**Sample Contract for the “new deal”:**

**Cross-border Snowboard Distribution Deal**

***Do not share with students.***

## International Distribution Agreement

This agreement is dated November 15, 20XX [this year], between Pegasus Snowboards, Inc., a United States corporation incorporated under Colorado law (“**Pegasus**”), and Deportes Azteca, Ltda., a Chilean limited liability company (“**Azteca**”).

## Background

Pegasus is in the business of developing, producing, packaging, and marketing snowboards, snowboard equipment, snowboard apparel, and snowboard accessories (the “**Products**”).

Azteca markets, sells, and distributes recreational merchandise in Chile.

The parties desire to enter into this agreement for the purpose of granting Azteca the

exclusive distributorship of the Products in order to market, sell, and distribute

the Products in Chile.

Accordingly, the parties agree as follows:

## Article 1. Grant of Exclusive Distributorship

**1.1 Exclusive Distributorship.** Subject to the terms of this agreement, Pegasus hereby grants to Azteca the exclusive right to distribute, market, and sell the Products, and Azteca shall distribute, market, and sell the Products. The territory for this exclusive distributorship is Chile. Azteca shall not distribute, market, or sell the Products outside of Chile.

**1.2 Independent Contractor.** This agreement does not create the relationship of principal and agent, employer and employee, partners, joint venturers, or any similar relationship between the parties. Azteca has no authority to bind Pegasus or to assume or to create any obligation, express or implied, on behalf of Pegasus, and Azteca shall not hold itself out to others as having this authority.

## Article 2. Term

**2.1 Effective Date.** The effective date of this contract is January 1, 20xx [next year] (the “**Effective Date**”).

**2.2 Initial Term and Renewal.** Subject to earlier termination as provided in this agreement, the initial term of this agreement is three years, beginning on the Effective Date (the “**Initial Term**”). To extend this agreement for an additional two years to begin on January 1, 20xx [the year after the Initial Term ends], and to end on December 31, 20xx [two years after the extended term begins] (the “**Extended Term**”), both parties must agree in writing at least three months before the Initial Term expires.

## Article 3. Minimum Purchase Requirements

**“Minimum Purchase Requirement”** means the lowest United States dollar amount of Products purchased by Azteca in a calendar year. Unless otherwise provided in this agreement, Azteca shall meet or exceed the following Minimum Purchase Requirement in each designated year:

(i) 320,000 USD for the first year of the Initial Term.

(ii) 395,000 USD for second year of the Initial Term.

(iii) 490,000 USD for the third year of the Initial Term.

(iv) 590,000 USD for the first year of the Extended Term.

(v) 690,000 USD for the second year of the Extended Term.

## Article 4. Purchase Orders

**4.1 Placement of Orders.** Azteca shall order Products from Pegasus by completing and submitting to Pegasus a purchase order on a form provided by Pegasus. The completed purchase order form will provide all necessary information to enable Pegasus to fill the order, including descriptions of Products ordered, the requested delivery date(s), and any export/import information.

**4.2 Order Date for Initial Sales**. “**Business Day**” means the days that Pegasus’s principal offices in Denver, Colorado, are open for business. Azteca shall place all purchase orders for initial sales for each calendar year before February 1 of each year of the Initial Term and for each year of the Extended Term. Despite the previous sentence, Azteca shall place its first order on January 2, 20xx [the first year of the contract]. If February 1 in any year falls on a day other than a Business Day, Azteca shall place the purchase order for initial sales for that calendar year before the last Business Day that precedes February 1.

**4.3 Purchase Order Limit**. Except as provided in Article 3, Azteca shall not place purchase orders for the Product in any calendar year that totals an amount greater than Azteca believes can be sold during that calendar year.

**4.4 Acceptance of Purchase Orders**. Each purchase order for the Products is subject to acceptance or rejection by Pegasus. Upon written acceptance by Pegasus, a purchase order will be deemed a binding contract to purchase the Product under the terms and conditions of this agreement. Pegasus has no liability to Azteca with respect to purchase orders that have not been accepted by Pegasus. Despite the preceding sentence, Pegasus shall not unreasonably reject any purchase order for the Products that do not require any modifications or additions to meet the specifications of Azteca or Azteca’s customers.

