

**NEW MILLENNIUM CONCEPTS, LTD.
DEALER AGREEMENT**

This Dealer Agreement (“Agreement”) is entered into as of the date specified below (“Effective Date”) between New Millennium Concepts, Ltd., (“NMCL”) located in 3301 Airport Freeway, Suite 103, Bedford, Texas, United States and _____, (“Dealer”) having a business address at:

(Street Address)

(City/District)

(State/Province/Region)

(Country)

(Postal/Zip Code)

(Dealer Phone Number)

WHEREAS, NMCL manufactures and/or markets certain Authorized Products under the “Berkey®” trademark and other proprietary brand names and desires to authorize Dealer to sell these Authorized Products to end user consumers.

WHEREAS, Dealer is willing to undertake sales and marketing of Authorized Products, according to the Terms and Conditions as defined below.

NOW THEREFORE, the Parties agree as follows:

1. **Scope.** This Agreement defines the Terms and Conditions under which the Dealer may sell, redistribute, market and advertise Authorized Products. NMCL will provide Dealer with Authorized Products at wholesale prices that the Dealer may resell according to this Agreement, at retail prices.

2. **Definitions.**

- a. “Business Day” - Monday through Friday, excluding market holidays.
- b. “Authorized Products” - products manufactured or sold by NMCL or any other of its affiliated or related companies as defined herein.
- c. “NMCL Content” - all information, tools, materials and services available on NMCL websites, as amended from time to time.
- d. “NMCL Websites” - NMCL maintained and supported websites which currently include the following:
 - i. www.berkeywater.com/
 - ii. www.support.berkeywater.com
 - iii. www.berkeywaterkb.com and
 - iv. www.britishberkefeld.com
- e. “Protected Materials” - NMCL’s patents, patent applications, copyrights, trademarks, service marks, brand names, trade names, pictures, and copy from literature, website(s), and/or advertising material including the Berkey® brand or any other intellectual property used, licensed or claimed by NMCL.

3. **Entire Agreement.** This Agreement constitutes the entire understanding and agreement of the parties hereto with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements, representations and understandings between the parties regarding the subject matter hereof.

4. **Amendment.** This Agreement cannot be amended by any oral agreement or understanding or by any past practice or course of dealing. No sales representative or non-authorized employee of the Dealer has any authority, express or implied, to amend, alter or change this Agreement. NMCL reserves the right to modify or amend this Agreement at any time with thirty (30) days written notice, by either electronic communications, fax or hard copy to the Dealer. The most current version of this Agreement is accessible (in the Dealer Center) on NMCL's Official Website www.berkeywater.com/. However, Dealer's account activity after notice of an amendment constitutes the Dealer's agreement to be bound by such amendment, regardless of whether Dealer has actually reviewed its contents. By this Agreement, the Dealer agrees to sell, market and advertise the Authorized Products offered by NMCL according to NMCL's policies, rules and regulations set forth below or otherwise issued to the Dealer. The Dealer accepts sole responsibility for keeping NMCL informed of any change of contact information. The Dealer further accepts responsibility to remain aware of and review all NMCL policies, guidelines, rules and regulations as it relates to the marketing and re-sale of the Authorized Products.

5. **Authorized Sales Channels and Exclusivity.** Pursuant to this Agreement, Dealer is authorized to market, advertise, offer to sell, sell and/or fulfill orders for the Authorized Products via the Authorized Sales Channel(s) **listed in Exhibits A and B only**. Dealer shall not market, advertise, offer to sell, sell and/or fulfill orders for the Authorized Products through any other channel or via any other electronic or physical location without NMCL's prior written consent. Dealer shall at all times be a non-exclusive Dealer of the Authorized Products. No exclusive territory is granted by this Agreement.

6. **Non-exclusive License to Protected Materials.** NMCL hereby grants Dealer, for the term of the Agreement, the non-exclusive, non-transferable, non-assignable, revocable right to market, advertise, offer to sell, sell and distribute the Authorized Products to end user consumers. Dealer acknowledges that NMCL's Protected Materials are proprietary. Protected Materials are solely owned by or licensed to NMCL, and use of such Protected Materials by Dealer must be in compliance with NMCL's written policies, which may be amended by NMCL from time to time. Dealer understands and acknowledges that it cannot grant the use of the Protected Materials to other third parties. Dealer shall not register or use the Protected Materials in connection with any business conducted by the Dealer only as necessary to market, advertise, offer to sell, sell and distribute the Authorized Products, as authorized by this Agreement.

