

ABC

EXCLUSIVE DISTRIBUTORSHIP AGREEMENT

THIS DISTRIBUTORSHIP AGREEMENT is made and entered into this day of Aug 1, 2004 by and between ABC, having its principal place of business at _____ (“Manufacturer”) and _____ (“Distributor”).

WITNESSETH:

WHEREAS, ABC is in the business of manufacturing and producing for sale, boards (which products are listed in Attachment A hereto and are collectively referred to hereinafter as “Products”); and

WHEREAS, Distributor wishes to engage in the business of purchasing and reselling and distributing Products to Distributor’s customers (hereinafter called “Customers”) within Taiwan and China (hereinafter called the “Territory”) in accordance with the terms and conditions of this Agreement;

WHEREAS, ABC’s Distributor prices comprehend Distributor’s efforts in marketing, promoting and selling Products within the Territory, as well as providing to Distributor’s Customers training, installation, maintenance, warranty and repair services for Products (hereinafter called “Support”);

NOW, THEREFORE, in consideration of the foregoing premises and of the covenants herein contained, the parties hereto, intending to be legally bound, agree as follows, subject to a condition precedent that the Distributorship Agreement countersigned is delivered to ABC within 30 days of Distributor’s countersignature thereon:

ARTICLE I Appointment of Distributor

1.1 **Appointment.** Subject to all of the terms and conditions set forth in this Agreement, ABC hereby appoints Distributor, and Distributor hereby accepts such appointment, as ABC’s exclusive distributor of those Products specified in Attachment A in the Territory with the right to market, sell and support Products solely from marketing and sales outlets within the Territory. ABC may, consistent with Distributor’s appointment hereunder,

(a) distribute, sell or license Products to OEMs inside of the Territory for delivery and use inside the Territory. An OEM is defined as an entity that purchases or licenses Products for the purpose of reselling such Products under its own name

1.2 **Sell in and Into Territory Only.** Distributor is not authorized to market or sell (or permit any of its dealers to market or sell) any of the Products

(a) from marketing outlets located outside of the Territory,

(b) from marketing outlets located inside the Territory to dealers, agents, representatives or dealers outside the Territory, or

(c) by mail order. Distributor shall refrain from actively marketing Products to dealers, agents, representatives or sub Distributors outside the Territory. Nothing in this Agreement shall be deemed to prevent Distributor (or its Distributors) from marketing any

of the Products from marketing outlets within the Territory for delivery to end-users located outside the Territory.

- 1.3 **Discontinuing Products.** ABC may, without violation of this Agreement, discontinue the sale of any or all of the Products, or of a particular model, to Distributor if ABC decides to discontinue the general sale or distribution of any such Product. ABC further reserves the right to make modifications, enhancements or deletions from any ABC Products or model. ABC will consult with Distributor prior to discontinuing models and will make its best efforts to fulfill all accepted outstanding orders and quotations to Distributor.
- 1.4 **OEMs in Territory.** Notwithstanding the provisions of Paragraph 1.1 above, ABC may sell Products and support services directly to OEM's located inside the Territory.
- (a) Distributor will not be required to install or maintain such OEM's Products

Article II Ordering and Purchase of Products

- 2.1 **Order Procedure.** Distributor may order the Products set forth in Attachment A hereto by executing and delivering a written purchase order in U.S. Dollars to ABC specifying the quantity, and model number, requested delivery date and such other information as ABC may reasonably request. Distributor agrees that the terms and conditions of this Agreement shall apply to all purchases of Products by Distributor notwithstanding any proposed variation from or addition to these terms and conditions appearing on any purchase order or other document submitted by Distributor or ABC, which variation or addition shall be of no effect.
- 2.2 **Forecasts.** Distributor shall provide ABC quarterly with a non-binding rolling 120 day forecast of Product delivery schedules. ABC will use its best efforts to comply with Distributor's forecast.
- 2.3 **Purchase Order Confirmation.** ABC shall accept or reject purchase orders within Five (5) days of receipt of order.
- 2.4 **Canceling Orders.** Any purchase order for Products may be canceled by Distributor up to 60 days prior to the scheduled delivery date for such Product. Thereafter, orders will be non-cancelable.
- 2.5 **No Shipment Without Export License.** Notwithstanding any other provision of this Agreement ABC shall be under no obligation to sell and deliver to Distributor any Product or component thereof for which ABC is unable to obtain an export license.

