

# 2008 MODEL DISTRIBUTION AGREEMENT



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# INTRODUCTION

For both distributors and manufacturers, success in the distribution channel depends in large part on the structure of the relationship. Equitable and secure relationships are characterized by agreements which provide for a balance of risk, effort, and investment between the parties. Successful agreements provide the distributor with the flexibility to maximize its potential with the product line. In return, the distributor commits its resources to achieve mutually agreed goals. Both work closely together to ensure success. Behind every good partnership is an effective distribution agreement. Such agreements are the foundation of an authorized distribution channel.

This document is intended as a guide or starting point for discussions between channel partners. NEDA offers this model agreement for the information and consideration of both suppliers and distributors of electronic components and related products. The use of any of these provisions is an independent business decision by individual distributors and suppliers in light of their individual business circumstances. Users are encouraged to obtain competent legal and other business advice regarding their individual circumstances and applicable federal and state laws before entering into any agreement.

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# DISTRIBUTION AGREEMENT

Agreement entered into, by and between \_\_\_\_\_,  
a \_\_\_\_\_ corporation having its principal place of business at \_\_\_\_\_  
\_\_\_\_\_, ("SUPPLIER"),  
and \_\_\_\_\_,  
a \_\_\_\_\_ corporation having its principal place of business at \_\_\_\_\_  
\_\_\_\_\_, ("DISTRIBUTOR").

## IT IS AGREED:

1. **Appointment.** SUPPLIER appoints DISTRIBUTOR on a non-exclusive basis to serve during the term of this Agreement as an authorized distributor of the Products within the Territory, and DISTRIBUTOR accepts such appointment. SUPPLIER will be free to distribute the Products within the Territory either directly or through other authorized distributors or dealers. However, the SUPPLIER will inform DISTRIBUTOR of the appointment of any other authorized distributor of the Products prior to the announcement. DISTRIBUTOR shall not be prevented in any way from selling within the Territory similar Products or merchandise of other suppliers or manufacturers.

**1.1 Definition of "Products."** The term "Products" will mean all Products offered for sale by SUPPLIER generally, as set forth and described in SUPPLIER's then current published price list (Price List) in effect at the date of this agreement. Products may be added to the Price List or deleted from there by SUPPLIER upon sixty (60) days prior written notice to DISTRIBUTOR. Additional Products may be added to this Agreement, including Products specified in SUPPLIER's Price List but not approved for distributor stocking, by mutual agreement between the parties.

**1.2 Definition of "Territory."** The term "Territory" will mean the geographic area(s) known as \_\_\_\_\_.

2. **Term.** The term of this agreement will be twelve (12) months from the Effective Date of this Agreement. The Agreement is automatically renewed for one year periods at all anniversary dates unless this Agreement is otherwise terminated.

3. **Duties of DISTRIBUTOR.** DISTRIBUTOR will:

- a. use reasonable commercial efforts to promote the sale of SUPPLIER's Products within the Territory;
- b. provide timely delivery of Products to DISTRIBUTOR's customers;
- c. provide SUPPLIER with sales activity reports in a "NEDA POS Standard Format", or in a mutually agreeable format; and

