



DISTRIBUTOR AGREEMENT (Level 2)

THIS DISTRIBUTOR AGREEMENT is made and entered into on _____ (the “Effective Date”) by and between SparkFun Electronics, Inc., with principal offices at 6175 Longbow Dr, Boulder, CO 80301, USA (“SparkFun”), and _____ (“Distributor”), a _____ [corporation] with principal offices at _____, in order to appoint and authorize Distributor to act as an authorized Distributor of SparkFun products (“Products”) as described herein.

1. Appointment; Pricing; Trademarks

(a) SparkFun hereby appoints and authorizes Distributor, and Distributor hereby agrees to act, as a nonexclusive Distributor of the Products as listed on SparkFun’s Website (the “Website”). Distributor shall have the right to identify itself as an “SparkFun Certified Distributor” provided that Distributor shall observe the guidelines and instructions that SparkFun shall issue from time to time during the Term to regulate such identification. SparkFun retains the right to distribute all Products directly or indirectly through other Distributors, integrators or OEMs.

(b) All Products available for distribution are listed on the Website. SparkFun will sell the Products to Distributor pursuant to the terms and conditions set forth in Section 3 below, at the Distributor price listed on the Website. SparkFun retains the rights, in its sole discretion and without liability to Distributor, (i) to add items to, or delete items from, the Website by an addition to or deletion from the Website from time to time, and to establish, change, alter or amend the prices of the Products without notice; and (ii) to modify, alter, change or enhance any or all of the Products and/or any features thereof at any time, and to discontinue any of the Products without notice.

(c) SparkFun and Distributor each hereby authorize the other to make specific use of its respective trademarks, trade names, logos or designations for Products and related services (collectively, the “Marks”) in connection with exercise of their respective rights and obligations under this Agreement and advertisement and promotion of Products during the Term, subject to and in accordance with the policies of the owner of the applicable Mark (the “Owner”) for such use as in effect from time to time. The user of the Owner’s Mark under this authority (the “User”) shall provide the Owner prior request for approval of any specific

use of any Mark and shall comply with all requests from the Owner to correct any improper use of any Mark or to modify any use of any Mark. In each case the User shall use the Owner’s Mark so as to create a separate and distinct impression from any other trademark used or affixed to the materials bearing the Mark. The use of a Mark permitted hereunder shall inure to the benefit of the Owner and shall not create in the User any right, title or interest in the Mark, including without limitation any right to register the Mark or any rights therein or any other trademark confusingly similar to the Owner’s Mark.

(d) The term of this Agreement and Distributor’s appointment and authority hereunder (the “Term”) shall be one (1) year from the date hereof, and automatically shall renew for successive one-year terms unless terminated. Either party has the right to terminate this Agreement without cause upon 60 days written notice to the other party given at any time. SparkFun has the right to terminate this Agreement for cause immediately by written notice in the event Distributor substantially ceases business operations, makes an assignment for the benefit of creditors, becomes insolvent, seeks the protection of or becomes the subject of bankruptcy, insolvency or receivership proceedings, or is liquidated, dissolved or acquired by merger, acquisition of substantially all of its assets or voting control. SparkFun also shall have the right to terminate this Agreement for cause upon 30 days written notice in the event Distributor breaches a material term of this Agreement, subject to cure of the breach by Distributor during the notice period, if reasonably possible. Upon any termination by SparkFun for cause, at SparkFun’s sole discretion, SparkFun shall repurchase from Distributor, and in that case Distributor shall resell at cost paid, less 15% restocking fee, and return promptly to SparkFun, any inventory of Products then in the possession of Distributor). THE PARTIES EXPRESSLY UNDERSTAND THAT THIS RIGHT OF TERMINATION IS ABSOLUTE AND

