

## SMARTORK INCORPORATED DEALERS AGREEMENT

AGREEMENT effective as of the last date set forth below by and between Smartork Incorporated ( hereinafter, "Smartork", a Texas corporation with its principal business at 101 Cravey Rd. ,Boerne, TX 78006 and \_\_\_\_\_, ( hereinafter, " Dealer") with its principal location of business at \_\_\_\_\_.

In consideration of the mutual covenants herein, the parties agree as follows:

### 1. APPOINTMENT OF DEALER

1.1. Sale of Smartork. Smartork hereby appoints Dealer as a non-exclusive dealer of products manufactured and distributed by Smartork in the ordinary course of its business. Dealer hereby accepts said appointment, and agrees to use its best efforts to promote and maximize sales of Products. Dealer agrees not to resell Products to anyone other than end-users of Products ("Customers"). This Agreement shall not limit Smartork's right to appoint any other dealer(s) in proximity to Dealer's location.

1.2. Dealer agrees that it is an independent contractor, not an agent, employee or franchisee of Smartork. Dealer acknowledges that it has not paid Smartork any fee of any kind in exchange for its right to sell the Products. Dealer is not authorized to assume or create any obligation or responsibility, including but not limited to obligations based on warranties or guarantees or other contractual obligations, on behalf or in the name of Smartork. Dealer shall not misrepresent its status or authority.

1.3. During the term of this Agreement, Dealer is authorized to use Smartork's trade names or trademarks in carrying out its obligations under the Agreement only. Dealer shall not use any such names or marks as part of Dealer's trade or business name or in any other way which Smartork considers misleading or otherwise objectionable.

### 2. OBLIGATIONS OF DEALER

2.1. Dealer Manual

2.2. Advertising and Promotion. Dealer shall use its best efforts to promote and maximize sales of the Products. In furtherance of this obligation, Dealer agrees to support and participate in such promotional programs as may be offered from time to time by Smartork.

2.3. Training and Personnel. Dealer shall employ a number of sales and service personnel sufficient to render prompt, competent and efficient customer sales, installations and other service. Dealer agrees, at its own expense, to have its sales and service representatives attend Smartork –sponsored training seminars, including but not limited to sales, service and installation training, as set forth in the Dealer Manual.

2.4. Installation and Other Service. Dealer agrees to provide proper, timely, and workmanlike installation and service (including service parts) for Smartork's Products, in accordance with any applicable Smartork specifications, to assure customer satisfaction. Dealer shall be solely responsible for ensuring that installation of Products complies fully with all applicable building codes, permit procedures, and other local laws and regulations. Dealer shall maintain the equipment and service parts on hand reasonably necessary to provide such service without delay. Dealer shall provide such customer service, including as part of any retrofit, warranty, or recall program, as may be required by Smartork, and shall provide such service at such labor rates as may be reasonably determined by Smartork. Dealer agrees to indemnify and hold Smartork harmless from any costs (including but not limited to reasonable attorneys' fees), damages and liabilities arising out of or relating to Dealer's failure to comply with these provisions. Dealer shall maintain all records concerning Smartork customer sales, installation and service, including without limitation, the serial numbers and physical locations of all products sold, installed and/or serviced by Dealer, and shall promptly provide copies of any such records

to Smartork upon its request; this obligation shall survive the termination or expiration of this Agreement and any change in ownership, control, or management of Dealer's business.

2.5. Working Capital. Dealer agrees to maintain its business with a level of working capital sufficient to meet all display, advertising, promotion, training and personnel requirements as set forth above. Dealer shall maintain fire, casualty and general liability insurance issued by a reputable carrier and in an aggregate amount reasonably acceptable to Smartork, which shall afford coverage for personal injury, property damage and other loss arising out of Dealer's operations in connection with this Agreement. Dealer will provide Smartork with documentation detailing their insurance coverage on an annual basis or as otherwise requested by Smartork.

### 3. OBLIGATIONS OF SMARTORK

3.1. Product Supply. Smartork shall use its reasonable best efforts to supply Products to Dealer on a timely basis, pursuant to the terms and conditions of this Agreement and the Dealer Manual.

3.2. Promotional Materials. Smartork shall supply Dealer with such customer promotional materials relative to the Products as may be developed by Smartork or its affiliates.

### 4. TERMS OF SALE

4.1. Price. Prices to Dealer shall be set forth in Smartork's dealer price list, as in effect at the time of shipment. Smartork's dealer price list is subject to change at the discretion of Smartork. It is agreed that Smartork's dealer price list constitutes proprietary information belonging to Smartork and will be treated by Dealer as confidential and shall not be revealed, disseminated or displayed to anyone other than Dealer. Smartork may, in its sole discretion and without notice to Dealer, before or after an acceptance of an order from Dealer, discontinue the sale of any Product or group of Products without liability to Dealer.

4.2. Payment. Payment for Products must be received within thirty (30) days of the date of Smartork's invoice to Dealer. Until such time as any Products sold pursuant to this Agreement are paid in full, Dealer hereby grants to Smartork a continuing security interest in the Products and all proceeds of their sale or other disposition. Smartork shall have all rights of a secured party under the Uniform Commercial Code and applicable state law.

4.3. Orders and Cancellation. Dealer shall use order forms specified by Smartork and/or contained in the Dealer Manual. No additional or different terms set forth in Dealer's purchase order, acknowledgement or other forms or correspondence shall govern any sales of Products by Smartork to Dealer. Smartork may refuse to accept any order in its sole discretion. Orders which have been accepted may not be cancelled by Dealer except as authorized pursuant to the Smartork cancellation policy set forth in the Dealer Manual. Products may not be returned except upon express written approval by Smartork or as otherwise authorized under written warranties.

### 5. WARRANTIES AND INDEMNIFICATION

5.1. Smartork Warranties. The only Smartork Product warranties are those set forth in writing and provided by Smartork for Customers at time of sale. Smartork disclaims all other warranties, express or implied, for the Products, including without limitation, all warranties of merchantability or fitness for any particular purpose. Dealer agrees that its sole remedy for violation of any warranty, or any problem or defect with any Product shall be the repair or replacement of the subject Product pursuant to the terms of the applicable warranty, if any. Dealer shall deliver to each Customer a copy of such written warranty offered by Smartork for the Product purchased. Dealer shall not offer or make any warranty on Products other than to convey Smartork applicable, written warranty.

5.2. Indemnification by Dealer. Dealer agrees to indemnify and hold Smartork harmless from any reasonable costs (including but not limited to reasonable attorneys' fees), damages and liabilities arising out of or relating to (a) any Dealer warranty and/or unauthorized representation or statement by Dealer; (b) any alleged negligent or improper installation, repair, modification or service of any Product; or (c) any alleged breach by Dealer of any agreement between Dealer and a Customer.

5.3. Indemnification by Smartork. Smartork agrees to indemnify and hold Dealer harmless from any reasonable costs (including but not limited to reasonable attorneys' fees), damages and liabilities arising out of or relating to any claim by a Customer or user of a Smartork Product alleging a defect in manufacture or design of any such Product.

5.4. Cooperation on Indemnified Claims. Any party seeking indemnification shall provide prompt written notice of any claim for which indemnification is sought. The proposed indemnitee shall at all times take all reasonable steps to ensure that the defense of such claim is not prejudiced by any action or inactions. The parties shall reasonably cooperate in the defense of such claim in such manner and to such extent as the indemnitor shall reasonably require.

## 6. TERMS AND TERMINATION

6.1. Term. Unless sooner terminated pursuant to this Article 6, this Agreement shall expire on December 31, 2012. Upon expiration or termination of this Agreement, Dealer shall immediately cease any use of Smartork's trademarks and trade names.

6.2. Termination Without Cause. This Agreement may be terminated by either party without cause and at any time upon ninety (90) days prior written notice to the other party.

6.3. Termination With Cause. Smartork may terminate this Agreement, for cause, at any time upon thirty (30) days prior written notice thereto to Dealer. Situations which shall entitle Smartork to terminate for cause shall include, but shall not be limited to, any of the following: (a) Dealer's breach of any provision of this Agreement; (b) any material change in the operating management of Dealer absent Smartork's prior written approval of such change; (c) sale, closeout, transfer or other disposition of Dealer's business, or an assignment or transfer of a substantial portion of the business assets or capital stock of Dealer's corporation; (d) Dealer's failure to pay an indebtedness to Smartork when the same becomes due, or attempts to assign, transfer, encumber or grant a security interest in any item in Dealer's stock in which Smartork has an interest absent Smartork's prior written consent; (e) discovery of any material misrepresentation made by Dealer or its representatives as to the financial status or operations of Dealer; or (f) any other acts of omissions on the part of Dealer which, as determined by Smartork in its sole discretion, may advertently affect the name, goodwill or reputation of Smartork, or the Products.

6.4. Immediate Termination With Cause. This Agreement shall terminate immediately upon written notice to Dealer, in the event that Dealer becomes insolvent, enters bankruptcy, abandons its business or is convicted for a violation of law tending in Smartork's opinion to adversely affect the business of Dealer or the name, goodwill or reputation of Smartork's or its products.

6.5. Losses from Termination. Neither party shall be entitled to any compensation or reimbursement for its inability to recoup any investment made in connection with its performance under this Agreement, loss of prospective profits or anticipated sales or other losses occasioned by expiration or termination of this Agreement.

## 7. MISCELLANEOUS

7.1. Entire Agreement. This Agreement, together with the Dealer Manual, constitutes the entire agreement between Dealer and Smartork, superseding all prior oral or written agreements, policies, understandings, representations, warranties and negotiations, on the subject of this relationship between Dealer and Smartork, and there are no conditions or terms affecting this Agreement which are not expressed herein. This Agreement may be amended only by a writing signed by duly authorized representatives of both parties hereto.

7.2. Governing Law and Forum. This Agreement and any purchase and sale transaction arising pursuant hereto shall be governed by and construed in accordance with the laws, without reference to principles of conflicts of laws, of the State of Texas. Dealer agrees that any suit arising out of or relating to this Agreement shall be brought in a state or federal court located within the State of Texas. Dealer consents to the jurisdiction of such court and to service of process in any such suit by mail at the address of Dealer specified herein.

7.3. Notice. Notice required or permitted hereby shall be deemed given upon enclosure thereof in an adequately postage-paid envelope, deposited in a U.S. mail box, and addressed to the party to be given notice at the address to which that party has previously requested by notice hereunder that notices be sent or, if no such request had been made, at the address listed for that party in this Agreement.

7.4. Assignment. This Agreement may not be assigned by Dealer, whether voluntarily or by operation of law, without the prior written consent of Smartork. Dealer must provide Smartork with sixty (60) days prior written notice of any changes in ownership, control or management of Dealer's business. This Agreement and any of Smartork's rights hereunder, may be assigned by Smartork upon written notice to Dealer. This Agreement shall be binding upon the parties and their respective successors and assigns and shall inure to the benefit of the parties and their permitted assigns.

IN WITNESS WHEREOF, the parties have executed this Agreement as a sealed instrument, effective as of the latest date set forth below.

SMARTORK INCORPORATED \_\_\_\_\_ "Dealer"

By: \_\_\_\_\_ By: \_\_\_\_\_

Title: \_\_\_\_\_ Title: \_\_\_\_\_

Date: \_\_\_\_\_ Date: \_\_\_\_\_