Dealer may not modify, translate, reverse engineer, decompile, disassemble and otherwise attempt to alter the Protected Materials or remove any notices, labels on or in the Authorized Products. Dealer shall include and shall not alter, obscure or remove any Protected Materials used or claimed by NMCL or any markings, colors or other insignia which are contained on or in or affixed to the Authorized Products at the time of shipment from NMCL's facilities or suppliers. Dealer agrees that its use of the Protected Materials shall not create in its favor any right, title, or interest therein, and acknowledges NMCL's

exclusive right, title and interest in the Protected Materials. In the event that NMCL seeks to secure, maintain or initiate any infringement action regarding such rights, the Dealer agrees to cooperate with NMCL in any reasonable way requested.

7. Use of the Berkey® Trademark in Dealers Website Domain Name(s) In the advent that Dealer has been using the Berkey® trademark, as authorized by an earlier agreement, in their own website domain name/URL, NMCL grants dealer the use of the Berkey® trademark under the following conditions within this paragraph. This right shall exist as long as Dealer is an active NMCL Berkey® Authorized Dealer under this Agreement. Dealer understands that its use of the URL shall not create in its favor any right, title, or interest therein, and acknowledges NMCL's is granting a limited license to the Dealer to use this URL only for the purpose of advertising Berkey® Authorized Products. Dealer understands that it may not advertise for any other gravity fed water filter or similar product that can possibly be considered to be in competition to NMCL or its products on this domain. In the event of the termination of this Agreement, this limited right to use the Berkey® trademark shall automatically terminate and Dealer agrees to immediately turn over the use of the URL, all passwords and authorizations to gain access to the URL, to NMCL. **Dealer shall list all URL domain names they are already using with the Berkey® Trademark on Exhibit B. Any New domains not listed on Exhibit B at the time of signing, must be submitted to the Dealers Account Manager and an amendment must be signed prior to Dealer using the new Domain.**

Dealer acknowledges that on or before October 1, 2021, Dealer will sign a separate License Agreement granting limited use of the Berkey brand name in their web domain -if applicable.

8. Cessation of Advertising and Use of the Protected Materials. Upon termination of Agreement, Dealer agrees to remove any and all information regarding Protected Materials from Dealer's websites and other advertisements and/or publications. NMCL and or licensor reserves the right to purchase Dealer's website domain name(s) with the Berkey® trademark or any online related platform that contains any Protected Material. NMCL and or licensor will pay a price of no more than \$20.00 per year if Dealer has paid for future licensing use of such domain name(s) or internet platforms. Upon request, Dealer shall deliver proof to NMCL and or licensor of the amount spent and length of current licensing for such domain name(s). Dealer agrees that NMCL is entitled to emergency injunctive relief at Dealer's expense, including NMCL and or licensor reasonable attorneys' fees, should Dealer fail to immediately suspend all advertising of the Authorized Products and all use of the Protected Material upon termination of this Agreement. Dealer acknowledges and agrees that this specific enforcement is reasonable and that it will not be necessary for NMCL and or licensor to post a bond or any other security in order to obtain an injunction prohibiting Dealer from advertising the Authorized Products. Dealer further understands and accepts that it will be the responsibility of Dealer to bear or reimburse all costs of any expense necessary for NMCL and or licensor to enforce NMCL's right to its Protected Materials.

9. Retail Sales Only. Dealer shall only engage in retail sales of the Authorized Products to end users. Any sales by Dealer of the Authorized Products to sub-Dealers, distributors, or any other party that ultimately resells the Authorized Products is strictly prohibited, unless agreed upon in writing by NMCL. If there is a question as to a violation of this paragraph, NMCL's determination shall be binding

and final.