THAT NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR DAMAGES, OR OTHERWISE, IN CASE OF TERMINATION OF THIS AGREEMENT. TERMINATION SHALL NOT ENTITLE DISTRIBUTOR, AND DISTRIBUTOR WAIVES ANY RIGHTS UNDER APPLICABLE LAW, TO RECOVER COMPENSATION, DAMAGES OR PAYMENTS IN RESPECT TO GOODWILL ESTABLISHED OR ON ACCOUNT OF PROSPECTIVE OR ANTICIPATED PROFITS, NOR REIMBURSEMENT FOR ANY TRAINING, ADVERTISING, MARKET DEVELOPMENT, INVESTMENTS, LEASES OR OTHER COSTS THAT DISTRIBUTOR MAY EXPEND BEFORE THE TERMINATION OF THIS AGREEMENT. Sections 1(d), 2(d)-(f); 3(b)&(c); and 4-7 hereof, including without limitation Distributor's obligation to pay any outstanding SparkFun invoices, shall survive any expiration or termination of this Agreement.

(e) Distributor shall not assign or sublicense any of its rights or duties under this Agreement to any third party without prior written approval of SparkFun.

2. Duties of Distributor

(a) Distributor shall create and maintain, at its own cost, a distribution program pursuant to which Distributor shall market, promote and solicit sales of the Products. Distributor shall conduct all business in its own name as an independent Distributor and independent contractor. No employment, agency or similar arrangement is created hereby or is intended to be created between SparkFun and Distributor, and Distributor shall have no right or power to make any binding commitment on behalf of SparkFun, nor shall Distributor represent that it has any such right or power.

(b) Distributor at its sole expense shall comply with all of the laws, regulations and treaties applicable to its operations and to its performance of its functions pursuant to this Agreement, including without limitation any requirement to register this Agreement with any agency or other governmental entity of any country or subdivision. Distributor will not employ any deceptive, misleading or unethical practices in marketing, selling or distributing the Products.

(c) Distributor acquires no rights to any intellectual property of SparkFun nor any right or authority to transfer any of the same, including any patents, trademarks, trade names, copyrights or other intellectual property rights relating to the

Products (including all software included or embedded therein). Distributor shall not modify, disassemble, decompile or reverse engineer any Products; copy, enhance or otherwise reproduce any Products, in whole or in part; or remove, modify or otherwise tamper with notices or legends on the Products or any labeling on any physical media of the Products, or any installer licenses appearing in software included in the Products. SparkFun reserves the exclusive right to assert claims against third parties for infringement or misappropriation of SparkFun's intellectual property rights in the Products.

(d) If SparkFun shall so request, Distributor shall permit, and cooperate reasonably with SparkFun to produce, a press release announcing the collaboration of SparkFun and Distributor, including providing a quote of promotional character from Distributor's chief executive officer.

(e) Distributor shall maintain a cumulative order minimum of Three Thousand Dollars (\$3,000 USD) per calendar year (January 1 to December 31). If a Distributor is accepted after the commencement of the new year, its expected purchases will be pro-rated accordingly. Distributor shall increase annual sales at a rate appropriate to their market and region.

(f) Distributor shall carry a good range of SparkFun's products.

(g) Distributor shall work to increase community awareness and education through events or other programs.

(h) Distributor shall conduct itself and its business in a manner that will not be slanderous or defamatory to SparkFun. No actions/words implied or not implied will negatively reflect on, including but not limited to, SparkFun, Products, and/or employees of SparkFun.

(i) Distributor shall not have advertising on their website that could be considered inappropriate (e.g., pornographic, offensive, etc.).

3. Purchasing; Pricing and Shipping; Payment; Taxes & Charges

(a) Distributor shall place its order through the Website.. Distributor orders shall meet a minimum of Three Hundred Dollars (\$300 USD). SparkFun will endeavor to make Products available to Distributor as ordered, but shall bear no liability to

Distributor or any third party for any delay or error in filling orders or delivery

(b) Distributor shall pay SparkFun for each shipment in U.S. Dollars. Payment may be made by:

(i) Credit Card

(ii) Check/Money Order - Orders paid by check on an account with insufficient funds will result in the Distributor being charged a Twenty-Five Dollar (\$25 USD) NSF service fee.