- d. participate in such training programs as may be offered by SUPPLIER.
4. **Duties of SUPPLIER.** SUPPLIER, at no cost to DISTRIBUTOR, will provide to DISTRIBUTOR in a timely manner:
- a. the current price and Product information as may be necessary and in a format that will allow DISTRIBUTOR to provide such information to DISTRIBUTOR's customers;
  - b. sufficient quantities of marketing materials for sales programs;
  - c. adequate training;
  - d. technical support for all SUPPLIER's Products sold by DISTRIBUTOR;
  - e. assurances that the Products, as manufactured and sold to DISTRIBUTOR, fully comply with all applicable laws, standards, codes and regulations; are appropriately marked and labeled in accordance with all applicable laws, standards, codes and regulations; and suitable for distribution; and
  - f. replace at no charge samples of SUPPLIER's Products provided to DISTRIBUTOR's customers.
5. **DISTRIBUTOR Sales Activity Reports.** If required by SUPPLIER, within \_\_\_\_\_ business days after the end of each month, DISTRIBUTOR will send to SUPPLIER, in the "NEDA POS Standard Format", or in a mutually agreeable format:
- a. a stock status report showing the month-end, on-hand quantities of SUPPLIER's Products by device type and warehouse location; and
  - b. a point-of-sale report showing Product sales for then month by device type, sale location (as necessary to enable SUPPLIER to properly compensate its sales representatives), quantities and sales price, for SUPPLIER's Products.
6. **SUPPLIER Reports.** Within \_\_\_\_\_ business days after the end of each month, SUPPLIER will send to DISTRIBUTOR, in a mutually agreeable format an open status report listing all accepted orders that have not yet been shipped, and indicating the part number, quantity, order date, purchase order number and Acknowledged Shipment Date (as defined in Section 8.1) for each such order.
7. **Audits.** Not more than once during any year, upon reasonable prior written notice, SUPPLIER may at its cost:
- a. audit those records of DISTRIBUTOR at DISTRIBUTOR's corporate headquarters which pertain solely and exclusively to purchases of SUPPLIER's Products under this Agreement for the previous twelve (12) months or from and after the last such audit, whichever period is shorter;
  - b. conduct a physical inventory (or, in automated facilities, observe cycle counts and related methodology) of SUPPLIER's Products purchased under this Agreement at any stocking location; and

- c. have the audit performed by SUPPLIER and not third party auditors unless specifically approved by the DISTRIBUTOR.

The audit and inventory will be carried out at reasonable times and in a manner that will not disrupt or otherwise materially adversely impact the conduct of DISTRIBUTOR's business. SUPPLIER's auditors will sign non-disclosure agreements before being permitted to perform audit

## **8. Orders; Delivery; Rescheduling; Cancellation.**

- 8.1 Orders. SUPPLIER will acknowledge each DISTRIBUTOR purchase order, in writing, at the earliest practicable date, but in any event within five (5) business days following receipt thereof and will confirm the requested shipment date or specify an alternative shipment date ("Acknowledged Shipment Date"). DISTRIBUTOR will have no obligation to order any minimum quantity of Products.
- 8.2 Rescheduling, Cancellation. DISTRIBUTOR may, on at least twenty (20) business days prior written notice, reschedule the Acknowledged Shipment Date of, or cancel, any order without cost or penalty. DISTRIBUTOR may cancel or reschedule at any time prior to SUPPLIER's ship date without penalty if SUPPLIER does not meet the originally scheduled ship date or makes adjustments to the scheduled ship date that causes DISTRIBUTOR's customer to cancel its order with DISTRIBUTOR. DISTRIBUTOR may reschedule custom Products up to forty-eight (48) hours prior to the scheduled ship date but such rescheduling will not exceed an additional sixty (60) days. DISTRIBUTOR may not cancel custom Products within thirty (30) business days of scheduled ship date. Custom Products are products mutually defined as such by DISTRIBUTOR and SUPPLIER.
- 8.3 DISTRIBUTOR's Acceptance. DISTRIBUTOR's acceptance of Products will occur upon its receipt and inspection of the Products unless DISTRIBUTOR notifies SUPPLIER that the Products are defective or do not conform to the SUPPLIER's applicable warranty, the terms of this Agreement, or DISTRIBUTOR's order. DISTRIBUTOR will use its reasonable commercial efforts to provide such notice within thirty (30) days of its receipt of the Products. DISTRIBUTOR may return for full credit any and all Products found to be defective at delivery, or within a reasonable time thereafter.
- 8.4 Early Shipments. Products delivered more than five (5) business days prior to their Acknowledged Shipment Date may be accepted or rejected by the DISTRIBUTOR. If SUPPLIER is notified of DISTRIBUTOR's intention to reject any such delivery, it will issue (or will be deemed to have issued) within five (5) days a Return Material Authorization (RMA).

## **9. Shipping and Risk of Loss.**

9.1 Packing and Labeling. All packing materials and methods for Products will conform to appropriate NEDA guidelines and standard industry practices. SUPPLIER will ensure that the SKU on the packing label matches the SKU on the price list and invoices. SUPPLIER will mark each Product and shipping container with mutually agreed upon bar code labels.

