



EMAIL: SALES@CHOFFY.COM ADDRESS: CHOFFY
 FAX: 702-978-6915 900 WIGWAM PARKWAY
 WWW.CHOFFY.COM SUITE 135
 HENDERSON, NV 89014

RETAILER APPLICATION AND AGREEMENT

DISTRIBUTOR ID

BUSINESS INFORMATION

NAME OF BUSINESS		SSN/FED TAX ID
FULL NAME OF RESELLER AGENT(S)		
WEBSITE URL		
BUSINESS ADDRESS		
CITY	STATE	ZIP
EMAIL		TEL.

By signing below, _____ (the "Retailer") hereby applies to become a retailer of CHOFFY.

In addition to executing this Application and Agreement, the following additional documents are required for application approval:

- For United States based businesses, a copy of your state-issued Sales and Use Tax Permit or Reseller's License is required if you are located within any State except AK, DE, MT, NH, or OR, which do not have state sales tax. If you are located within AK, DE, MT, NH or OR, you must submit a copy of your business license or articles of incorporation.
- For foreign businesses, you must submit a copy of your GST, PST, HST, VAT or similar license.
- For all retailer agents, a copy of a valid driver's license.

Unless and until this Application and Agreement is accepted by CHOFFY (as evidenced by its execution herein below), the Retailer shall not sell CHOFFY Products in any of its establishments. CHOFFY reserves the right to accept or reject this Application and Agreement in its sole and exclusive discretion.

In the event this Application and Agreement is accepted by CHOFFY, the Retailer agrees as follows:

RECITALS

- CHOFFY produces and sells the products described on Exhibit "A" which it desires for the Retailer to sell at its retail stores;
- The Retailer possesses the requisite knowledge, experience and facilities to promote, sell and distribute such products at its retail stores; and
- CHOFFY wishes to engage the Retailer, and the Retailer wishes to be engaged to sell such products at the Retailer's retail stores.

NOW, THEREFORE, the parties hereby agree as follows:

1. Definitions.

- "Products" shall mean those products of CHOFFY described in Exhibit "A" and all replacements and improvements of the same. CHOFFY reserves the right to add Products to or delete Products from Exhibit "A" at any time in its sole discretion.
- The "Stores" shall mean only those retail stores of Retailer identified in Exhibit "B".

2. Appointment; Marketing Rights.

- Appointment. Subject to the terms and conditions hereinafter set forth, and for so long as this Agreement shall remain in effect, CHOFFY hereby appoints the Retailer as a non-exclusive retailer of the Products at the Stores, and the Retailer hereby accepts such appointment and agrees to so act.
- Additional Stores. CHOFFY's acceptance of this Application and Agreement (if applicable) is based upon and pertains to only the Stores identified in Exhibit "B". If the Retailer wishes to sell CHOFFY Products at additional stores, the Retailer must immediately notify CHOFFY of the additional stores and obtain CHOFFY's written agreement to sell CHOFFY thereat.

c. Non-Exclusive Appointment. It is expressly understood and agreed by the Retailer that CHOFFY may, in its sole discretion, designate other parties as retailers of the Products.

d. Other Sales by CHOFFY. It is expressly agreed that CHOFFY may make other sales of the Products including, without limitation, sales to retailers, dealers, manufacturers, end-users and other parties.

3. **Responsibilities of Retailer.**

a. Marketing and Sales of the Products. The Retailer shall diligently and faithfully use its best efforts to develop the market for and sell the Products from its Stores.

b. Covenants of the Retailer. The Retailer will: (i) conduct business in a manner that reflects favorably at all times on the Products and the good name, goodwill and reputation of CHOFFY; (ii) avoid deceptive, misleading or unethical practices that are or might be detrimental to CHOFFY or the Products; (iii) make no false or misleading representations with regard to CHOFFY or the Products; (iv) not publish or employ, or cooperate in the publication or employment of, any misleading or deceptive advertising material with regard to CHOFFY or the Products; (v) make no representations, warranties or guarantees with respect to the Products that are inconsistent with the literature distributed by CHOFFY; and (vi) not repack or re-label any Products for any purpose.

c. Brewing and/or Preparation of Products by the Retailer. Any drinks brewed or otherwise prepared by the Retailer with CHOFFY Products for on or off premises consumption shall be identified as "CHOFFY" Products on the Retailer's menus, menu boards, table tents, etc.

