptive manner;

- (e) Knowingly make, omit, engage, cause, or permit to be made, any representation relating to the Direct Selling operation, including remuneration system and agreement between the Direct Selling entity and the direct seller, or the goods and /or services being sold by such direct seller which is false and / or misleading;
- (f) Require or encourage direct sellers recruited by the first mentioned direct seller to purchase goods and /or services in unreasonably large amounts;
- (g) Provide any literature and /or training material not restricted to collateral issued by the Direct Selling entity, to a prospective and / or existing direct sellers both within and outside the parent Direct Selling entity, which has not been approved by the parent Direct Selling entity;
- (h) Require prospective or existing direct sellers to purchase any literature or training materials or sales demonstration equipment.

7. Relationship between Direct Selling Entity and Direct Seller.-

1. The relationship between Direct Selling entity and Direct Seller shall be determined as per the written agreement between the parties which shall contain the rights and obligations that are expressly provided as conditions for the conduct of Direct Selling business as well as provide for the obligation of the direct selling entity and the direct seller in terms of these guidelines;
2. All other rights and obligations shall be determined as per the express terms of written agreement between a Direct Selling entity and Direct Seller;
3. The Direct Selling entity will be liable for grievances arising out of sale of products, services or business opportunity by its Direct Sellers;
4. It will be the responsibility of the Direct Selling entity to monitor and control the practices/methods adopted by the Direct Sellers.

8. Conduct for the Protection of Consumer.-

1. Direct Sellers and Direct Selling Entity shall take appropriate steps to ensure the protection of all private information provided by a consumer.
2. Direct Sellers and Direct Selling Entity shall be guided by the provision of the Consumer Protection Act 1986(68 of 1986).
3. All complaints received over phone, email, website, post and walk-in should have a complaint number for tracing and tracking the complaint and record time taken for redressal;
4. Every Direct Selling company shall constitute a Grievance Redressal Committee whose composition, nature of responsibilities shall include but not limited to,-
 - (a) At least three officers of the Direct Selling Entity;
 - (b) The Grievance Redressal Committee shall address complaints and inform complainants of any action taken;
 - (c) Complaints may be made by any member of the general public against a Direct Seller of the company, an employee or any other officer of the entity;
 - (d) All such grievances will be resolved directly by the Direct Selling Entity;

5. The direct selling entity shall provide information to the consumer upon purchase which shall contain :
 - (a) the name of the purchaser and seller;
 - (b) the delivery date of goods or services;
 - (c) procedures for returning the goods; and
 - (d) warranty of the goods and exchange / replacement of goods in case of defect.

Provided that no Direct Seller shall, in pursuance of a sale, make any claim that is not consistent with claims authorized by the Direct Selling Entity.

6. Any person who sells or offers for sale, including on an e-commerce platform / marketplace, any product or service of a Direct Selling Entity must have prior written consent from the respective Direct Selling Entity in order to undertake or solicit such sale or offer.

9. Prohibition of Pyramid Scheme & Money Circulation Scheme.-

1. No person or entity shall promote a Pyramid Scheme, as defined in sub Clause (l) of Clause 2 or enroll any person to such scheme or participate in such arrangement in any manner whatsoever in the garb of doing Direct Selling business.
2. No person or entity will participate in Money Circulation Scheme, as defined in sub-clause (i) of Clause 2 in the garb of Direct Selling of Business Opportunities.

10. Appointment of Monitoring Authority.-

1. The Nodal department to deal with the issues related to Direct Selling will be Department of Food, Civil Supplies and Consumer Affairs in the State;
2. Director (Food) shall be the authority to monitor/ supervise the activities of Direct Sellers, Direct Selling Entity regarding compliance of the guidelines for Direct Selling; He may further authorize any Officer including District Controller / Food Supply Officer for supervision / monitoring of activities of Direct Sellers, Direct Selling Entity regarding compliance of the Guidelines for Direct Selling. Director FCS&CA reserves all rights to get verified the undertakings submitted by Direct Selling Entity from Field Enforcement Staff. If any discrepancy is found, the action may be initiated against Direct Selling Entity as per existing provisions of law and the same may not be allowed to operate as Direct Selling Entity within the State of Himachal Pradesh.
3. Any direct selling entity conducting direct selling activities shall submit an undertaking to the Director Food, Civil Supplies and Consumer Affairs, Government of Himachal Pradesh stating that it is in compliance with these guidelines and shall also provide such details of its incorporation and other business details as may be notified from time to time.