10. **Independent Entities.** Nothing contained herein shall affect, modify or change the fact that NMCL and Dealer are separate legal entities and are not representatives or agents of each other. This Agreement does not create a joint venture, partnership and/or agency relationship. NMCL shall bear no responsibility, directly or indirectly, for the Dealer websites or for the transactions made through said Dealer websites. Dealer agrees that it will not represent itself, its business, or its employees as being an agent, employee or representative of NMCL or any of its subsidiaries or affiliates. Specifically, Dealer shall publicize a disclaimer that its views and opinions are independent and do not necessarily reflect the views and opinions of NMCL on any public statements regarding politics, social norms and/or opinions.

11. **Policies, Procedures, Website Terms and Conditions.** Dealer agrees to be subject to and abide by all Policies and Procedures, Terms and Conditions of NMCL posted on NMCL Websites. This includes but is not limited to Minimum Advertised Pricing (MAP) Policy, payment, shipping, advertising, returns, refunds, Dealer website content, NMCL terms of use, privacy policy, all marketing content for the Authorized Products. NMCL reserves the right to modify or amend Policies, Procedures, Terms and Conditions at any time. The current version of the Policies, Procedures, Terms and Conditions can be found on the NMCL Websites. Dealer agrees to review the NMCL Websites on a periodic basis for changes.

12. **Advertising.** NMCL has the right but not the obligation to review and approve any original advertising. This includes but is not limited to any printed materials, websites, social media and online storefront marketplaces related to Authorized Products, prior to use to ensure compliance with NMCL's policies. Further, NMCL has the right to demand that incorrect information relating to Authorized Products be corrected to NMCL's standards within three (3) business days of incorrect information being reported to Dealer. Failure to correct information may subject Dealer to possible suspension or revocation of Agreement. Information on NMCL Websites is subject to change. It is the Dealer's responsibility to periodically review NMCL Websites content and change their website/material accordingly. Dealer shall make no statements, representations, or claims, including without limitation, performance and health claims, in selling the Authorized Products, other than what is expressly stated in the Protected Materials and/or NMCL Content. Although NMCL strives to ensure accuracy, NMCL cannot be responsible for typographical errors on NMCL's Websites or any published literature.

13. This Agreement shall not be transferred or assigned by the Dealer without the prior written approval of NMCL.

14. Dealer shall abide by all federal, state and local laws and regulations.

15. Dealer agrees to provide appropriate state retail sales tax license information, which is required to process Dealer application, unless state retail sales tax licenses are not required in the state in which the Dealer's does business. Dealer agrees to keep tax and business information up-to-date with NMCL. Failure to provide updated state sales tax or business information may result in the termination of this Agreement by NMCL.

16. Dealer understands that certain filtration and purification systems are not to be sold in the states of California and/or Iowa until further notice. Dealer agrees to read, review, understand and abide by the NMCL Policy on Berkey® Sales to California and Iowa available on NMCL websites.

17. Dealer understands that new Authorized Products will be offered from time to time and agrees to abide by any regulatory restrictions with respect to sales and advertising as laid forth in this Agreement.

18. Dealer agrees to read, review, understand and abide by the [NMCL Policy Regarding Counterfeit Berkey® Products](#) available on NMCL websites. This policy is designed to protect the business of all Berkey® Dealers as well the integrity of the Berkey® brand. Violation of the Counterfeit Berkey® Products Policy is a direct violation of this Agreement and will result in immediate termination of this Agreement. Violation of this policy includes but is not limited to:

- i. Dealer introducing counterfeit Berkey® products or components into the marketplace;
- ii. Dealer attempting to locate or otherwise contact any of NMCL's suppliers or raw materials sources; and
- iii. Dealer offering products that are related to Berkey® Products that use the Berkey® name or NMCL's SKU numbers in the product description.

19. Dealer agrees that MAP policies apply to any and all types of media.

20. Violations of MAP policies by Dealer will constitute a material breach of this Agreement.

21. **Annual Purchase Requirement.** Dealers are required to purchase a minimum of \$5,000 of Authorized Products in a twelve (12) month period from NMCL to remain a Dealer. If less than \$5,000 is purchased in a twelve-month period by the Dealer, NMCL retains the right to automatically terminate Dealer's Agreement or to place Dealer on probation and withhold the ability from making further purchases. In the case of new dealers who have been a dealer for less than one year, the time period of when Dealer established an account will be pro-rated for purposes of this paragraph. In addition, all sales charges are final unless not delivered within ninety (90) days. Thus, any chargeback(s) from Dealer will give NMCL the right to terminate Dealer.