Article III Distributor's Marketing, Support Obligations and Conduct

- 3.1 **Use Best Efforts.** Distributor agrees that until this Agreement is terminated in accordance with the provisions hereof, it will use its best efforts to market, promote, sell, support, deliver, and install the Products in the Territory and to provide customers for the Products with satisfactory delivery, support and other services reasonably expected by such customers including without limitation, regular sales calls and deliveries in accordance with the needs of such customers, stocking of Products and of spare parts, and installation, repair, maintenance, training and repair and warranty services.
- 3.2 **No Deliberate Mis-statements or Mis-Representations.** Distributor shall not make any deliberate and material statement or representation indicating or implying that performance of

any Product or Software is other than as indicated in ABC's brochures, sales literature or other appropriate documentation.

- 3.3 **Indemnity by Distributor.** Distributor agrees to indemnify, defend and hold ABC harmless from any claims, demands, liabilities, and damages arising from or connected with Distributor's sales, lease, or use of Products and/or Support obligations, except where any such claim, demand, liability or damage is caused by results from actions of ABC.
- 3.4 **Failure to Comply.** A substantial or material failure of dealer to comply with any of the provisions of this Article shall constitute a breach of this Agreement.

Article IV Terms and Conditions of Purchases

- 5.1 **Price.** The dollar list prices for each Product ordered hereunder shall be as set forth opposite the Product on the Price List attached as Attachment A hereto and are subject to change at any time by ABC upon thirty (30) days written notice. Orders received by ABC for Products prior to the expiration of such thirty day notice period and are accepted by ABC for delivery within thirty (30) days of the date of order shall be entitled to the list price which is the lower of the list price then in effect or the new price set forth in such notice.
- 5.2 **Published List Price.** ABC creates and offers a published Price List. Price List may change from time to time, for end users and dealers. ABC also offers a confidential Discount Schedule for end user and dealer quantity purchases, as such Discount Schedule may change from time to time. ABC agrees to quote from these only. However, Distributor acknowledges that customers in Distributor's territory will be able to call ABC directly to receive this pricing and discount information.
- 5.3 **Similar Pricing.** ABC's prices for Products shall be no greater than those offered hereafter to similar Distributor or OEM customers of Products under similar circumstances and for similar quantities.
- 5.4 **Taxes, Transportation and Import Expenses.** All sales, property, excise, income and other taxes imposed by the Korea or local government in the Korea on Products or the sale of Products, prior to delivery Ex-Factory. at a point in KimPo-City shall be paid by ABC. All sales, property, excise, income and other taxes, as well as any customs, import or other duties, tariffs, taxes or levies imposed by any governmental unit or agency thereafter shall be paid by Distributor. All transportation charges to the Ex-Factory. delivery point, if within KimPo-City, shall be paid by ABC and thereafter by Distributor, or if paid by ABC, shall be reimbursed by Distributor. Distributor shall pay all expenses associated with the import of Products into the Territory.
- 5.5 **Payment Terms.** Payment shall be made in U.S. Dollars as Net 30 day payment, cash in advance of shipment, or against an irrevocable letter of credit in ABC's favor at, or confirmed by, a major Korea bank selected by ABC and acceptable to Distributor, and which shall be established at least 30 days prior to the scheduled delivery date. The letter of credit shall provide for payment upon presentation by ABC of shipping documents to the KimPo-City Ex-Factory. point of delivery or of a request by Distributor that interest charges calculated at the lesser of one and one-half percent (1.5%) per month or the maximum rate of interest allowed by law. Notwithstanding the above, with respect to orders for repair of parts or for spare parts only, if the cumulative value of all such outstanding and unpaid orders does not at any time exceed U.S. \$10,000.00, payment may be made for such orders within thirty (30) days of receipt of ABC's invoice. If the cumulative value of all such outstanding and unpaid orders exceeds U.S. \$10,000.00, payment shall be made prior to shipment.