By Order

Principal Secretary

Food, Civil Supplies and Consumer Affairs,
to the Govt. of Himachal Pradesh Shimla-9

Endst. No. As above,

Dated: Shimla-171002, 29th July, 2019.

Copy forwarded to:-

1. All the Administrative Secretaries to the Government of Himachal Pradesh, Shimla-29.

2. The Principal Secretary to the Hon'ble Chief Minister, Himachal Pradesh, Shimla-2
3. The DLR-Cum-Deputy Secretary, Law to the Government of Himachal Pradesh, Shimla-2.
4. The Deputy Director(IT), Government of India, Ministry of Consumer Affairs, Food and Public Distribution, Department of Consumer Affairs, Krishi Bhawan New Delhi-11001 w.r.t. their letter No. 21/18/2014-IT(Vol-II) dated 09th September, 2016.
5. The Secretary to the Governor, Himachal Pradesh, Shimla-171002.
6. The Registrar General, High Court of Himachal Pradesh, Shimla-171001.
7. The Secretary, Himachal Pradesh Vidhan Sabha, Shimla-171004.
8. The Private Secretary to the Hon'ble Minister, Food, Civil Supplies & Consumer Affairs, Shimla
9. All the Heads of Departments in Himachal Pradesh.
10. The Director, Food, Civil Supplies & Consumer Affairs, Shimla-171009.
11. The Director General of Police, Shimla-171002.
12. The Managing Director, Himachal Pradesh State Civil Supplies Corporation Limited, Shimla-171009.
13. All the Deputy Commissioners in Himachal Pradesh.
14. All the District Controller, Food, Civil Supplies & Consumer Affairs, Himachal Pradesh.


24-07-19

(Suresh Chand Dogra)
Under Secretary (F, CS & CA) to the
Government of Himachal Pradesh
Ph. No. 0177-2621157

DECLARATION BY DIRECT SELLING ENTITIES/COMPANIES

**PROFORMA
PART- A**

1	(i) Name of the Company(As Registered) (ii) CIN No : (iii) Name and address of Directors on Board (Enclose details)	
2	DETAILS OF REGISTRATION (WITH JURISDICTION) (a) Address of Registered office(Enclose copy of Registration Certificate): (b) Email: (c) Telephone Nos: (d) Company Website: (e) Details of other registrations (with jurisdiction), if any (Attach copy of Registration certificate) (f) Type of Entity (Private, Public, Trust, Ltd. Etc.)	
3	HEAD OFFICE (a) Address (b) E-mail (c) Details of Key Management Personnel as per registration under the companies Act (d) Details of Regional Offices: (e) Nodal officer for interaction with D/o Consumer Affairs; (Name, designation, Tel No., e-mail, Fax, mobile No.)	
4	Whether any one from the Management was convicted by any court in the past, within the past 5 years (from the date of application). If so, the details thereof;	
5	Whether direct selling is of Products or Services or both?	
6	Details of License(s), Trade Mark or Principal Brand which indentifies the company:	
7	(i) Address/ Telephone Nos/e-mails etc. of Customer Care & Grievance Redress Cell (HQ & Branches); (ii) Details of Consumer Grievance Redress Committee as per guidelines: (a) Member Name, Phone No and email; (b) Member Name, Phone No and email; (c) Member Name, Phone No and email;	

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PART-B

(Direct Selling Business Details)