22. **Communication.** NMCL's standard practice is to record all communications with Dealer, including telephonic communications, for archiving, training and quality purposes. Dealer hereby agrees to allow NMCL to record and store such telephonic communications.

23. **Term and Termination.** This Agreement shall remain in force and effect until terminated by either party as stated in this Paragraph. NMCL reserves the right to terminate this Agreement immediately, upon written notice, for breach of this Agreement or upon thirty (30) days prior written notice for any reason. Upon termination of this Agreement, NMCL has the right, but not the obligation, to repurchase, all remaining Authorized Products in Dealer's inventory after all existing orders have been fulfilled. Dealer shall have the right to resell only those Authorized Products in its inventory and any additional Authorized Products that may previously have been ordered by Dealer, which NMCL

elects to deliver after termination. Dealer will be given thirty (30) days to liquidate their inventory and fulfill all existing orders. Should NMCL exercise their right to repurchase existing inventory, Dealer agrees to provide, upon request, a list of all existing inventory and all non-fulfilled orders within two (2) days of NMCL's request.

24. **No Waiver.** A Party's failure to exercise or delay in exercising any right, power or privilege under this Agreement shall not operate as a waiver; nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof. Should any portion of this Agreement be adjudged to be unenforceable, that shall not affect the enforceability of other provisions of this Agreement.

25. **Applicable Law.** This Agreement is entered into and shall be performed at least in part in Tarrant County, State of Texas, United States, and the Parties hereby submit to the exclusive jurisdiction of the state and federal courts located therein, which shall be the exclusive venue for any dispute arising in relation to this Agreement. THE PARTIES HEREBY WAIVE THE RIGHT TO A TRIAL BY JURY IN CONNECTION WITH ANY ACTION RELATED TO THIS AGREEMENT. This Agreement will be governed by and construed according to the laws of the State of Texas, without regard to the conflicts of laws principles thereof, and the United States of America. The Parties hereby agree that all service(s) of process or notices in any manner related to this Agreement may be made to them by certified or registered mail, international Federal Express, UPS, or other similar carrier, to their respective addresses set forth above (or to such other address as either may notify the other of in writing).

26. **Limitation of Liability and Liability Waiver.** Dealer agrees to indemnify and hold harmless NMCL, its subsidiaries, affiliates, and their shareholders, partners, officers, agents, employees, and directors, from and against any claim, demand, liability, loss, cost, or expense, including but not limited to, court costs or attorney's fees, asserted against or suffered or incurred by any of them by reason of, directly or indirectly, arising out of or in any way related to or connected with, allegedly or otherwise, Dealer's: (1) activities as a Dealer including, without limitation, any unauthorized representations made by Dealer; (2) breach of the terms of this Agreement; (3) violation of or failure to comply with any applicable federal, state, or local law or regulation; (4) failure to comply with the proper use of Protected Materials; (5) failure to comply with NMCL's stated policies; and (6) any losses attributable to loss of business due to Dealer's unauthorized offers of Berkey® Products on third party websites. Dealer accepts that NMCL shall not accept any liability for actions taken by the Dealer in violation of NMCL's policies and procedures and will not assist in the defense of any litigation that may be filed against the Dealer for its independent actions.

27. **Electronic Signatures.** Dealer's use of electronic signatures to sign NMCL documents legally binds the Dealer in the same manner as if Dealer had manually signed.

28. **Authority to Sign.** Each of the Parties herein represents and warrants that the execution, delivery, and performance of this Agreement has been duly authorized and signed by a person who meets statutory requirements or other binding approval to sign on behalf of its business organization as named in this Agreement.

EXHIBIT A

List below how you intend to sell Berkey® products (Application will be denied if left blank).

Pursuant to this Agreement, Dealer is authorized to market, advertise, offer to sell, sell and/or fulfill orders for the Authorized Products via the Authorized Sales Channel(s) listed in Exhibits A and B only.