9.2 Delivery. SUPPLIER will pay all delivery costs to delivery Products to DISTRIBUTOR's distribution center or other location designated by DISTRIBUTOR. SUPPLIER will comply with DISTRIBUTOR's shipping instructions as amended from time to time. If SUPPLIER elects to ship other than in keeping with DISTRIBUTOR's shipping instructions, it will do so at its own cost and bear all risk of loss until the shipment is received on DISTRIBUTOR's dock.

9.3 Title and Risk of Loss. Title (exclusive of the SUPPLIER's retained intellectual property rights) and risk of loss will pass to DISTRIBUTOR upon delivery of the Products to DISTRIBUTOR's dock or shipping destination.

**10. Prices, Price Changes and Taxes.** DISTRIBUTOR will pay the prices for Products as set forth in SUPPLIER's Price List in effect as of the date of this Agreement. If DISTRIBUTOR's customer has special pricing from SUPPLIER, SUPPLIER will honor this price to DISTRIBUTOR.

10.1 Price Changes. SUPPLIER may change the prices contained in the Price List, but the change will not be effective to DISTRIBUTOR unless SUPPLIER gives at least thirty (30) days advance, written notice to DISTRIBUTOR.

10.2 Price Increases. Prior to the effective date of a price increase, DISTRIBUTOR may order Products requesting delivery within ninety (90) days, at the prior, lower price. Products shipped under orders submitted by DISTRIBUTOR prior to the effective date of any price increase will be shipped and invoiced at the price in effect at the time of order placement.

10.3 Price Decreases. If SUPPLIER decreases the price of any Product, SUPPLIER will credit DISTRIBUTOR the difference between the price paid by DISTRIBUTOR and the decreased price multiplied by the amount of affected Products in DISTRIBUTOR's inventory or in transit from SUPPLIER. SUPPLIER will invoice DISTRIBUTOR for any unshipped Products and pending purchase orders at the decreased price. All Products shipped on or after the effective date of any price decrease will be shipped and invoiced at the price in effect at the time of shipment.

10.4 SUPPLIER's Pricing Representation. SUPPLIER represents and warrants that its practices and policies, including prices and discounts, comply with all applicable laws. Such practices, policies, prices and discounts will not be less favorable than those extended to other purchasers of Products from SUPPLIER for resale or other distribution.

10.5 Special Pricing. If SUPPLIER offers DISTRIBUTOR special pricing, additional discounts or any other terms pursuant to program offers, DISTRIBUTOR may adjust the prices of and discounts for Products in its Purchase Orders to reflect such terms.

10.6 Taxes. All prices quoted are exclusive of all taxes. SUPPLIER will invoice DISTRIBUTOR for all taxes applicable to sales of the Products, itemized by type and jurisdiction, which SUPPLIER is required by law to collect from DISTRIBUTOR.

**11. Payment and Credits.**

11.1 Payments. SUPPLIER will invoice DISTRIBUTOR via electronic or fax transmission no later than the business day after shipment or delivery of Products. Such invoices will be due within \_\_\_\_\_ days of the invoice date. DISTRIBUTOR will also receive a \_\_\_\_\_ percent discount if payments are made within \_\_\_\_\_ days from the invoice date. DISTRIBUTOR has the right of offset against SUPPLIER for programs, promotions, special pricing, rebates, and for any DISTRIBUTOR returns as described in Section 12.

11.2 Volume Discount. DISTRIBUTOR will earn annual rebates in the form of Credits that will be issued to DISTRIBUTOR by SUPPLIER when DISTRIBUTOR's actual annual sales net of returns reach \$\_\_\_\_,000. SUPPLIER will issue credits for annual rebates to DISTRIBUTOR by March 1<sup>st</sup> of the following year. SUPPLIER will calculate the annual rebate amount according to the following plateau schedule.