(iii) PayPal

(iv) Wire Transfer - Wire Transfers cannot be used for orders that are split into two shipments. Payments usually take 3-5 business days to clear. A record of the transaction from your bank is not sufficient to release an order. For orders totaling Two Thousand Dollars (\$2,000 USD) or more, we offer a Thirty Dollar (\$30 USD) discount as an incentive to pay by Wire Transfer. The total considered is the subtotal plus all additions and deductions, and will be calculated at checkout. Gift certificates are not applicable.

(c) The Distributor may apply for Net30 payment terms once it has placed and paid for three (3) orders. To apply, the Distributor must contact the Distributor Account Representative at SparkFun. Once approved, SparkFun will release a Distributor order upon receipt. The amount due is to be paid within Thirty (30) days of the invoice date. Failure to pay all invoices within this time will result in a 5% compounding monthly late fee. Any Distributor that has not paid an outstanding balance with SparkFun will have its Distributor account suspended and no further orders will be accepted until the balance is paid in full. All outstanding payment obligations of Distributor shall accelerate and come due upon the termination of this Agreement for any reason. Upon request during the term of this Agreement, Distributor will provide SparkFun up to three (3) trade references and Distributor's primary bank reference for purposes of credit assessment. SparkFun shall retain this information in confidence as provided in Section 6.

(c) Distributor shall bear sole responsibility for paying all taxes of any nature that become due with regard to the Products purchased and distributed under this Agreement and Distributor's support services, except for taxes on SparkFun's income, regardless of which party may be responsible for reporting or collecting such taxes; and Distributor shall pay all import and export duties, government permit fees, license fees, customs fees and similar fees levied as a result of the existence or operation of this Agreement and any penalties, interest,

collection costs and withholding costs associated with any of the foregoing. If Distributor is required to withhold amounts for any such fees or taxes from any payments to SparkFun, then the amount payable to SparkFun shall be adjusted such that SparkFun shall receive the same net amount as if the withholding obligation did not apply.

(d) SparkFun does not drop-ship directly to Distributor's customers.

4. SparkFun Obligations to Distributor

(a) SparkFun agrees to review a Distributor's website at least once per six (6) months. At that time, SparkFun will verify that the Distributor is satisfactorily upholding the obligations of section 2. If SparkFun determines, in its sole and unfettered discretion, that a Distributor is not fulfilling its obligations pursuant to section 2, or any other section, of this Agreement, corrective action may be taken, up to and including termination of the Agreement.

(b) A Distributor will not be listed on the Website for six (6) months from the Effective Date. Following a review at that time, the Distributor's logo and website information may be posted on the Website. SparkFun is not obligated to post any Distributor's information at any time and Distributor will not be entitled to any damages of any kind arising from SparkFun's posting or non-posting of Distributor information on the SparkFun website.

5. Indemnification.

(a) SparkFun shall indemnify Distributor, and hold it harmless, from and against any and all claims, liabilities, damages, losses, costs and expenses incurred by Distributor arising from any claim or proceeding made or brought against Distributor based on an allegation that a Product as supplied hereunder infringes any valid United States patent, ownership rights or copyright of any third party (a "Claim"), and shall defend each Claim at SparkFun's expense, with counsel of SparkFun's choice; provided, that Distributor shall notify SparkFun promptly of any such Claim, and shall give SparkFun promptly a copy of each communication, notice or other action relating thereto, and the authority, information and reasonable assistance necessary for SparkFun to control the defense and to settle or litigate it. Distributor shall not enter into any settlement or compromise of any such Claim without SparkFun's prior written consent. If in SparkFun's reasonable