**4.5 Partial Orders**.Notwithstanding Section 4.4, Pegasus may sell to Azteca fewer Products than Azteca ordered on a purchase order if Pegasus is unable to meet all of its distributors’ demands. Pegasus may allocate the Products between Azteca and other distributors as Pegasus considers appropriate.

**4.6 Sales Price**. If Pegasus accepts a purchase order, the sales price for the Products covered by the purchase order will be Pegasus’s net distributor prices that are in effect on the date of Pegasus’s acceptance. Pegasus may change the net distributor prices from time to time, and those changes will be effective immediately upon Azteca’s receipt of notice of the change. However, if Pegasus changes a net distributor price, then that change will not affect purchase orders accepted before the change becomes effective.

**4.7 Cancellation.** Pegasus may cancel any outstanding purchase orders if Azteca does not make a full payment as required by Article 6.

## Article 5. Delivery

**5.1 Communication.** Pegasus shall inform Azteca of the estimated delivery date for each purchase order and, upon Azteca’s written request, keep Azteca informed of the purchase order’s status.

**5.2 Pre-shipping Inspection.** Pegasus shall inspect all Products prior to shipping the Products to Azteca and shall ensure that the Products are in first-class condition when shipped. Azteca may access Products that are to be shipped to Azteca before the Products are shipped to inspect the quality of the Products.

**5.3 Invoices.** Pegasus shall submit invoices to Azteca upon shipment of Products.

**5.4 Shipment Restrictions.** Notwithstanding anything to the contrary in this agreement, Pegasus will not ship Products unless Pegasus has the ability to

i) make the sales of the Products, and

ii) obtain required licenses and permits

under all applicable decrees, statutes, rules, and regulations of the United States government that are presently in effect or which will come into effect during the Initial Term or Extended Term. If an order is accepted by Pegasus but cannot be shipped under this section, then the order will be deemed rejected when Azteca had submitted the order.

**5.5 Broker.** Azteca shall select and work with an import broker or forwarding agent to handle all shipments of the Product to Chile.

**5.6 Delivery.** Pegasus shall make reasonable efforts to meet Azteca’s delivery requirements for the Products ordered by Azteca in any purchase order accepted by Pegasus. All delivery of the Products to Azteca will be F.O.B. at a mutually agreed port of embarkation, such as dockside at a port or airport, in San Francisco, California, U.S.A. All deliveries will be made to Azteca’s broker. Pegasus shall bear all liability for loss of or damage to the ordered Products until the Products are delivered to Azteca’s broker.

**5.7 Post-delivery Inspection.** In addition to any inspection in Section 5.2, Azteca will have ten calendar days after delivery of the Products to inspect the Products and reject any defective Products. If Azteca does not reject the Products before the tenth Business Day after the day on which the Products were delivered, then the Products will be deemed accepted by Azteca.

**5.8 Importation.** Azteca shall obtain all necessary consents from any government or related authority to import the Products into Chile.

**5.9 Transportation and Insurance.** Azteca shall transport and insure the Products after Pegasus’s delivery to Azteca’s broker. Azteca shall obtain insurance that provides full coverage of the Products from the time the Products are delivered by Pegasus to Azteca’s broker until Azteca has paid Pegasus for the Products in full.

**5.10 Rights Reserved.** Notwithstanding anything in this agreement to the contrary, Pegasus reserves all rights with respect to the delivered Products permitted by law, including without limitation, the rights of rescission, repossession, resale, and stoppage in transit, until the full amount due from Azteca for the Products has been paid.

**Article 6. Payment**

For each Product delivered to Azteca or its broker, Azteca shall pay Pegasus in full the sales price designated in Section 4.6 on or before the date that the Product was delivered. Azteca shall make payments by a letter of credit that

i) is an irrevocable, transferable, and divisible letter of credit in favor of Pegasus,

ii) is opened at Azteca’s expense,

iii) is issued or confirmed by a U.S. bank specified by or acceptable to Pegasus,

iv) is denominated in U.S. dollars,

v) does not expire earlier than thirty Business Days after the estimated

shipment date of the Product,

vi) provides for payments in case of partial shipments, and

vii) is negotiable by Pegasus upon submission to the confirming bank of the

related commercial invoices and shipping documents for the Product.