	<u>Annual DISTRIBUTOR Sales Net of Returns</u>	<u>Earned Rebate</u>
Plateau 1	\$____,000 - \$____,000	____% of payments within plateau
Plateau 2	\$____,000 - \$____,000	____% of payments within plateau
Plateau 3	\$____,000 - \$____,000	____% of payments within plateau
Plateau 4	\$____,000 - \$____,000	____% of payments within plateau

11.3 Credits. In the event DISTRIBUTOR is entitled to a credit from SUPPLIER which exceeds DISTRIBUTOR's obligation to SUPPLIER at the time, SUPPLIER will promptly pay, upon request, the amount of such excess to DISTRIBUTOR.

**12. Return of Product.** DISTRIBUTOR may return to SUPPLIER the following Product(s) for credit:

12.1 Initial Purchases. Any initial inventory of any Products ordered by DISTRIBUTOR may be returned for credit within twelve months of DISTRIBUTOR's receipt of such Products, subject to all of the terms and conditions of Section 12.2, but will not be counted as a "stock rotation" for purposes of computing the amount of Products returnable under Section 12.2.



12.2 Quarterly Rotation. Once in each quarter, DISTRIBUTOR may return to SUPPLIER, for credit, a quantity of Products the value of which will not exceed \_\_\_\_\_ percent of the amount invoiced by SUPPLIER to DISTRIBUTOR for all Products purchased by DISTRIBUTOR during the previous quarter. Credit issued for such returned Products will equal the price paid by DISTRIBUTOR for such Products, less any prior credits taken thereon. Such returns, which may be made from one or more stocking locations, will be shipped, prepaid by SUPPLIER to SUPPLIER's domestic U.S. facility. DISTRIBUTOR must obtain a Return Material Authorization (RMA) from SUPPLIER prior to shipment, and all Products returned must be in their original, smallest, unopened packaging, or undamaged and in merchantable condition.

12.3 Scrap Allowance. DISTRIBUTOR may utilize up to one half (by dollar value) of any rotation permitted under Section 12.2 as a scrap allowance and will receive a credit from SUPPLIER of the purchase price paid by DISTRIBUTOR for Product(s) identified by DISTRIBUTOR as "scrap," less any other credits received by DISTRIBUTOR. Scrapped Product will no longer be eligible for price protection, stock rotation or return upon termination of this Agreement.

12.4 Recalled Product. DISTRIBUTOR will return for credit Products that are functional and not defective Products but that are recalled by SUPPLIER.

12.5 Rebates. Commencing with the first, six-month anniversary of this Agreement, with respect to SUPPLIER Product and irrespective of new Product DISTRIBUTOR protections outlined in Section 13.3, DISTRIBUTOR at DISTRIBUTOR's sole option, may semi-annually elect to forego taking the \_\_\_% stock rotation privilege (outlined in Section 12.2, if applicable) as well as the \_\_\_% Scrap Allowance (outlined in paragraph 12.3) and instead take a rebate equal to \_\_\_% of DISTRIBUTOR's prior six month total purchases of SUPPLIER Product.

12.6 Return Material Authorization. A Return Material Authorization shall be issued by SUPPLIER within thirty (30) days of any request by DISTRIBUTOR when required in connection with any return request under this Agreement.

12.7 Non-Cancelable/Non-Returnable. SUPPLIER shall inform DISTRIBUTOR which SUPPLIER Products are "non-cancelable/non-returnable" ("NC/NR") and give DISTRIBUTOR at least ninety (90) days prior written notice of any changes in SUPPLIER's NC/NR classification of Products. The NC/NR Product designation shall be equally applied to SUPPLIER's Products whether purchased by SUPPLIER's distributors or customers. Notwithstanding the preceding, SUPPLIER and DISTRIBUTOR may agree that a specific SUPPLIER Product, not otherwise a NC/NR Product, may be NC/NR for a particular DISTRIBUTOR customer.

### **13. Product Changes.**

13.1 Addition and Deletion of Products. SUPPLIER may add or delete Products from its Price List upon sixty (60) days prior written notice to DISTRIBUTOR.