judgment a final judgment awarding damages is reasonably likely to be entered against Distributor by reason of any such Claim, SparkFun shall have the right to repurchase and refund to Distributor the amounts paid by Distributor to SparkFun for the subject Products, depreciated on a straight-line basis over a period of three (3) years from the date of SparkFun's applicable invoice. SparkFun will not be obligated to defend or be liable for any Claim to the extent that the alleged infringement arises out of or is related to (i) a modification made to a Product by Distributor or a third party; (ii) use or combination of a Product with products or data not provided by SparkFun; (iii) use of other than the latest unmodified release of Product made available to Distributor by SparkFun if the infringement would have been avoided by the use thereof; or (iv) use or distribution of a Product after Distributor receives notice, or has reason to believe, that the Product infringes the rights of a third party. THE FOREGOING CONSTITUTES THE ENTIRE LIABILITY OF SPARKFUN AND THE SOLE REMEDY OF DISTRIBUTOR WITH RESPECT TO ANY CLAIM OR ACTION BASED IN WHOLE OR IN PART UPON INFRINGEMENT OR MISAPPROPRIATION OF A PATENT, COPYRIGHT OR OTHER INTELLECTUAL PROPERTY RIGHT.

(b) Distributor shall indemnify SparkFun, and hold it harmless, from and against any claims, suits, proceedings, losses, liabilities, damages, costs and expenses (inclusive of SparkFun's attorneys' fees) made against SparkFun as a result of any negligence, misrepresentation, error, omission, default or breach on the part of Distributor or its representatives in performing or observing any of the Distributor's obligations, covenants or duties under this Agreement, or any claims, warranties or representations made by Distributor or Distributor's employees or agents which differ from SparkFun's end user warranty; and shall defend the claim at Distributor's expense, provided that SparkFun shall notify Distributor promptly of any such claim, and shall give Distributor promptly a copy of each communication, notice or other action relating thereto, and the authority, information and reasonable assistance necessary for Distributor to control the defense and to settle or litigate it. SparkFun shall not enter into any settlement or compromise of any such claim without Distributor's prior written consent.

(c) NEITHER PARTY SHALL HAVE ANY LIABILITY TO THE OTHER NOR TO ANY OTHER THIRD PARTY FOR ANY LOST PROFITS, LOST DATA, LOSS OF USE, INTERRUPTION OF BUSINESS OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES,

OR FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING IN ANY WAY OUT OF THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED THEREBY, UNDER ANY CAUSE OF ACTION OR THEORY OF LIABILITY, AND IRRESPECTIVE OF WHETHER SUCH PARTY HAD ADVANCE NOTICE OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT FOR LIABILITY ARISING UNDER BREACHES OF SECTION 6 ("CONFIDENTIALITY") AND EACH PARTY'S INDEMNIFICATION OBLIGATIONS EXPRESSLY SET FORTH IN THIS SECTION 5 (AND THE OBLIGATIONS OF DISTRIBUTOR TO PAY DULY ISSUED INVOICES FOR PURCHASES PURSUANT TO SECTION 3), IN NO EVENT WILL EITHER PARTY'S TOTAL LIABILITY FOR ANY CLAIMS OR CAUSES ARISING OUT OF THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED THEREBY, UNDER ANY CAUSE OF ACTION OR THEORY OF LIABILITY, EXCEED THE AMOUNTS PAID BY DISTRIBUTOR UNDER THIS AGREEMENT IN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT WHICH GAVE RISE TO SUCH DAMAGES. THE LIMITATIONS SET FORTH IN THIS SECTION 5 SHALL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

6. Confidentiality.

By reason of the parties' relationship under this Agreement, each may obtain information and materials relating to the other party's business, plans, customers, software technology, and marketing strategies, which is confidential and of substantial value to the other party (the "Confidential Information"), and the of which value would be impaired if the information were disclosed to third parties. Neither party shall use any Confidential Information revealed to it by the other party for its own account (except in the course of exercise of rights and performance of obligations under this Agreement) or for the account of any third party, nor disclose it to any third party, but shall take every reasonable precaution to protect the confidentiality of the other's Confidential Information. Upon termination of this Agreement, each shall return to the other or destroy all Confidential Information of the other in its possession. Upon any breach or threatened breach of this Section 6, each party, as a disclosing party, shall be entitled to injunctive relief without posting of bond.

