

Authorized Distributor Dealer Agreement

THIS AGREEMENT ("Agreement") is made and entered into this _____ day of _____ 201____ by and between Soundcast, LLC, located at 9771-E Clairemont Mesa Blvd., San Diego, CA 92124, (hereinafter referred to as "SOUNDCAST") and _____ with principal place of business located at: _____ (hereinafter referred to as "Dealer"), authorized to Purchase Soundcast Products through Authorized Distributor _____.

NOW THEREFORE, SOUNDCAST and Dealer agree as follows:

1. APPOINTMENT; LIMITATIONS ON APPOINTMENT

- A. SOUNDCAST hereby appoints Dealer, and Dealer hereby accepts appointment, as a non-exclusive authorized Dealer for the purpose of promoting and selling the SOUNDCAST products, related service parts and accessories manufactured and/or sold by SOUNDCAST (here to the "Products") to end users only. The description of Products and the identification of the Territory may be changed from time to time at SOUNDCAST's sole and absolute discretion upon 30 days' prior written notice to Dealer.
- B. **This appointment specifically precludes Internet sales of SOUNDCAST products. At no time shall the Dealer promote SOUNDCAST Products on the Internet without the express written permission of SOUNDCAST.** DEALER agrees it will **not**:
- (i) advertise, promote or sell any SOUNDCAST Products through mail order catalogs, the internet, or on-line auctions, or knowingly sell SOUNDCAST products to any party who intends to resell Soundcast products, and/or use these channels for the marketing or sale of SOUNDCAST Products without receiving prior written authorization from SOUNDCAST.
 - (ii) sell SOUNDCAST Products to anyone other than end-user customers
- (i) disposal of these materials, DEALER will properly return these materials to SOUNDCAST for disposal at no additional cost.

2. Adherence to Soundcast MAP Policy:

Dealer agrees to strictly follow all Soundcast MAP Policies. In the event that the Dealer breaks MAP, the dealer agrees to correct the MAP pricing within 24 hours of notification

3. On-line Sale of Soundcast products.

- A. Dealer is allowed and encouraged to market and promote Soundcast Products in their communications, including the Dealers public website.
- B. Dealer is prohibited from selling Soundcast Products on their websites, unless the Dealer has received express authorization from Soundcast by executing and receiving approval from Soundcast in a separate Soundcast On-line Reseller agreement.
- C. Dealers are expressly prohibited from advertising, promoting, or selling Soundcast products on any third party on-line reseller sights including, but not limited to, Amazon.com, Ebay.com, NewEgg.com, Walmart.com, or any others. Such resale will incur penalties as outlined in Soundcast's Published On-line Sales Policy.

4. Title and Risk of Loss

- A. Title and Risk of Loss. All shipments are made at Dealer's risk. Title to and risk of loss of or damage to Products will pass to Dealer upon SOUNDCAST Distributor placing Products in the custody of a carrier for shipment to Dealer, regardless of the person designated as consignee. It will be the sole responsibility of Dealer to file all claims for shipment damage or loss with the carrier.
- B. Inspections. Within thirty (30) calendar days following the date of receipt by Dealer, Dealer will inspect Products and will promptly notify SOUNDCAST Distributor of any shortages in shipment or defects or damage to Products claimed to be the fault of the SOUNDCAST Distributor. Failure by

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Dealer to notify the SOUNDCAST Distributor of any such shortages, defects or damage within thirty (30) calendar days will be conclusive proof that Products have been received by Dealer without defects or damage, and in the quantities specified on the bill of lading.

5. RETURNED PRODUCTS

Dealer agrees to abide by Soundcast Published policies on returned products and warranty policies.