4. **Pricing.**

a. Wholesale Price List. Current pricing for the Retailer's purchase of CHOFFY Products are set forth in the Wholesale Price List, which is attached as Exhibit "C". CHOFFY may change the prices of the Products at any time in its sole discretion.

b. Advertising of Online Sales. To assure product line integrity, fair pricing, and an orderly marketplace, the Retailer agrees not to advertise any CHOFFY products online at a price lower than CHOFFY's Minimum Advertised Price (MAP). MAP is applicable to all published, advertised or otherwise publicly-posted prices for online sale, regardless of the manner communicated and irrespective of the format or medium of communication, to include email, postcard, flyer, radio or television, billboard, print media, website banner or similar, or any other form of advertising. In addition, all automatic email responses to price inquiries must comply with the MAP policy. MAP does not apply to non-advertised prices or in-store pricing. CHOFFY will establish, maintain, support and monitor an ongoing MAP program for its product line.

c. MAP Determination. CHOFFY shall determine the MAP for all CHOFFY products in its sole and absolute discretion. CHOFFY reserves the right to set, change, modify or discontinue any Product or MAP at any time, without notice and without liability.

d. Violation of MAP Policy. CHOFFY reserves the right, in its sole discretion, to determine all violations of its MAP policy.

e. CHOFFY'S Own Prices. CHOFFY shall be free to set its own prices and may sell Products at any price in its sole discretion.

5. **Payment and Delivery.** Full payment for the Products shall be made in U.S. Dollars within _____ (#) days after their delivery to the Retailer. Retailer shall pay to CHOFFY a monthly service charge of ___ percent (#%) per month for any past due amounts. CHOFFY shall use its reasonable best efforts to fill all orders as promptly as reasonably possible, but CHOFFY will not be responsible if it is unable to ship Products in a timely manner or if there are delays in shipment. CHOFFY will not be required to deliver any Products to the Retailer if the Retailer is delinquent in making any payment to CHOFFY or is in breach of any of its obligations hereunder.

6. **Taxes.** The Retailer agrees that it is solely responsible for any and all tax obligations, if any, due to all taxing authorities arising from or in connection with the Retailer's purchase or agreement to purchase and/or retail CHOFFY Products.

7. **Trademarks; Copyrights; and Confidential Information.**

a. Ownership by CHOFFY. The Retailer acknowledges that, as between the Retailer and CHOFFY, CHOFFY is the exclusive owner of or has all rights to the copyrights, trademarks and confidential and proprietary information used in connection with the Products, including "CHOFFY," "Taste. Life.," CHOFFY'S logo, and CHOFFY'S promotional materials.

b. Use by Retailer. In the performance of this Agreement, the Retailer is entitled to use and display those of CHOFFY's trademarks and copyrighted material that have been approved by CHOFFY for the Products; provided, however, that the Retailer shall follow the instructions of CHOFFY at all times as to the use or discontinuance of such trademarks and copyrights. Use of these trademarks shall not grant the Retailer any rights to such trademarks.

c. Discontinuance of Use Upon Termination. In the event of termination of this Agreement for any reason, the Retailer shall, upon the effective date of termination, immediately cease selling the Products and cease all use of CHOFFY's trademarks, copyrighted material and confidential and proprietary information. Thereafter, the Retailer shall not sell or offer, directly or indirectly, any products bearing trademarks, trade names, labels, or packaging, or bearing any other identification, so resembling those used with the Products as to be likely to cause confusion or mistake, to deceive the public, or to trade upon the goodwill of the Products or CHOFFY. The Retailer's obligations under this Section shall survive any termination of this Application and Agreement.