7. General Provisions

(a) This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado, USA, except for that body of law dealing with conflicts of law. The parties expressly exclude

the United Nations Convention on Contracts for the International Sale of Goods from application to this Agreement.

(b) All disputes and claims arising out of or relating to this Agreement, or the breach, termination or invalidity thereof, shall be settled by arbitration conducted in English language in Boulder, Colorado, pursuant to the Commercial Arbitration Rules of the American Arbitration Association. The arbitrator shall have the authority to award reasonable attorney's fees and costs in connection with the proceeding to the prevailing party.

(c) This Agreement (together with attachments hereto) constitutes and contains the complete agreement and understanding of the parties with respect to the subject matter hereof, and supersedes any and all prior correspondence, agreements, representations, statements, negotiations and undertakings between the parties relating to said subject matter. Amendments to this Agreement must be in writing, specifying such amendment, signed by duly authorized representatives of both parties. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together shall constitute one and the same instrument.

(d) If any part of this Agreement is found to be invalid or unenforceable by any law, rule, order or regulation of any government, or by the final determination of any state or federal court, that part of this Agreement shall be amended to achieve as nearly as possible the same economic effect as the original provision and the remaining provisions of this Agreement shall remain in full force and effect.

(e) Distributor shall not export or re-export any Products except in compliance with all applicable United States laws and regulations, including without limitation the U.S. Export Administration Regulations, 15 C.F.R. (EAR), and the regulations promulgated by the U.S. Department of Treasury Office of Foreign Assets Control, the U.S. Department of Commerce Bureau of Industry and Security, and the U.S. Department of State Directorate of Defense Trade Controls. Distributor shall use diligent efforts to ascertain the nature of the business and accurate street address of each end-user customer, and such other information as Distributor may reasonably require, routinely to check the end-

user customer's identity against the applicable lists indicated in the above regulations and to observe the "red flag" procedures specified in the EAR. Distributor shall indemnify and hold SparkFun harmless against any damages, penalties, levies or restrictions that may result from violation of or failure to comply with the EAR or other applicable export regulations

(f) For purposes of marketing and sale of any Products to any agency of the U.S. Government, software included in any Product is commercial computer software (and corresponding documentation is commercial computer software documentation and technical data) as described in 48 CFR 252.227-7014(a)(1), acquired pursuant to Federal Acquisition Regulations 48 CFR 12.212 and 12.211 and successor provisions (in the case of civilian use) or 48 CFR 227.7202-3 of the Department of Defense supplement thereto (in the case of military use).

(g) Any notice provided for or permitted under this Agreement will be in writing and will be treated as having been given (a) when delivered personally; (b) when sent by confirmed facsimile or telecopy; (c) one (1) business day after being sent by nationally recognized overnight courier with written verification of receipt; or (d) three (3) business days after being mailed postage prepaid by certified or registered mail, return receipt requested, to the party to be notified, at the address set forth above, or at such other place of which the other party has been notified in accordance with this Section 7(g).

8. Warranty

The warranty provided by SparkFun can be reviewed on the SparkFun website under Terms of Service. This warranty applies to both Distributors and end users. SparkFun shall not be responsible for any warranty provided by a Distributor to an end user that provides a longer or more extensive warranty than provided by SparkFun. Distributor agrees to indemnify and hold harmless SparkFun from any claim arising from Distributor offering a warranty to an end user different from that provided by SparkFun.

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Executed by the respective parties' duly authorized officers effective for all purposes as of the Effective Date first written above:

Distributor: _____

SPARKFUN ELECTRONICS, INC.

By: _____

By: _____

Title: _____

Title: _____

ATTACHMENT B

DISTRIBUTOR RESOURCE RESPONSIBILITIES