6. WARRANTIES; DAMAGE LIMITATION

A. Warranties.

- (i) Consumer Warranty Only. SOUNDCAST extends a Limited Warranty on Products directly to end users of Products, and SOUNDCAST will, from time to time, advise Dealer of the terms and conditions of such Limited Warranty.
- (ii) No Warranty to Dealer. SOUNDCAST makes no warranties, guarantees or representations, express or implied, to Dealer with respect to Products. ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR USE OR FOR A PARTICULAR PURPOSE, AND ALL OBLIGATIONS TO DEALER ON THE PART OF SOUNDCAST WITH RESPECT TO ANY OF PRODUCTS ARE HEREBY EXCLUDED AND DISCLAIMED, EXCEPT AS SOUNDCAST MAY UNDERTAKE IN ITS TERMS AND PRICES AT ITS OPTION TO REPAIR, REPLACE OR ISSUE CREDIT FOR PRODUCTS THAT ARE FOUND TO BE DEFECTIVE PRIOR TO SALE BY DEALER. SOUNDCAST WILL NOT BE LIABLE FOR ANY COST OR EXPENSE FOR REPAIR, INSTALLATION OR ANY OTHER WORK BY DEALER IN CONNECTION WITH PRODUCTS.
- (iii) No Warranty by Dealer. Dealer will not make any warranties, representations or guarantees to any person, either orally or in writing, in the name or on behalf of SOUNDCAST without SOUNDCAST's prior written consent. Dealer will indemnify and hold SOUNDCAST, its parent and subsidiaries, and their employees or agents, harmless from and against any and all liabilities, costs and expenses including, without limitation, reasonable attorneys' fees, and claims therefore, arising out of or by reason of any act or omission of Dealer, its agents or employees, in violation of this paragraph. At SOUNDCAST's request, Dealer will assume the defense of any and all liabilities, and claims therefore, for which the SOUNDCAST indemnities are indemnified under this paragraph.

B. Limitation of Damages.

- (i) General Limitation. EXCEPT AS PROVIDED IN THE FOLLOWING PARAGRAPH WITH RESPECT TO DIRECT DAMAGES ARISING OUT OF CLAIMS RELATED TO PRODUCT ORDERS, UNDER NO CIRCUMSTANCE WILL SOUNDCAST BE LIABLE FOR ANY DAMAGES, UNDER ANY LEGAL THEORY, INCLUDING, WITHOUT LIMITATION, DIRECT, INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES (EXCEPT FOR CONSEQUENTIAL DAMAGES RELATING TO PERSONAL INJURY IN JURISDICTIONS WHERE SUCH DAMAGES MAY NOT BE DISCLAIMED AS A MATTER OF LAW) OR LOSS OF PROFITS, SUSTAINED BY DEALER, OR BY ANY PERSON DEALING WITH DEALER, IN CONNECTION WITH ANY PRODUCT ORDER OR PRODUCTS COVERED THEREBY.
- (ii) Limitation Applicable to Orders. THE LIABILITY OF SOUNDCAST, IF ANY, FOR DIRECT DAMAGES IN CONNECTION WITH FILLING PRODUCT ORDERS IN ACCORDANCE WITH TERMS AND PRICES, REGARDLESS OF THE DELIVERY OR NON-DELIVERY OF SUCH PRODUCTS, WILL NOT, IN ANY EVENT, BE GREATER THAN THE ACTUAL PURCHASE PRICE OF PRODUCTS WITH RESPECT TO WHICH SUCH CLAIM IS MADE.

7. FAIR MARKETING PRACTICES; TRADEMARKS; RIGHTS TO ENJOIN; PATENT PROTECTION FOR DEALER; CONFIDENTIALITY

A. Fair Marketing Practices.

- (i) Dealer hereby acknowledges that SOUNDCAST has legally protected interests in Products, trade names, trademarks, logos, insignias and all other proprietary information and things, tangible and intangible, whether or not registered (the "Intellectual Property Rights"). Dealer

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will not imitate Products or infringe upon SOUNDCAST's Intellectual Property Rights in any way whatsoever, **and will not involve itself in any way in the distribution or sale of imitations of Products or the distribution or sale of any SOUNDCAST- brand merchandise that was not intended for sale in the United States ("Gray Market Merchandise")**.

- (ii) Dealer will not engage in any unfair practices with respect to Products, and will not make false or misleading representations to its customers or others with respect to Products, their specifications or features, or engage in any conduct which may adversely affect the image, creditability or reputation of SOUNDCAST or its Products or would constitute unethical practices or behavior with respect to SOUNDCAST.
- (iii) Dealer will promptly notify SOUNDCAST in the event it should learn that others are imitating Products, selling Gray Market Merchandise, infringing or attempting to infringe on SOUNDCAST's Intellectual Property Rights, or are planning to do so, or are engaging in any of the foregoing unfair practices, and Dealer will cooperate fully with SOUNDCAST in any action SOUNDCAST undertakes against persons or entities doing so or planning to do so.