d. Confidential Information. As used herein, Confidential Information includes, but is not limited to, all information given to or acquired by the Retailer in the course of this Agreement relating to CHOFFY; CHOFFY's customers, suppliers and affiliates; and the Products and their design, manufacture, composition and use. The Retailer shall not divulge any Confidential Information to third parties and upon termination of this Agreement shall return to CHOFFY all Confidential Information in written form. This obligation of confidentiality shall not apply to any information which is or later becomes public knowledge through no fault of the Retailer, or which is subsequently acquired by the Retailer from sources under no obligations of secrecy, or which is reasonably required to be disclosed by any law or court order.

e. Injunctive Relief. The Retailer agrees that any violation or threatened violation of Sections 7(c) or 7(d) will cause irreparable injury to CHOFFY and entitle CHOFFY to obtain injunctive relief in addition to all other legal remedies.

8. **Indemnity.**

a. Indemnity by the Retailer. The Retailer agrees to indemnify and hold CHOFFY harmless from and against any and all claims, actions, costs (including reasonably attorney's fees), losses and damages attributable to or arising from the Retailer's negligence or misconduct or arising from or attributable to any statement, representation, or warranty made by the Retailer with respect to a Product or its use which is not first approved by CHOFFY in writing or contained in CHOFFY's written Product materials furnished to the Retailer hereunder, provided that CHOFFY promptly informs the Retailer of any such claim or action asserted against CHOFFY.

b. Limitation of Liability for Damages. CHOFFY shall not, in any case, be liable to the Retailer or any of its customers for special, incidental or consequential damages arising from any breach of warranty, breach of contract, negligence or any other legal theory. Such damages include, but are not limited to, loss

of profits or revenue, injury to business, cost of capital, cost of any substitute product, facilities or services, or claims of customers of the Retailer for such damages.

9. Term; Extension; Termination of Agreement.

a. **Term.** This Agreement shall commence as of the date hereof and shall continue in effect for an initial term of one year unless sooner terminated by a party as specifically permitted by any applicable provision hereof (the "Initial Term").

b. **Extension.** The term of this Agreement shall automatically extend for additional one [year/month] periods unless one party gives the other party written notice of its intention not to renew the Agreement 30 days prior to the termination of the Initial Term or any renewal term.

c. **Material Breach.** CHOFFY may terminate this Agreement upon ten (10) days prior written notice if the Retailer fails to make payment of any sum owing to CHOFFY.

d. **Breach.** Either party hereto may terminate this Agreement at any time in the event of any breach of this Agreement by the other party effective ten (10) days after the giving of written notice to the other party of the reasons for such termination, if the other party shall fail to cure or rectify the deficiencies specified in such notice within ten (10) days after such notice. In the event the Retailer breaches this Agreement and fails to timely cure or rectify the deficiencies specified in the notice of breach, all unpaid balances outstanding to CHOFFY shall become immediately due and payable.

e. **Insolvency.** This Agreement shall terminate automatically without notice to either party hereto if CHOFFY or the Retailer shall become insolvent, be adjudicated bankrupt, shall make a general assignment for the benefit of creditors, or shall take the benefit of any insolvency, reorganization or other relief act or similar law, or if a receiver or trustee be appointed for its property.

10. **Independent Contractors.** CHOFFY and the Retailer are independent contractors. Neither party nor its employees or representatives are employees, agents or representatives of the other party, and shall not hold themselves out as such, and shall have no authority or power to bind the other party or contract in the other party's name.

11. **Notices.** Any notice or other communication required or permitted hereunder shall be hand-delivered or mailed first class, postage prepaid to the recipient party at its address as written below or as changed by notice given hereunder and shall be deemed given upon the earlier of receipt or three (3) days after deposit in the U.S. Mail.

12. **Assignment.** Neither party hereto may assign this Agreement, in whole or in part, to any other person or entity without the prior written consent of the other party. Any attempted assignment contrary to this Section shall be null and void.