5.6 Acceptance, Delivery and Title. Products shall be deemed accepted by Distributor upon successful operation at ABC's plant using ABC's then standard documented and agreed procedures and diagnostic test programs, unless ABC is notified in writing within ten (10) working days from receipt of the Product by Distributor that the Product does not conform to ABC's official published specifications. Delivery and acceptance will take place and title will pass to Distributor upon delivery by ABC Distributor's selected agent. ABC shall use its best efforts to meet its quoted delivery dates; however, in no event shall ABC be liable for any expense, damage, or loss resulting from failure to meet such delivery schedule. Distributor shall provide ABC prior to forty-five (45) days before the scheduled delivery date with import licenses and documentation necessary for ABC to obtain Korea. export licenses in a timely fashion.

Article VI ABC Support and Service

6.1 Distributor Provides Support. Distributor shall be responsible for and shall provide Support to Customers for Products within the Territory, to include training, installation, warranty, maintenance and repair services. ABC shall have no obligation to provide Support services directly to Distributor's Customers other than as defined in section 6.3 below.

6.2 One Free Training Session. As required by Distributor for performance of its Support obligations hereunder, ABC shall provide one free training session to Distributor's personnel relating to the Support of Products. Such training will be provided at a site chosen by ABC. Distributor shall pay all costs and expenses to attend, of its personnel at such training sessions.

6.3 Support to Distributor. ABC shall, on a best effort basis, at ABC's standard time and material rates with standard terms, including reimbursement of travel and other out-of-pocket expense:

- (a) Provide assistance to Distributor in diagnosing and solving problems that Distributor and its Customers may incur in the use and operation of Products, Hardware and Software.
- (b) Provide assistance to Distributor in the event Distributor or its agents is unable to supply proper and adequate Support to Distributor's Customers, as required hereunder.
- (c) Respond to any requests from Distributor for such assistance in a prompt manner with qualified and experienced personnel. ABC may provide such assistance electronically, by telephone, in writing or in person at Distributor's offices, at ABC's option, or as otherwise agreed in writing.

6.4 English Language Documentation. ABC shall provide a Distributor with an English language version of documentation, user manuals and repair manuals which ABC generally makes available to its customers, OEM's and Distributors. Distributor may translate such materials into the language of the country in which Products are sold by Distributor, as permitted under this Agreement. All such translated materials shall remain the property of ABC upon which ABC shall be entitled to apply for copyright protection in its own name in any jurisdiction and shall contain such proprietary or copyright notices as ABC may decide. Distributor may affix its own name and labels to such manuals.

6.5 ABC Repair Responsibility. ABC shall provide repair of parts and components which ABC generally considers repairable at ABC's then standard rates for repair such parts and components promptly at ABC's plant in Korea, or elsewhere at ABC's option. ABC shall not be required to repair parts or components which in its reasonable judgment are not repairable. Distributor shall be responsible for shipment of parts and components to ABC's plant,

including cost of shipment, insurance, and risk of loss (but not for customs clearance or import, excise or customs taxes, duties or tariffs).

- 6.6 **Repair Timing.** ABC shall use its best efforts to deliver repaired or replacement parts to the carrier for return shipment to Distributor within twenty (20) working days of receipt by ABC of the part to be repaired or replaced.

Article VII Term, Termination and Extensions to this Agreement

- 7.1 This Agreement shall be effective as of the date accepted in writing by a corporate officer of ABC and shall terminate one year from the effective date. This Agreement may be extended only by a written instrument executed by an authorized officer of parties hereto prior to its expiration date. No termination of this Agreement shall effect any obligations incurred, as contemplated under this Agreement, prior to the effective date of termination.
- 7.2 Either party to this Agreement shall have the right to terminate this Agreement without cause upon one hundred eighty (120) days written notice.