## Article 7. Merchandise

**7.1 Pricing**. Azteca may establish its own price for the Products it sells. Azteca shall provide Pegasus with notice of Azteca’s price changes.

**7.2 Overstock.** Azteca shall orderly liquidate any overstock of the prior season’s Products

at reasonable prices and within a reasonable time before beginning sales in the current year.

**7.3 Product Line.** At any time during the Initial Term or Extended Term, Pegasus may add or delete specific Products; change the design or specification of any Product; delete models or lines of the Product; or add models and lines of the Product.

**7.4 Product Modification by Azteca.** Azteca shall not customize, modify, or have customized or modified, any of the Products unless Azteca obtains the prior written consent of Pegasus, which consent Pegasus may withhold. If Azteca customizes, modifies, or has customized or modified, any of the Products without Pegasus’s prior written consent, then Pegasus will not have any obligation that it might otherwise have had with respect to that Product under the warranties in Article 12.

**Article 8. Intellectual Property**

**8.1 Grant of License.** Subject to the terms of this agreement, Pegasus hereby grants to Azteca the exclusive right to use Pegasus’s trademarks, trade names, corporate name, logos, characters, designs, and artwork created for the Products (the “**Intellectual Property**”)in Chile and solely for distributing, marketing, and selling the Products in Chile. Despite the preceding sentence, the Intellectual Property remains the exclusive property of Pegasus. Azteca has no ownership rights to the Intellectual Property. Azteca shall notify Pegasus immediately if it discovers any potential or actual infringement by third parties of the Intellectual Property.

**8.2 Compliance.** When using the Intellectual Property, Azteca shall comply with all applicable laws and regulations.

**8.3 Right of Inspection.** Azteca shall permit Pegasus’s representatives to inspect Azteca’s facilities, during normal business hours and without advance notice, to confirm that Azteca is using the Intellectual Property as provided in this agreement.

## Article 9. Marketing

**9.1 Azteca’s Marketing Efforts.** Azteca shall use its best efforts to promote and sell the Products to the maximum number of responsible customers. Azteca shall pay all costs for marketing the Products and will display all Intellectual Property notices required by Pegasus on all advertising and marketing materials.

**9.2 Support from Pegasus.** Pegasus shall provide Azteca with price lists, promotional flyers, catalogs, specification sheets, and other materials to assist Azteca in marketing the Products.

**9.3 Pre-approval.**  Azteca shall submit all creative marketing and promotional materials to Pegasus before dissemination. Pegasus shall notify Azteca of its approval or disapproval of the submitted materials on or before the fifth Business Day after receiving the materials from Azteca. If Pegasus fails to give notice of its approval or disapproval within this time period, the materials will be deemed approved by Pegasus. If Pegasus disapproves of the materials on or before the fifth Business Day after receiving the materials, then Azteca shall use its best efforts to correct the deficiencies and resubmit the corrected materials for approval.

**Article 10. Training and Support**

## 10.1 Training Seminars. Pegasus shall provide training seminars at Azteca’s offices in Santiago, Chile, at no cost to Azteca. The parties will schedule the seminars at a mutually agreeable time. The number of seminars will be as many as are reasonably necessary to assist Azteca in marketing and supporting the Products.

**10.2 Technical and Sales Support.** Pegasus shall provide technical and sales assistance as reasonably necessary to support Azteca in carrying out its obligations under this agreement. Pegasus shall provide technical and sales assistance at no cost to Azteca.

## Article 11. Taxes

Azteca shall pay all custom duties, excise taxes, assessments, or other governmental taxes and charges

i) that are directly or indirectly imposed or based upon the distribution, transportation, delivery, use, or maintenance of the Products, or

ii) that otherwise arise in connection with this agreement.

## Article 12. Warranty

Pegasus warrants that the Products will be free from defects in material and workmanship and will substantially conform to the publicly available specifications for the Products. Pegasus shall replace or repair, at its option, any Products that

i) before the fifteenth calendar day after the day on which the Product was delivered to the end user is found defective in materials, workmanship, or specifications, and

ii) upon written notification by Azteca identifying each defect.