13.2 Obsolescence and Modification. SUPPLIER reserves the right, upon at least ninety (90) days prior written notice to DISTRIBUTOR, to (i) discontinue the manufacture or sale of, or otherwise render or treat as obsolete, any Product, (ii) modify the design or manufacture of any Product so as to preclude or limit DISTRIBUTOR's sales of such Product, or (iii) modify the status of any Product so as to limit DISTRIBUTOR's right to return or obtain price protection for such Product. DISTRIBUTOR may, in its discretion, within sixty (60) days of its receipt of such notice, notify SUPPLIER in writing of its intention to return any or all such Products which remain in its inventory for a credit equal to the net price paid by DISTRIBUTOR for such Products. The Products will be returned within sixty (60) days of the date of DISTRIBUTOR's receipt of SUPPLIER's return authorization. SUPPLIER will pay all freight and shipping charges in connection with any such returns. Such returns will not be counted for computing the amount of Products returnable under Section 12.2.

13.3 Introduction of New Products. SUPPLIER will give DISTRIBUTOR at least ninety (90) days prior written notice of the introduction of any new Products that preclude or materially limit DISTRIBUTOR from selling any of SUPPLIER's Products in its inventory and will work with DISTRIBUTOR to resell the affected inventory. If, despite such efforts, affected Product still remains in DISTRIBUTOR's inventory, SUPPLIER will replace it with the new Products within one hundred twenty (120) days of the official public announcement, or SUPPLIER's first shipment, of such new Products, whichever occurs first. Such returns will not be counted for computing the amount of Products returnable under Section 12.2. SUPPLIER will provide, upon request, samples of new Products to DISTRIBUTOR.

#### 14. Warranty.

14.1 Warranties to DISTRIBUTOR. SUPPLIER warrants to DISTRIBUTOR and its customers that:

- a) the Products conform to their published documentation and are free from defects in design, workmanship and materials under normal use for the life of the Product;
- b) SUPPLIER owns all right, title and interest in and to the Products and related materials; and
- c) no suit or proceeding is pending or threatened alleging that any Products, regardless of their combination with other components, infringe upon or misappropriate the intellectual property rights of any other person or entity; and
- d) DISTRIBUTOR is authorized to pass the foregoing warranty through to DISTRIBUTOR's direct customers. The warranty period begins to run only upon delivery of the Product to the DISTRIBUTOR's customer. Either DISTRIBUTOR or DISTRIBUTOR's customer may return any Product to SUPPLIER under the terms of the warranty but if SUPPLIER requests that DISTRIBUTOR handle warranty returns, DISTRIBUTOR may charge SUPPLIER with a reasonable handling fee for such returns. If DISTRIBUTOR is authorized by SUPPLIER to act as a master

distributor, DISTRIBUTOR is authorized to pass warranty through to reseller distributors, who may pass warranty through to their direct customers. Modification or change of Product by DISTRIBUTOR may void SUPPLIER's warranty.

14.2 Warranty Indemnification. Despite anything to the contrary contained in SUPPLIER's warranty or elsewhere in this Agreement, SUPPLIER will indemnify DISTRIBUTOR against, and hold it harmless from, any cost, loss, damage or liability (including reasonable attorney's fees) arising from or related to SUPPLIER's conduct or the failure, or alleged failure, of the Products, as manufactured and sold to DISTRIBUTOR, to fully comply with all applicable laws, standards, codes, specifications and regulations or to be suitable for resale or other distribution by DISTRIBUTOR as contemplated by this Agreement. All warranty and indemnification provisions of this Agreement will survive the termination hereof.

14.3 Disclaimer of Warranty. Except as set forth herein, DISTRIBUTOR disclaims all warranties with regard to SUPPLIER's Product(s), including without limitation, the implied warranties of merchantability and fitness for a particular purpose. This section shall survive termination or expiration of this Agreement.

## 15. Intellectual Property.

15.1 Indemnification. SUPPLIER will indemnify, defend, and hold DISTRIBUTOR, its successors, assigns, customers and end-users harmless against all loss, damages, costs and expenses (including reasonable attorneys' fees and costs of establishing rights to indemnification and any settlement) based on any claims, demands, suits, proceedings and actions ("Claims"), in connection with any alleged infringement of any patent, copyright, trademark, trade secret or other intellectual property right of a third party, including any Claims that the Product, or the process, design, or methodology used to manufacture the Product infringes any third party patent, copyright, trademark, trade secret or other intellectual property right.