8	Details of Products/ Services offered (Give link of websites)	
9	<p>Please confirm the following about your direct selling scheme:-</p> <p>(a) Whether there has no provision that a Direct Seller will receive remuneration or incentives for the recruitment/ enrolment of new participants and provide that direct sellers will receive remuneration derived only from the sale of goods or services?</p> <p>(b) Whether it does not require a participant to purchase goods or services:</p> <p style="padding-left: 40px;">i. for an amount that exceeds an amount for which such goods or services can be expected to be sold or resold to consumers;</p> <p style="padding-left: 40px;">ii. for a quantity of goods or services that exceeds an amount that can be expected to be consumed by, or sold or resold to consumers;</p> <p>(c) Whether it does not require a participant to pay any entry/ registration fee, cost of sales demonstration equipment and materials or other fees relating to participation?</p> <p>(d) Whether it provides a participant with a written contract describing the "material terms" of participation?</p> <p>(e) Whether it allows or provides for a participant a reasonable cooling-off period to participate or cancel participation in the scheme and receive a refund of any consideration given to participate in the operations?</p> <p>(f) Whether it allows or provides for a buy-back or repurchase policy for "currently marketable" goods or services sold to the participant at the request of the participant at reasonable terms?</p> <p>Note: 1. Give details in regard to the above in an enclosure. 2. In case any of the answers in this Para is 'No', Please provide full details with reasons in an enclosure.</p> <p>(g)</p>	<p>Yes/No</p> <p>Yes/No</p> <p>Yes/No</p> <p>Yes/No</p> <p>Yes/No</p> <p>Yes/No</p> <p>Yes/No</p>
10	<p>(a) Whether proper identity documents(s) to all the Direct Sellers are issued?</p> <p>(b) Whether you maintain "Register of Direct Seller" wherein relevant details of each enrolled Direct Seller is updated and maintained with details including verifiable proof of address, proof of identity and PAN as per the Income Tax Act?</p> <p>(c) What is the mechanism for payment of GST? Give details.</p>	<p>Yes/No</p> <p>Yes/No</p>
11	<p>(a) Whether the website is proper and updated regularly with all relevant details, contact information, details pertaining to management, products, product information and complaint redress mechanism for direct sellers and consumers?</p> <p>(b) Whether there are arrangements for registering consumer complaints online or otherwise and grievances are resolved within 45 days of date of making such complaints. Details to be provided?</p>	<p>Yes/No</p> <p>Yes/No</p>
12	Note/Remarks, if any.	

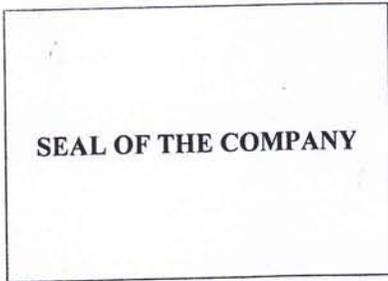
PART-C
(UNDERTAKING)

I/We.....In the capacity of.....of the company/firm
declare that we are compliant with the following:

- (a) We do not promote a Pyramid Scheme, as defined in Clause 2 (i) or enroll any person to such scheme or participate in such arrangement in any manner whatsoever in the garb of doing Direct Selling Business.
- (b) We do not participate in Money Circulation Scheme, as defined in Clause 1 (l) in the garb of Direct Selling of Business Opportunities.
- (c) We are Compliant with all the remaining aspects mentioned in the Guidelines issued vide F. No. 21/18/2014 – IT (Vol-II) date 9th September, 2016 by the Department of Consumers, Ministry of Consumer Affairs, Food and Public Distribution and shall also provide such details as may be notified from time to time.

Place:

Sd/-



Name.....

Designation.....

Tel. No.....

E-mail.....

List of documents to be provided:

1. Certificate o Registration/ Bye-laws/ Memorandum of Association.
2. List of Board of Directors, with contact details.
3. Brief details of direct selling scheme and compensation plan.
4. Sample of contract with direct sellers/distributors.