13. **Force Majeure.** No failure or omission, in whole or in part, to carry out or observe any of the terms, provisions or conditions of this Agreement shall give rise to any claim by CHOFFY against the Retailer or by the Retailer against CHOFFY or be deemed to be a breach of this Agreement, if the same is caused by or arises out of "Force Majeure." To the extent that it is not within the reasonable control of the party whose performance under this Agreement is affected thereby, the term "Force Majeure" as used in this Agreement shall mean war, declared or not, embargoes, export or import restrictions, and inability to obtain export or import licenses; fire, frost or ice, earthquake, storm, lightning, explosion, tide, tidal wave, or perils of the sea; strike or combination of workmen or other labor disturbances; any other cause whether or not of a similar nature provided that it is beyond the reasonable control of the party thus prevented from performing its obligations hereunder, which would have the effect of preventing or impeding the supply of Products in accordance with the terms of this Agreement. The party affected shall give the other party immediate notice of the cause preventing or hindering the production, delivery or shipment of Product and shall give a further notice as soon as possible after such cause has ceased to have effect.

14. **Integration; Modification.** This Agreement constitutes the entire agreement between the parties hereto and supersedes and take the place of all prior agreements and understandings, whether written or oral, including all understandings and agreements, formal or informal, applicable to the relationship of the parties hereto prior to the date hereof, and this Agreement can be modified only by a writing signed by an authorized officer of the party against which such modification is asserted.

15. **No Automatic Waiver; Invalidity.** Failure to enforce any provision of this Agreement by either party, shall not be construed as a waiver of that provision. If any provision of this Agreement is deemed invalid, illegal or incapable of being enforced under any applicable rule of law or public policy, the remainder of this Agreement shall be valid and otherwise enforceable to the fullest extent permitted by law; provided, however, that if the validity or unenforceability of such party of or provision in this Agreement substantially denies to a party the intended benefits of this Agreement, this Agreement may be terminated by such party on thirty (30) days' written notice to the other party hereto.

16. **Successors and Assigns.** This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, representatives, successors and permitted assigns.

17. **Further Assurances.** Each of the parties hereto agrees on behalf of itself, its successors and assigns, that it will, without further consideration, execute, acknowledge and deliver such other documents and take such other action as may be necessary or convenient to carry out the purposes of this Agreement.

18. **Counterparts.** This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original but all of which taken together shall constitute but one and the same Agreement.

19. **Conflicting Terms.** The parties agree that the terms and conditions of this Agreement shall prevail, notwithstanding any contrary or additional terms in any purchase order, sales acknowledgement, confirmation or any other document of either party concerning the purchase or sale of Products.

20. **Headings.** Headings of Sections herein are inserted for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

FOR CHOFFY USE ONLY

APPLICANT'S SIGNATURE	ACCEPTED		NOT ACCEPTED	
	SIGNATURE			
TITLE	DATE	CUST #	DATE	



EXHIBIT "B"

STORE LOCATION(S) (Attach additional sheets if necessary)

STORE NAME		TEL:	
ADDRESS	CITY	STATE	ZIP

STORE NAME		TEL:	
ADDRESS	CITY	STATE	ZIP

STORE NAME		TEL:	
ADDRESS	CITY	STATE	ZIP

STORE NAME		TEL:	
ADDRESS	CITY	STATE	ZIP

STORE NAME		TEL:	
ADDRESS	CITY	STATE	ZIP

STORE NAME		TEL:	
ADDRESS	CITY	STATE	ZIP

STORE NAME		TEL:	
ADDRESS	CITY	STATE	ZIP

STORE NAME		TEL:	
ADDRESS	CITY	STATE	ZIP

BILLING AUTHORIZATION

NAME ON CREDIT CARD		
CREDIT CARD NUMBER	EXP DATE	CCV
BILLING ADDRESS		
CITY	STATE	ZIP

I authorize CHOFFY Inc. to charge purchases, shipping and fees to the credit card out company keeps on file with CHOFFY. I agree to abide by all terms outlined in this Agreement. CHOFFY may suspend at their discretion, either permanently or temporarily, retailer privileges outlined in this Agreement. I understand that CHOFFY enters into this Agreement with a full reservation of rights and may amend this Agreement in the future with notification provided to the account holder within a reasonable time and opportunity to enter into a revised contract of the new Agreement's terms.

SIGNATURE	TITLE
PRINTED NAME	DATE