Pegasus’s obligation with respect to the defective Product is limited to repair or replacement of the Product without any further expense to Pegasus. Any alteration, abuse, modification, or misuse, including neglect or accidental damage or defacement, of the Product voids this limited warranty. THE LIMITED WARRANTY IN THIS ARTICLE 12 IS EXPRESSLY MADE IN LIEU OF ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. This limited warranty will not be enlarged or affected by, and no liability or obligation will arise from, Pegasus’s rendering of technical or other advice, or of service, in connection with any of the Products. Pegasus’s employees, agents, distributors, and sales representatives are not authorized to make warranties. Oral or written statements made by them do not constitute warranties and will not be relied upon by Azteca.

## Article 13. Azteca’s Conduct

**13.1 Ethical Practices**. Azteca shall engage in a lawful business in a manner reasonably expected to uphold Pegasus’s reputation. Azteca shall not engage in any deceptive, misleading, illegal, or unethical business practices.

**13.2 Compliance with Laws.** Azteca shall comply with all applicable laws, statutes, regulations, and treaties that relate to any one or more of the following:

a) The marketing, sale, and distribution of the Products in Chile.

b) The performance of Azteca’s duties and obligations under this agreement.

Azteca shall obtain all governmental import, product registration, currency (including foreign exchange) and other approvals, licenses, or authorizations that are necessary

in Chile or that are necessary for distribution of the Product and the performance of Azteca’s obligations.

**13.3 Non-competition.** During the term of this agreement, Azteca shall not:

i) design, manufacture, distribute, market, or sell, or

ii) act in any capacity, including as a representative or distributor, for

any product that competes with the Products.

**13.4 Confidentiality. ”Confidential Information”** means information regarding the manufacture, design, pricing, marketing, and other non-public aspects of the Products, and the manner in which Pegasus conducts its business. As an exception to the preceding sentence, Confidential Information does not include

a) information which is, or becomes, public or general industry knowledge through no fault of Azteca, its agents, or employees; or

b) information requested by a government agency or through a court order.

Azteca acknowledges that Confidential Information exits and that Pegasus has the right to seek protection of the Confidential Information. Azteca shall not use or disclose, or allow its agents or employees to use or disclose, any Confidential Information during or for two years after this agreement, except as necessary to perform its obligations under this agreement. Upon termination of this agreement, Azteca shall, at its expense, return any Confidential Information to Pegasus as soon as practicable. The Confidential Information will remain the exclusive property of Pegasus during this agreement and following this agreement’s termination.

Azteca acknowledges that the remedy at law for any breach of its obligations under this Section would be inadequate and would cause Pegasus irreparable harm. Therefore, in the event of any breach or threatened breach of Azteca’s obligations under this Section, Pegasus is entitled to injunctive relief in any proceeding brought to enforce the provisions in this Section. Pegasus’s resort to equitable relief is not a waiver of any of its other available rights or remedies.

## Article 14. Representations

**14.1 Pegasus’s Representations.** Pegasus represents that it is not a party to any other contract that provides for the distribution of the Products in Chile.

**14.2 Azteca’s Representations.** Azteca represents that:

a) It is not a party to any contract that conflicts with its obligations

under this agreement.

b) It is not distributing any products that compete with the Products.

## Article 15. Indemnification

**15.1 Azteca’s Indemnification**. Azteca shall indemnify and defend Pegasus and its officers, directors, employees and agents (“**Pegasus Indemnitees**”) from all actual and threatened claims, actions, investigations, proceedings, and suits, including without limitation attorneys’ fees, expenses and settlement costs, that

i) exceed 5,000 USD, and

ii) arise out of or are related to any misrepresentation or breach of obligation by Azteca

(“**Pegasus’s Indemnified Claim**”). Eligibility for the indemnification provided in this Section is contingent upon the satisfaction of all of the following conditions:

a) Pegasus Indemnitees must give Azteca prompt written notice of Pegasus’s Indemnified Claim after any of Pegasus Indemnitees become aware of its existence.

b) Azteca must have sole control of the defense and settlement negotiations of Pegasus’s Indemnified Claim.

c) Pegasus Indemnitees must cooperate with Azteca in the defense and

settlement negotiations of Pegasus’s Indemnified Claim.