15.2 DISTRIBUTOR Assistance. DISTRIBUTOR will provide SUPPLIER with written notice of any such Claims, grant full authority to SUPPLIER to defend and settle such Claims, and upon SUPPLIER's request, provide reasonable assistance and information, at SUPPLIER's reasonable cost and expense.

15.3 SUPPLIER Claim Duties. If a Product becomes the subject of a Claim or DISTRIBUTOR is enjoined from selling or using a Product, SUPPLIER will:

- a) procure for DISTRIBUTOR the right to sell and use the Product;
- b) provide DISTRIBUTOR with replacement or modified Product that is non-infringing; or
- c) if SUPPLIER is unable to provide the remedies in 15.3(a) or (b), refund the full purchase price for such Product.

15.4 Confidentiality. Section 15 is deemed non-confidential and DISTRIBUTOR may reveal the content of Section 15 to its customers.

- 16. General Indemnification.** SUPPLIER will defend, indemnify and hold the DISTRIBUTOR harmless of and from any and all liabilities, losses and damages (including, without limitation, costs, expenses attorneys' fees and disbursements, and costs of establishing rights to indemnification) resulting from any claim of any of DISTRIBUTOR's customers or any other third party, including employees of DISTRIBUTOR or SUPPLIER, for death, personal injury, financial loss, or damage to property whether based in contract, warranty, tort, strict liability, statute, equity, or any other cause of action, arising out of, or in any way connected with, the Products or the use or operation thereof, or any acts of omission or representations of the SUPPLIER.

Neither party will be liable to the other pursuant to this Agreement for amounts representing indirect, special, incidental, consequential or punitive damages of the other party arising from the performance or breach of any terms of this Agreement.

SUPPLIER will not be liable for any and all liabilities, losses and damages (including costs, expenses and attorneys' fees, and costs of establishing rights to indemnification) resulting from any claim arising as a result of DISTRIBUTOR's modification or change of the PRODUCT.

- 17. Insurance.** SUPPLIER will name DISTRIBUTOR as an additional insured, with a vendor liability endorsement, on any and all Product liability insurance policies it may have in effect with respect to any Products.

**18. Termination.**

18.1 Termination for Convenience. Either party may terminate this Agreement without cause and at any time upon giving thirty (30) days prior written notice to the other party. Such termination will be effective on the date stated in the notice.

18.2 Termination for Cause. Either party may terminate this Agreement immediately for cause in the event the other party:

- a) Becomes insolvent; or
- b) Assigns or transfers, either voluntarily or by operation of law, any or all of its rights or obligations under this Agreement without having obtained the prior written consent of the other party; or
- c) Upon the filing of a petition by or against it under any state or federal bankruptcy or insolvency law, fails to tender to the other party a guaranty of its obligations under this Agreement by a person, firm or other entity having a net worth of at least eight-five percent (85%) of its own net worth as of the commencement of this Agreement, such guaranty to be in a form satisfactory to the other party; or

d) Fails to perform any of its material obligations under this Agreement and fails to cure such default within thirty (30) days after written notice.

18.3 Effects of Termination:

a) If Agreement is terminated, SUPPLIER will, at DISTRIBUTOR's option, repurchase any or all unsold Products in DISTRIBUTOR's inventory or in transit to DISTRIBUTOR on the effective date of termination and any other marketing material. The repurchase price for such unsold Products and other material will be the actual net invoice price paid by DISTRIBUTOR less any prior credits.

b) If SUPPLIER terminates under Section 18.1, or DISTRIBUTOR terminates under Section 18.2, then SUPPLIER will pay all freight charges associated with such repurchase of Products under this Section 18.3 without a re-stocking charge. If DISTRIBUTOR terminates under 18.1, or SUPPLIER terminates under Section 18.2, then DISTRIBUTOR will pay the freight charges and a re-stocking charge of \_\_\_\_\_ % (percent).

c) DISTRIBUTOR will return all Products under this Section 18 in the original, smallest, unopened packaging, or undamaged and in merchantable condition.

d) After any termination of this Agreement, SUPPLIER will sell to DISTRIBUTOR any Products that DISTRIBUTOR is contractually obligated to furnish to a customer if DISTRIBUTOR orders such Products within fifteen (15) days after the effective date of termination.

e) SUPPLIER shall pay DISTRIBUTOR for purchases under Subsection 18.3 within thirty (30) days from shipment of the Products by DISTRIBUTOR.