Article VIII Termination for Default

- 8.1 **Grounds for Immediate Termination.** Either Party shall in addition to any other rights or remedies it may have, have the right to terminate this Agreement immediately if the following occurs with respect to the other Party:
- (a) In the event that a receiver, trustee in bankruptcy, or other custodian of the property of either Party be appointed, or if either Party is declared bankrupt or insolvent, or either Party makes a general assignment for the benefit of creditors or petition under any bankruptcy or similar law is filed against either Party.
 - (b) In the event of any change of ownership of either party or merger of either Party which results in either Party being owned by, owning, or being affiliated with an entity, company or firm that competes with the other Party; or immediately in the event Distributor undertakes to manufacture Products in competition with ABC or the group or division within Distributor responsible for this Agreement is sold or transferred to a third party.
 - (c) Breach or default by either party which is not cured within thirty days from receiving a written notice of such default.
- 8.2 **Obligations of Distributor Maintained.** Any suspension or termination of this Agreement by ABC in accordance with this Article shall not relieve Distributor of its obligation to pay any sum due hereunder or of its obligations with respect to the confidential treatment and protection of ABC proprietary information and Software. ABC shall not pay for any loss or damage of any nature whatsoever arising from any such suspension or termination which is in accordance with this Article, or from any nonrenewable of this Agreement.
- 8.3 **Distributor Right to Distribute after ABC Breach.** In the event of a breach or default by ABC of the terms and conditions of these Agreement which is not cured within thirty days, Distributor may, without notice and at any time, do all acts necessary to maintain uninterrupted sale of Products in the Territory. In such case Distributor shall be free to sell products of any manufacturer in the Territory.

Article IX Limited Warranty

9.1 Limited Warranty. Product manufactured by and purchased from ABC is warranted to be free from defect and workmanship errors for one (1) years after delivery. Product which fails due to defective material or workmanship during the relevant warranty period will, at ABC's option, be repaired or replaced at an authorized product repair center specified by ABC provided that ABC has been promptly notified of the defect.

9.2 Cost of Freight and Insurance. The cost of freight and insurance to and from the point of repair will be borne solely by Purchaser.

9.3 RMA Required for Return. Prior to returning any product under these warranty provisions, Purchaser must first obtain from ABC a Return material Authorization (RMA). All replaced parts and products shall become the property of ABC.

9.4 Warranty Limitation and Exclusion. ABC's standard warranties are contingent upon the proper use of the product and will not apply to product on which the original identification marks have been removed or altered. In addition, the standard warranties shall not apply to defects or failures due to:

- (a) Accident, neglect or misuse;
- (b) Failure or defect of electrical power, external electrical circuitry, air conditioning or humidity control;
- (c) The use or attachments of items not provided by ABC
- (d) Unusual stress
- (e) Any party other than ABC modifying, adjusting, repairing, or servicing the product
- (f) Failure to provide a suitable installation environment

9.5 Out of Warranty Repair Charges. If ABC determines that products returned to ABC are not covered by this warranty, Purchaser shall pay ABC's then standard charges for handling and repair.

9.6 No Other Warranties. Except as stated above, there are no warranties, express or implied, by operation of law or otherwise, of products or services furnished hereunder or in connection herewith. ABC disclaims all implied warranties of merchant ability and fitness for purpose. No representation of affirmation of fact, including, but not limited to statements regarding suitability for use or performance of products whether made by ABC employees or otherwise, which is not contained in the Agreement, shall be deemed to be a warranty by ABC for any purpose or give rise to any liability of ABC whatsoever.

Article X Patent and Copyright Indemnification

10.1 ABC Will Defend Against Claims. ABC will defend Distributor against a claim that Products supplied hereunder infringe a patent, trademark or copyright of a third party which applies in the Territory, and ABC will pay resulting costs, damages and attorney's fees finally awarded, provided that:

- (a) Distributor gives ABC prompt written notice of any such claim;

- (b) Distributor cooperates with ABC in the investigation and defense of such claim and grants ABC with exclusive control of the defense and settlement thereof; and
- (c) ABC's indemnity obligation with respect to patent non-infringement will be limited to the use of the Products strictly in the manner set forth in the documents accompanying the Products without any modification, combination, etc.

10.2 Conditions on ABC Obligation. ABC's obligation under this Article is conditioned on Distributor's agreement that if the Product supplied to Distributor hereunder, or the use or operation thereof, becomes, or in ABC's opinion, is likely to become the subject of a claim of infringement, Distributor will permit ABC at its opinion and expense, either to procure the right for infringing, and if neither of the foregoing alternatives is available on terms which are reasonable in ABC's judgment, Distributor will return the Product on written request by ABC. ABC agrees to grant Distributor a credit for the returned Product which is equal to Distributor's or Distributor's Customer's depreciated value of the returned Products. ABC shall have no liability for any claim based upon the combination, operation or use of any Product, equipment or Software, supplied hereunder with equipment, software or data not supplied by ABC, or based upon or resulting from the alteration or modification of Products supplied hereunder, or if such claim would have been avoided by use of another program or software whether or not capable of achieving the same results.