**15.2 Pegasus’s Indemnification**. Pegasus shall indemnify and defend Azteca and its officers, directors, employees and agents (“**Azteca Indemnitees**”) from all actual and threatened claims, actions, investigations, proceedings, and suits, including without limitation attorneys’ fees, expenses and settlement costs, that

i) exceed 5,000 USD, and

ii) arise out of or are related to any misrepresentation, breach of obligation,

or breach of warranty by Pegasus

(“**Azteca’s Indemnified Claim**”). Eligibility for the indemnification provided in this Section is contingent upon the satisfaction of all of the following conditions:

a) Azteca Indemnitees must give Pegasus prompt written notice of Azteca’s Indemnified Claim after any of Azteca Indemnitees become aware of its existence.

b) Pegasus must have sole control of the defense and settlement negotiations of Azteca’s Indemnified Claim.

c) Azteca Indemnitees must cooperate with Pegasus in the defense and

settlement negotiations of Azteca’s Indemnified Claim.

**15.3 Duration of Indemnification Obligations.** The parties’ respective indemnifications under Sections 15.1 and 15.2 will remain in effect for the duration of this agreement and for at least two years after termination of this agreement or for as long as the statute of limitations remains in effect for any indemnified claim, whichever is the longer period.

**Article 16. Termination**

**16.1 Failure to Satisfy the Minimum Purchase Requirement.** Pegasus may terminate this agreement in the event Azteca fails to meet the Minimum Purchase Requirement in any year, if Pegasus gives thirty calendar days written notice to Azteca before sixty calendar days after the end of the calendar year Azteca failed to meet its goal.

**16.2 Termination for Breach of Obligation.** If a party breaches a material obligation under this agreement, including but not limited to Pegasus’s obligations under Article 10, then the non-breaching party may terminate this agreement

i) after giving written notice of the termination to the breaching party, and

ii) the breaching party fails to cure its breach before thirty calendar days

after receiving the written notice in i) from the non-breaching party.

Termination will be effective immediately upon the breaching party’s failure to cure its breach within the time period provided in ii) of this Section. Notwithstanding the provisions of this Section, Azteca’s failure to meet the Minimum Purchase Requirement in any year is a breach subject to termination as provided in Section 16.1.

**16.3 Bankruptcy**. Pegasus may terminate this agreement by giving written notice of the termination to Azteca if

i) a petition of bankruptcy, insolvency, or reorganization is filed against or by Azteca, or

ii) Azteca goes into receivership or otherwise becomes insolvent.

Termination will be effective upon dispatching the notice to Azteca.

**16.4 Surviving Obligations.** If this agreement terminates, whether as provided in this Article 16 or by expiration of the Initial Term or Extended Term, Azteca shall pay Pegasus all amounts owed to or becoming owed to Pegasus as a result of the Products tendered or delivered to Azteca on or before the date of termination, including interest on those amounts paid after the date they became or will become due pursuant to this agreement.

**Article 17. Dispute Resolution**

**17.1 Mediation.** In the event of any dispute arising under or related to this agreement, the parties shall first try to settle the dispute through mediation as provided in this Section. The mediator will be chosen by the parties from a list of neutrals registered with the International Centre for Dispute Resolution (the “**ICDR**”). The mediator will be fluent in English and Spanish. Mediation sessions will be held in Denver, Colorado, U.S.A. Mediation will be conducted according to the ICDR’s International Mediation Rules. Each party shall participate in good faith in at least three mediation sessions to be held during three consecutive Business Days. If the dispute is not settled after the third mediation session, then the parties may by mutual written consent agree to continue with mediation. In the event the parties fail to agree to continue with mediation, the dispute will be submitted to arbitration as provided in Section 17.2. Each party shall bear its own costs and expenses for the mediation and an equal share of the mediator’s fees.