**19. Confidential Information.** Each party will receive and maintain in confidence all proprietary information, trade secrets or other know-how belonging to the other (including but not limited to knowledge of manufacturing or technical processes, financial and systems data, and customer information) provided that any such information, secrets or know-how is expressly designated as being confidential, except and to the extent that disclosure is required by law, regulation or court order, or enters into the public domain through no fault of the party obligated to maintain such confidentiality. Without limiting the foregoing, all material and information made known to SUPPLIER by DISTRIBUTOR pursuant to Section 5 of this Agreement is hereby designated as confidential. The obligation not to disclose will be for a period of two (2) years from receipt of the confidential information unless otherwise agreed to by both parties.

**20. Use of Trademarks/Trade names.** This Agreement does not create, and neither party will have any right in, or to the use of, any mark, name, style or logo of the other party. DISTRIBUTOR is, however, hereby granted a nonexclusive right to use SUPPLIER's marks, names or logos to identify itself as an authorized DISTRIBUTOR of the Products and for advertising and promoting its services under this Agreement.

**21. Marketing Communication.** To assist DISTRIBUTOR in advertising and promoting the Products, SUPPLIER pay into a cooperative marketing fund \_\_\_\_ percent of the net sales dollars invoiced to DISTRIBUTOR each month percentage, to be used by DISTRIBUTOR for promotional efforts approved by both DISTRIBUTOR and SUPPLIER.

## **22. DESIGN WIN PROGRAM**

The design win program is intended to reward DISTRIBUTOR for time and technical resources expended to develop and support the use of SUPPLIER's Products in the design and manufacture of items produced by DISTRIBUTOR's customers. Design win opportunities may be identified and pursued by DISTRIBUTOR or identified by SUPPLIER and referred to DISTRIBUTOR. Should DISTRIBUTOR wish to obtain special pricing for an opportunity to assist a customer in using a SUPPLIER Product in its design, DISTRIBUTOR will submit a design win application in the NEDA format or equivalent form to SUPPLIER containing the customer's name, a description of the Product or program, the device type, and the additional discount required to compensate DISTRIBUTOR. Upon SUPPLIER's approval of the design win, SUPPLIER will issue to DISTRIBUTOR a unique registration number which DISTRIBUTOR will use to obtain from SUPPLIER the additional discount pricing. SUPPLIER will not offer special pricing to any other party that sells or attempts to sell Products in support of a customer Product or program for which a registration number has been issued. DISTRIBUTOR will only be entitled to obtain special design win pricing on Products sold by DISTRIBUTOR for use in the approved (registered) Product or program and only for the duration of the manufacture of such Product or of the program.

SUPPLIER and DISTRIBUTOR recognize that in many instances, customers purchasing SUPPLIER's Products through distributors within a particular territory, transfer that purchasing to a customer facility or agent outside the territory. In such cases, DISTRIBUTOR will seek out and identify to SUPPLIER's customers purchasing SUPPLIER's Products that would have been supported by SUPPLIER's authorized distributors (including Products that would have been eligible for a design win registration discount) were they not located outside the territory. SUPPLIER authorizes DISTRIBUTOR, or DISTRIBUTOR's local affiliate, to purchase SUPPLIER's Products from SUPPLIER, or SUPPLIER's local affiliate, for resale to such customers. SUPPLIER will offer such Products for sale to DISTRIBUTOR at the prices offered by SUPPLIER for the sale of such Products in the country or region where such customer purchases occur. If the Products would have qualified for a design win registration discount, had they been purchased within the original territory, SUPPLIER will allow DISTRIBUTOR the design registration discount based upon such national or regional price. SUPPLIER will also provide DISTRIBUTOR with a point of contact and Product sales/return mechanism to assist DISTRIBUTOR in supporting the customer.