List all Domains (URL addresses) that Dealer controls, that do not contain “Berkey” in the domain name. Domains with “Berkey” in the URL will be listed on Exhibit B

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.

List all online 3rd Party Marketplaces and Storefront Seller Names

List the Marketplace, dash, then Seller name (e.g., eBay - ABC Store; Amazon.ca – eCanuck)

***No Dealers may sell Berkey® products on Amazon.com (U.S.) without a separate agreement.**

Dealers may list and sell Berkey® products on Amazon marketplace domains outside of the U.S.

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.
- 9.
- 10.

List all "other" (Radio, Television, Expos, Gun Shows, State Fairs, etc.)

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.

List all Brick-and-Mortar physical RETAIL STOREFRONT addresses (Dealer conducting business without a physical storefront (only selling online), do not need to list their office address here).

Any multi-location retailer should list their Headquarters as line#1 and fill out locations thereafter. If more than 10 locations apply, dealer will supply their NMCL Account Manager a list of all locations and contacts needed to conduct business.

Total number of locations as of the date of this signing: _____

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.
- 9.
- 10.

EXHIBIT B

List below all website Domains (URL addresses) that include the Berkey® trademark.

Note: A licensing Agreement with applicable fee (per Domain) must be signed and kept current, for Domain to be authorized.

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.
- 9.
- 10.

By signing this Agreement below, Dealer is acknowledging that Dealer has read and agree to the Terms and Conditions of this Agreement. Note that Prospective Dealer is not considered an Authorized Berkey® Dealer until Agreement is signed by both Dealer and NMCL, and in the case of a new dealer, dealer must also place the required initial minimum order and sign up for required communications, before being recognized as an Authorized Dealer.

Accepted and agreed to on this _____ day of _____, 20____ (“Effective Date”).

By: Dealer

(Signature)

(Print Name)

(Company Name)

(Dealer Email Address)

(NMCL Account Manager)

By: Approving Authority

(Signature)

(Print Name)

New Millennium Concepts, Ltd.

(Company Name)

We require ALL prospective Berkey® dealers (and existing dealers, signing new agreements) to complete a Texas Sales and Use Tax Resale Certificate form regardless of where you are located, including US Dealers outside of Texas, and International Dealers in other countries.

If you are in Texas, you will fill in your 11-digit Tax permit #.

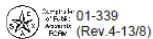
If you are out of state or in another country, please list your applicable state or country Tax Identification Number (TIN) in the “Out-of-state retailer's registration number or Federal Taxpayers “Registry (RFC) number”.

Failure to provide your Tax Identification Number on the New Millennium Concepts, Ltd. Dealer Agreement will result in your agreement being denied. If we identify that you have provided an invalid Tax number on the certificate, this will also result in your agreement being denied. If you do not have a tax number, please contact the NMCL account manager that sent you this agreement to discuss how to proceed.

_____ I have read and understand the instructions on this page.

Please note that even though we may approve your Dealer Agreement, that you will not be setup in our system to enable you to begin purchasing wholesale from us, until you provide us with a copy of your State or Country’s Sales Tax Permit. You can upload this permit from a link located in an email your account Manager sent to you, entitled: “How to become a Berkey Dealer”, or you may email a copy of the Permit directly to your Account Manager.

See following example:



Texas Sales and Use Tax Resale Certificate

Name of purchaser, firm or agency as shown on permit		Phone (Area code and number)
Address (Street & number, P. O. Box or Route number)		
City, State, ZIP code		
<p style="text-align: center;">if in Texas, Fill-in</p> Texas Sales and Use Tax Permit Number (must contain 11 digits) <div style="border: 1px solid black; width: 100%; height: 15px; margin-top: 5px;"></div>		
<p style="text-align: center;">Dealers Not in Texas, including other countries, Fill-in</p> Out-of-state retailer's registration number or Federal Taxpayers Registry (RFC) number for retailers based in Mexico <div style="border: 1px solid black; width: 100%; height: 15px; margin-top: 5px;"></div> <p style="text-align: right; font-size: small;">(Retailers based in Mexico must also provide a copy of their Mexico registration form to the seller.)</p>		

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