**17.2 Arbitration.** In the event a dispute arising under or related to this agreement is not settled by mediation as provided in Section 17.1, then the parties shall submit the dispute to final and binding arbitration to be administered by the ICDR under its International Arbitration Rules. The dispute will be submitted to a panel of three arbitrators. Each party will choose one arbitrator from the ICDR’s roster of arbitrators. The chosen arbitrators will choose a third arbitrator from the same roster. All arbitrators will be fluent in English and Spanish, but the arbitration will be conducted in English. Arbitration will take place in San Francisco, California, U.S.A. Each party shall bear its own costs and expenses for the arbitration and an equal share of the fees for arbitration.

## Article 18. Miscellaneous

**18.1 Force Majeure.** “**Force Majeure Event**” means a tornado, earthquake, fire, hurricane, acts of war, terrorist activity, strikes, lockouts, explosions, interruption of transportation, action of the government or public authority, or other act of nature or destructive event that

i) is beyond the non-performing party’s control,

ii) is beyond the non-performing party’s ability to avert through its exercise of due diligence, and

iii) prevents or delays a non-performing party’s performance under this agreement.

If a party is unable to perform any obligation under this agreement due to a Force Majeure Event, the party is excused from any delay or failure to perform its obligation under this agreement during the duration of a Force Majeure Event so long as the party

a) provides notice of the Force Majeure Event, including its nature

and expected duration, as soon as practicable after it knows or

should have known of the Force Majeure Event giving rise to

or appearing likely to give rise to a delay or failure to perform

it obligations, and

b) continues to use its best efforts to recommence performance to

whatever extent possible without delay.

Notwithstanding the previous sentence, a Force Majeure Event will not excuse Azteca’s obligations under Article 13 or for the payment of money by either party as provided in this agreement.

The non-performing party shall resume performance of its obligations under this agreement within fifteen calendar days after termination of the excused Force Majeure Event and notify the other party of the termination of the event.

If the non-performing party’s delay or suspension of performance due to a Force Majeure Event lasts more than ninety calendar days, then the other party may terminate this agreement by giving written notice to the non-performing party.

**18.2 Notice.** All notices required by this agreement are to be given as provided in this Section. The parties shall deliver all notices required under this agreement by overnight courier. Notice is effective upon receipt, except as provided in Section 16.3. Both parties to this agreement shall comply with this Section when notifying the other party of a change in notice address or contact information.

Notices to Pegasus will be sent to:

James Sordano

One Athletic Forum Drive

Boulder, Colorado, USA

Notices to Azteca will be sent to:

Alejandro Reyes

Nueva de Lyon 14

Providencia, Santiago, Chile

**18.3 Controlling Language.** This agreement is written in American English, which is the official language of this agreement. All communications and documents relating to this agreement will be written in American English. American English will control in any interpretation or dispute arising under this agreement or other writings between the parties.

**18.4 Governing Law.** Colorado law governs this agreement and all matters arising under or relating to this agreement. The provisions of the United Nations Convention on Contracts for the International Sale of Goods do not apply to this agreement.

**18.5 Merger.** This agreement (i) is the complete, final, and exclusive agreement between the parties, and (ii) supersedes all prior proposals, negotiations, representations, warranties, commitments, whether written or oral, between the parties.

**18.6 Delegation and Assignment.** Neither party to this agreement shall (i) delegate their duties under this agreement nor (ii) assign their rights under or related to this agreement. Any purported delegation or assignment is void.

**18.7 Severability.** If a provision in this agreement is found to be unenforceable, then the parties shall use reasonable efforts to rewrite the unenforceable provision

i) to make it enforceable, and

ii) to the extent possible reflect the original business purpose of the unenforceable provision.

If the parties are unable to reach an agreement for the rewrite of the unenforceable

provision and the provision is of such essential importance to the parties’ agreement that

the parties would not have contracted this agreement without that provision, then this

entire agreement is unenforceable against either party.

**18.8 Modifications.** The parties may modify this agreement only if the modification is in writing and signed by the presidents of both parties.

**18.9 Waiver**. A party's failure to insist on the other party's strict performance under this agreement does not constitute a waiver of that right to performance if another default occurs. To waive a right under this agreement, the president of the party against whom waiver is sought to be enforced must give the other party written notice of the waiver and sign the waiver notice.

The parties have signed this agreement on the date stated in the introductory statement.

Pegasus Snowboards, Inc.

By:

James Sordano, President

Deportes Azteca, Ltda.

By:

Alejandro Reyes, President