## **23. General Provisions.**

**23.1 Independent Contractors.** SUPPLIER and DISTRIBUTOR are independent contractors and each is engaged in the operation of its own business and neither will be considered the agent of the

other for any purpose. Nothing contained in this Agreement will be construed to establish a relationship that would allow either party to make representations or warranties on behalf of the other except as expressly set forth herein.

23.2 Assignment. Neither party may assign this Agreement in whole or in part without the prior written consent of the other, which will not be unreasonably withheld. This Agreement will be binding upon and inure to the benefit of the parties and their successors and assigns.

23.3 Entire Agreement. This Agreement contains the entire understanding of the parties with respect to the subject matter and supersedes all related prior agreements between the parties. Amendments to this Agreement must be in writing, signed by the duly authorized officers of the parties, specifically stating that such amendments are made pursuant to this Agreement.

23.4 No Implied Waivers. The failure of either party at any time to require performance by the other of any provision will not affect the right of such party to require performance at any time after, nor will the waiver of either party of a breach of any provision be taken or held to be a waiver of a provision itself.

23.5 Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction will be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof in that jurisdiction or affecting the validity or unenforceability of such provision in any other jurisdiction.

23.6 Survivorship. All obligations and duties of the parties that by their nature extend beyond the expiration or termination of this Agreement, will survive and remain in effect beyond any expiration or termination hereof.

23.7 Force Majeure. Neither party will be liable for failure to fulfill its obligations under this Agreement or any purchase order issued hereunder or for delays in delivery due to causes beyond its reasonable control, including, but not limited to, acts of God, acts of terrorism, epidemic, acts or omissions of the other party, man-made or natural disasters, strikes, delays in transportation or inability to obtain labor or materials through its regular sources. The time for performance of any such obligation will be extended for the time period lost by reason of the delay.

23.8 Conflicting Terms. The parties agree that the terms and conditions of this Agreement will prevail notwithstanding contrary or additional terms in any purchase order, sales acknowledgment, confirmation or any other document issued by either party affecting the purchase or sale of Products.

23.9 Notices. Notices and other communications by either party under this Agreement shall be deemed given when delivered by hand or deposited in the United States mail as certified mail, postage prepaid, addressed to the chief executive officer of the other party at its then principal place of business as follows:

If to SUPPLIER:

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If to DISTRIBUTOR:

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23.10 Consent Not Unreasonably Withheld. Whenever any consent, action or authorization is required or requested of SUPPLIER hereunder, such consent, action or authorization shall not be unreasonably withheld or delayed.

23.11 Governing Law. This Agreement will be interpreted in accordance with the laws of the State of \_\_\_\_\_ without reference to \_\_\_\_\_ conflict of laws principles. The United Nations Convention for the International Sale of Goods shall not apply. SUPPLIER agrees that it will be subject to personal jurisdiction within the State of \_\_\_\_\_.

23.12 Compliance with Laws. SUPPLIER represents and warrants to DISTRIBUTOR that its practices and policies (whether manufacturing or otherwise), including any prices or discounts extended to DISTRIBUTOR in connection with Products, comply with all applicable U.S. and international laws.

23.13 Affiliates. DISTRIBUTOR is entering into this Agreement on its own behalf and on behalf of its Affiliates and is acting as their agent for the purposes of this Agreement. Whenever reference is made herein to "DISTRIBUTOR", such reference shall be deemed to include all Affiliates of DISTRIBUTOR. The rights and obligations of DISTRIBUTOR shall inure to the benefit of DISTRIBUTOR's Affiliates and may be directly enforced by either DISTRIBUTOR and/or any such Affiliate. For the purposes of this Agreement, the term "Affiliate" shall mean any entity which directly or indirectly controls, is controlled by, or is under common control with DISTRIBUTOR.



AGREED TO THIS

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

\_\_\_\_\_  
Name

\_\_\_\_\_  
Address

By \_\_\_\_\_

Title \_\_\_\_\_

ACCEPTED THIS

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

\_\_\_\_\_  
Name

\_\_\_\_\_  
Address

By \_\_\_\_\_

Title \_\_\_\_\_