B. Trademarks.

- (i) Use of SOUNDCAST Trademark. Dealer will not use the "Soundcast" name or any of the Intellectual Property Rights without SOUNDCAST's prior written consent, except that the name, "Soundcast" may be used in connection with the sale of genuine SOUNDCAST Products, but only if due regard is given to proper trademark use and to the ownership by SOUNDCAST, or its parent or affiliates, of its name and mark. Without limiting the generality of the foregoing, Dealer will not use any trademark or trade name owned by SOUNDCAST, or its parent or affiliates, either alone or with any other word or words as part of Dealer's trade or corporate name or in any advertising, without the express written consent of SOUNDCAST. Dealer will not remove any such trademark or trade name from any Products. Upon request by SOUNDCAST, and in any event upon the termination or expiration of this Agreement, Dealer will discontinue completely any use of any of SOUNDCAST's trademarks or trade names as set forth in paragraph 13(c)(i)(4), below.
- (ii) No Combination Trademarks. Without the express written consent of SOUNDCAST, Dealer will not attach to or otherwise use in conjunction with Products any additional trademark or trade designation or affix any SOUNDCAST trademark or trade name to products of others.

8. TERMINATION

- A. Termination by Dealer. Dealer may terminate this Agreement at any time, with or without cause, for any reason or for no reason, on 30 days' prior written notice to SOUNDCAST.
- B. Termination by SOUNDCAST. SOUNDCAST may terminate this Agreement, with or without cause for any reason or for no reason, on 30 days' prior written notice to Distributor Dealer. Written notice may be via postal mail, email or facsimile.

9. NOTICES

All notices required or permitted to be given under this Agreement will be given in writing and sent by e-mail, personal delivery, registered mail, return receipt requested, or by facsimile to the principal office of the other party indicated herein or at such other address.

10. ARBITRATION AND GOVERNING LAW

- A. Arbitration with respect to disputes as to indebtedness arising out of the sale of Products in the ordinary course of SOUNDCAST's business, any controversy or claim arising out of or relating to this Dealer Agreement or the breach thereof, whether common law or statutory, including without limitation claims asserting violations or the antitrust laws, shall be settled exclusively by arbitration in San Diego, California. The arbitration shall be heard before three arbitrators, one to be chosen by SOUNDCAST, one to be chosen by Dealer and the third to be chosen by those two arbitrators.

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- B. Governing Law. The arbitrators shall apply the internal law of the State of California, excluding its conflict-of-laws principles, in determining the rights, obligations and liabilities of the parties. The arbitrators shall not have the power to alter, modify, amend, add to or subtract from any term or provision of this Dealer Agreement, nor to grant injunctive relief, including interim relief, of any nature. In all other respects, the Commercial Arbitration Rules of the American Arbitration Association shall govern the arbitration. Judgment on the award of the arbitrators may be entered by any Court having jurisdiction to do so, and the parties to this Agreement hereby irrevocably consent and submit to the personal jurisdiction and venue of the federal and state courts of the State of California for that purpose as well as for any and all other purposes in connection with this Agreement.

11. ENTIRE AGREEMENT

This Agreement together with its Exhibits sets forth the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes and cancels any and all prior or contemporaneous agreements between them, express or implied, with respect to such subject matter. The parties acknowledge that no representations or promises have been made to induce either of them to enter into this Agreement other than as may be specifically set forth herein. This Agreement may not be changed, altered, amended or modified except in writing signed by a duly authorized representative of Dealer and the Manager of SOUNDCAST.

12. MODIFICATIONS

Nothing contained in this Agreement will be deemed to limit or affect SOUNDCAST's rights to modify, amend or change, in any way it deems to be necessary or appropriate and in its sole and absolute discretion, any of its Terms and Prices or to make such other changes to its policies and practices as it deems appropriate as long as such other changes do not materially impair the rights of Dealer under this Agreement.

13. INDEMNITY

Dealer will indemnify and hold SOUNDCAST, its parent and affiliates, whether now existing or coming into existence hereafter, and its employees and agents, harmless from and against any and all claims, liabilities, costs and expenses, including, without limitation, legal costs and fees, arising out of any act or omission by Dealer including, without limitation, any breach of this Agreement.

IT WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized representatives effective as of the date and year first above written.

Distributor Dealer.....

By:

Signature.....

Date...../...../.....

Title.....

Soundcast Distributor.....

By:

Signature.....

Date...../...../.....

Title.....

Initials_____

Soundcast LLC

By:

Signature.....

Date...../...../.....

Title.....

Exhibit "A"

List of Dealer Retail Stores or Public Showrooms

(or attach list with addresses)

Dealer Store Name: _____

Address: _____

City: _____

State: _____

Zip Code: _____

Phone: _____

Dealer Store Name: _____

Address: _____

City: _____

State: _____

Zip Code: _____

Phone: _____

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