10.3 ENTIRE LIABILITY. THE FOREGOING CONSTITUTES THE ENTIRE LIABILITY OF ABC AND EXCLUSIVE REMEDY OF DEALER WITH RESPECT TO ANY CLAIM OR ACTION FOR PATENT, TRADEMARK, COPYRIGHT OR TRADE SECRET INFRINGEMENT WITH RESPECT TO PRODUCTS PROVIDED BY SITEC.

**Article XI
Export Controls and Licenses**

11.1 Distributor understands and agrees that this Agreement, the delivery of Products to Distributor and all ABC Products are subject to any and all laws, regulations, orders, licenses or other restrictions relative to the export, re-export or redistribution of ABC Products that may now or any agency thereof. Distributor agrees to comply with all such laws, regulations, orders and licenses which relate to the export of Products to Distributor and to the re-export of Products by Distributor.

**Article XII
Miscellaneous**

12.1 Force Majeure. Neither party shall be liable for any delay or failure to perform its obligations due to any cause beyond its reasonable control, including, without limitation, labor disputes, fire, accident, transportation delays, act of the public enemy, war, rebellion, insurrection, sabotage, shortage of raw material, energy or machinery, act of God, government or the judiciary; provided, however, nothing contained herein shall be construed to relieve Distributor of its obligation to make all payments due hereunder as they shall become due and payable.

12.2 Arbitration. Any controversy, dispute or claim arising out of or relating to this Agreement, or breach thereof, including, without limitation, any claim that this Agreement, or any part hereof is invalid, illegal or otherwise voidable, or void, shall be finally settled by arbitration in accordance with the Commercial Arbitration Rules then obtaining of the International Chamber of Commerce (the "Rules"). The arbitration shall be held in Seoul, Korea unless the parties mutually agree to have the arbitration held elsewhere, and the award made therein may be entered in any court having jurisdiction thereof. The arbitration shall be conducted, and the award be rendered in English.

12.3 Assignment. Distributor shall not assign or transfer, or attempt to assign or transfer, any part of all of this Agreement, or any of its rights or obligations hereunder, without the prior written consent of ABC.

12.4 Waiver. Either party may elect to continue performance hereunder notwithstanding any breach of this Agreement and such performance shall not constitute a waiver of any of such part's rights hereunder.

12.5 Notice. All notices shall be in writing and shall be directed to ABC or to Distributor at its respective address shown on the face of this Agreement or to such other address as the recipient may from time to time specify in writing.

12.6 Law and Jurisdiction. This Agreement is made in Seoul, Korea, and the laws of the Korea shall govern the interpretation of this Agreement. ABC and Distributor agree to exclude application of the UN Convention on Contracts for International Sales of Goods, 1980, to the interpretation of this Agreement.

12.7 Entire Agreement. This Agreement, together with any and all exhibits, attachments, and schedules referred to herein, each of which is incorporated herein by this reference, constitutes the entire understanding and agreement between the parties and may only be modified by a written instrument executed by ABC and an authorized office of ABC and of Distributor. Neither ABC nor Distributor shall be bound by any oral agreement or representation irrespective of by whom or when made.

12.8 Severability. If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

12.9 Limitation of Liability. ABC's entire liability for breach of warranty and Distributor's sole and exclusive remedy therefore is limited to repair or replacement or Products in conformance with ABC's Limited Warranty for Products contained herein. If, after repeated efforts ABC is unable to repair the Equipment to good working order, or to replace it with Equipment in good working order, or to make the Software operate, all as warranted, Distributor's sole and exclusive remedy shall be limited to the refund of actual dollar amounts paid to ABC upon ABC's receipt of such defective or non conforming Equipment.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound, have caused this Agreement to be duly executed and effective as of the effective date set forth below.

ABC

DISTRIBUTOR

By: _____

By:

Title: _____

Title:

Effective Date: _____

Effective Date: