

**THE DOLPHIN DISTRIBUTION GROUP, LLC  
DEALER AGREEMENT**

This Agreement is made as of this \_\_\_\_\_ day of \_\_\_\_\_, 2010, by and between The Dolphin Distribution Group, LLC (“Dolphin”), 1200 North Milwaukee Avenue, Glenview, Illinois, 60025 and \_\_\_\_\_, a \_\_\_\_\_, having its principal place of business at \_\_\_\_\_ (“Dealer”).

Telephone: \_\_\_\_\_ Email Address: \_\_\_\_\_

**RECITALS**

WHEREAS, Dolphin is an exclusive distributor of certain consumer loudspeaker Products manufactured by MK Sound ApS (“MK”), a Danish company (the “Products”); and

WHEREAS, Dealer desires to be appointed as a retail dealer of said MK Products to sell said MK Products subject to, and upon the terms and conditions, set forth herein.

NOW, THEREFORE, in consideration of the foregoing and of the mutual promises hereinafter set forth and of other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

1. **Appointment of Dealer.** Dolphin hereby appoints Dealer and Dealer hereby accepts such appointment as a non-exclusive retail dealer of Dolphin, upon the terms and conditions set forth in this Agreement, at the business location of the dealer set forth above, and, where applicable, the additional locations, if any, set forth in Schedule A attached to this Agreement (the “Approved Locations”). Dealer represents that it either owns or it is a Lessee of each Approved Location.

2. **Dealer Obligation.** As an appointed dealer of the Products, Dealer agrees that it will:

- A. utilize its best efforts to promote and sell the Products within the Territory (as defined in Schedule A) from its Approved Locations;
- B. maintain quality facilities for the on-premise demonstration and sale of Products;
- C. use Product information supplied by Dolphin and/or developed for the consumers’ educational enhancement;
- D. display and have available for sale Products having the appropriate relationship with respect to volume, value, and image;
- E. comply with (1) applicable federal and state laws, standards and regulations, and (2) principles of good conduct and business ethics; and

- F. refrain from any unfair competitive practices, including, but not limited to, product disparagement or bait and switch practices.

3. **Purchase of Products.** Dealer agrees to purchase the Products exclusively from Dolphin. Dealer agrees not to offer Products for sale at any location other than at an Approved Locations and not to sell the Products by internet or e-commerce services without Dolphin's prior written consent. Dealer also agrees not to sell and or transfer Products to others for resale without the prior written consent of Dolphin. If Dolphin has credible information that the Dealer has willfully engaged in unauthorized distribution activities, Dolphin may request and Dealer agrees to allow the independent audit of its business records by certified accounting professionals at Dolphin's expense to confirm whether Dealer has engaged in unauthorized distribution. Dealer agrees that in the event of a violation of this paragraph, it would be difficult to accurately determine the damage caused to Dolphin by such unauthorized distribution activities. For this reason, the parties agree that Dealer shall pay to Dolphin liquidated damages in the amount of \$500.00 for each unit of the Product sold or acquired in violation of this paragraph and Dolphin's costs associated with the investigation, Product recovery and operation or such unauthorized distribution activities.

4. **Advertising.** Dealer will not advertise or engage in promotional activities concerning the Products unless it has in stock a sufficient supply of the Products to meet anticipated demand. [Dealer agrees that it will comply with any minimum advertised price policy hereafter created by Dolphin.] Dealer will use its best efforts in all respects to advertise, promote, and market the Products subject to the provisions hereof in all parts of the Territory and shall protect the good name and reputation of MK. Dealer shall follow any marketing guidelines that may be established by Dolphin.

5. **Trademarks, Trade Names, and Copyrighted Materials.** During the term of this Agreement, Dealer is granted the limited right on a non-exclusive basis to use, in accordance with Dolphin's policies in effect from time to time, the trademark, trade names and copyrighted materials provided by Dolphin for use in connection with the Products to be sold. Such permission is limited to use by Dealer necessary for the performance of Dealer's obligations under this Agreement. Dealer recognizes that such marks and names have a valuable reputation and goodwill and constitutes assets of substantial value. Dealer agrees to make proper use of such marks, names, copyrighted materials and not to take any action inconsistent with the Dolphin's or MK's rights in those marks, names, or materials. Without limitation to the foregoing, Dealer further agrees as follows:

- A. Dealer shall conduct business in its own name, and shall not use any Dolphin or MK trademark or trade name in its own trade dress;
- B. Dealer shall not publish or distribute marketing materials other than those materials provided by Dolphin without Dolphin's prior written consent;
- C. Dealer shall not use the trade names and trademarks of Dolphin or MK except in connection with its distribution of Products that it is authorized to distribute under this Agreement;

- D. Dealer shall, upon termination of this Agreement, cease forthwith the use of Dolphin's and MK's trade names and trademarks; and

Nothing contained in this Agreement shall give Dealer any right, title or interest in such trademarks or trade names except as heretofore provided, and Dealer's right to use such marks and names shall cease upon termination or expiration of this Agreement. Dealer further agrees not to affix to or use any such mark or trade names in connection with products other than the Products specified herein, and not to register any mark or name used by Dolphin or MK.

6. **Export Sales.** Dealer agrees not to sell or otherwise transfer the Products to any other person or entity licensed outside of the United States without the prior written consent of Dolphin.

7. **Term.** The term of this Agreement shall commence as of the date hereof and continue until terminated by either party with or without cause on written notice to the other given not less than thirty (30) days prior to the desired determination date. Dolphin may terminate this Agreement immediately upon written notice to Dealer in the event any of the following shall occur;

- A. a breach of any of the terms or conditions of this Agreement by Dealer, including without limitations unauthorized sales activities;
- B. either party becomes insolvent, is adjudicated a bankrupt or becomes a subject of dissolution, liquidation or involuntary bankruptcy proceedings or if either party proposes a judicial or extrajudicial settlement with its creditors, makes an assignment for the benefit of creditors, or otherwise discontinues its business;
- C. there is any change in Dealer's control or management such that Dolphin in its sole and absolute discretion deems detrimental to the continuation of this Agreement; or
- D. Dolphin determines that Dealer has engaged in sales, advertising or other trade practices that Dolphin, in its sole and absolute discretion, deems detrimental to reputation or goodwill of Dolphin or MK, or otherwise in a manner not befitting the status of the Products as high quality items.

Upon any termination of this Agreement, all pending orders from Dealer for Products shall be deemed canceled. Further, Dolphin shall have the option, but shall not be required, during the thirty (30) day period subsequent to any such termination, to elect to repurchase all or any part of the unused and saleable Products remaining in Dealer's inventory. In the event Dolphin shall exercise such right of repurchase, the price to be paid by Dolphin to Dealer shall be an amount equal to the price paid by Dealer for such Products to be repurchased, less any discount and unearned allowance paid to Dealer with respect to such Products. Upon any such repurchase, Dealer shall ship the Product to Dolphin at Dolphin's expense.

Neither party hereto is under any obligation to continue this Agreement or to continue the arrangement hereunder after termination of this Agreement for any reason. The parties agree that neither party shall be liable to the other party for any loss or damages incurred by such party

as a result of any termination of this Agreement in accordance with the provision of this Agreement.

Upon any termination, Dealer shall refrain from any conduct which would make it appear that it is an authorized Dolphin or MK dealer, shall promptly remove from its letterhead, advertising literature, and signboards at Approved Locations, and shall promptly take action to have removed from all telephone and business directories of any kind, all references to the Products and to its acting as a Dealer with respect to the Products or on behalf of Dolphin; and shall not thereafter use any corporate name, trade mark and sales materials bearing the MK name and any other advertising and promotional materials provided by Dolphin.

8. **Terms of Sale.** During the term of this Agreement, Dolphin agrees to sell and Dealer agrees to purchase and pay for such quantities of Products which Dealer may reasonably request at the prices and subject to the other terms and conditions of sale established by Dolphin and in effect at the time of shipment. Upon acceptance of any purchase order by Dolphin such purchase order shall be binding and non cancelable by Dealer. Any terms of any purchase order submitted to Dealer which are inconsistent with the terms of this Agreement shall be void and of no force or effect. Dolphin may change prices at any time and shall have no liability to Dealer in connection with Dealer's inventory of unsold Products in effect at the time of any price change. Dealer shall pay for Products in accordance with the invoice terms.

9. **Warranties.** Dealer shall make no warranties or guarantees with respect to the Products or the use of the Products except as authorized by Dolphin in writing. All Products sold shall be subject to the MK's warranty with respect to the Product in effect from time to time. Dealer shall furnish appropriate warranty registration cards or similar materials provided by Dolphin to each retail purchaser. Dealer agrees to comply with the requirements of any applicable laws which may be in effect with regard to the sale and or installation of the Products and to take all actions that Dolphin may from time to time reasonably require for purposes of compliance with the Act and any such laws. Except as expressly provided above, all other warranties, express or implied are excluded to the fullest extent permitted by law. In particular, Dolphin and MK make no warranty relating to the **MERCHANTABILITY** of the Products or their suitability or Fitness for any Particular Purpose, all such warranties being hereby expressly excluded.

10. **Product Returns.** Dealer may not return Products without a Return Material Authorization number ("RMA").

11. **Limitation of Liability.** Notwithstanding anything in this Agreement to the contrary, Dealer shall not be entitled to, and Dolphin shall not be liable for, loss of profits or revenue, overhead, business interruption costs, injury to reputation of Dealer, punitive damages or any indirect, special, incidental or consequential damages of any nature in connection with this Agreement. Dealer's recovery from Dolphin for any claim shall not exceed in any event the purchase price paid for any affected Product irrespective of the nature of the claim, whether in contract, tort, warranty or otherwise. Dealer will indemnify, defend and hold Dolphin harmless from any claims based on Dealer's misrepresentation of or modification of any Products.

12. **Force Majeure.** Dolphin shall not be liable for failure to fulfill its obligations for any accepted purchase order or for delays in delivery due to causes beyond Dolphin reasonable control including, but not limited to, acts of God, natural or artificial disaster, riot, war, strike, delay by carrier, shortage of Products, acts or omissions of other parties, material shortages, fire, strikes, delays in transportation or inability to obtain Products, which shall be considered as an event of force majeure excusing Dolphin from performance and barring remedies for non-performance. If for any reason Dolphin is unable to deliver the Products on or before the delivery date as set forth in any purchase order, Dolphin shall promptly notify Dealer thereof and of the reason for the delay and the date of which Dolphin expects delivery will be made. If delivery is delayed thirty (30) days or more, Dealer may cancel its purchase order for such Products which cancelation shall be Dealer's sole and exclusive remedy in connection therewith.

13. **Miscellaneous:**

- A. Any notice or other communications required or permitted under this Agreement shall be deemed sufficient if deposited in the United States mail, postage prepaid via certified or registered mail addressed to the other party at the address set forth on page 1 of this Agreement, or at such other address as either party may hereafter communicate to the other in like manner, and shall be effective upon deposit.
- B. The parties are independent contractors. Nothing in this Agreement shall be construed to create or to authorize the creation of, any employment relationship, to confer authority upon the Dealer to enter into any commitment or agreement binding on Dolphin, or to create a partnership or joint venture of any form which would impose liability upon either party for any act or omission of the other party. Each party shall be and remain solely liable for its own business.
- C. Dealer agrees to indemnify and hold Dolphin harmless from and against any and all claims, damages, and liabilities whatsoever, asserted by any person or entity resulting directly or indirectly from any breach by Dealer of this Agreement or any other wrongful act of Dealer and such indemnification shall include the payment of all costs and reasonable attorney's fees expended by Dolphin in defending any such claims.
- D. Dealer shall have no right to assign, transfer or sell the rights, or delegate it obligations, under this Agreement without prior written consent of Dolphin.
- E. No waiver or any requirements or of any default in respect to this Agreement shall be deemed a waiver of any other requirement or default.
- F. This Agreement supersedes all prior discussions, negotiations, and agreements between the parties with respect to the subject matter hereof and reflects the entire agreement of the parties. It may be amended only by a written document signed by both parties.
- G. If any of the provisions of this Agreement are unenforceable or invalid for any reason whatsoever, such unenforceability or invalidity shall not affect the enforceability or the validity of the remainder of this Agreement and such

unenforceable or invalid provision shall be severable from the remainder of this Agreement.

- H. This Agreement shall be deemed to have been entered into in Glenview, Illinois, and all questions concerning the validity, interpretation, or performance of any of its terms or any rights or obligations of the parties hereto, shall be governed by and resolved in accordance with the laws of the State of Illinois without reference to conflict of laws principles.
- I. Any controversy, claims, or disputes arising out of or relating to this Agreement, or the breach thereof, including any claims or controversy as to the arbitrability of any claims or controversy and any claim for recession, shall be settled by final and binding arbitration in Cook County, Illinois, in accordance with the commercial arbitration rules of the American Arbitration Association, except for claims for injunctive relief as set forth in subparagraph J, below. The prevailing party shall be entitled to reasonable attorney's fees and costs. Judgment upon the award rendered by the arbitrator(s) may be entered in any court of competent jurisdiction.
- J. Notwithstanding the provision of such paragraph I, above, the parties shall have the right to seek injunctive or other provisional judicial relief before, during or subsequent to the arbitration proceeding in a court of competent jurisdiction. Any such judicial proceeding against Dolphin shall be litigated exclusively in state or federal courts located in Cook County, Illinois.
- K. This Agreement shall supersede any prior existing Dealer Agreement executed by the parties which prior existing agreement shall be of no further force or effect.

IN WITNESS WHEREOF, the parties have executed this Dealer Agreement as of the date first above written.

**Dealer**

**The Dolphin Distribution Group, LLC**

\_\_\_\_\_

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

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

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

Print Name

\_\_\_\_\_  
Title