

**MSD Performance Authorized Dealer Agreement**

The Dealer (Full Business Name): \_\_\_\_\_ Tax Identification No. (FEIN): \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ e-mail: \_\_\_\_\_

Owner/Manager: \_\_\_\_\_ Website: \_\_\_\_\_

Brands Requested (indicate with initials):  \_\_\_\_\_  \_\_\_\_\_  \_\_\_\_\_  \_\_\_\_\_  \_\_\_\_\_

**THIS AGREEMENT** is made as of the Effective Date (as defined on the signature page) by and between MSDP Performance, Inc. (“MSDP”), a Delaware corporation located at the address shown on the signature page, and the Dealer (as defined above) located at the address shown above.

**1. Appointment.** Subject to the terms and conditions of this Agreement, MSDP appoints the Dealer and the Dealer agrees to perform as MSDP’s Nonexclusive Authorized Dealer for the Products during the Term. (For certain definitions of capitalized terms, see Section 5 of this Agreement.) Except as expressly authorized in writing by MSDP, the Dealer agrees to submit orders for item(s) of the Products to one or more of the Distributors during the Term and, subject to the prices and terms and conditions of sale determined between the Dealer and each such Distributor (but consistent with this Agreement) to purchase from such Distributor such item(s) described in each such order.

**2. Responsibilities.** Except as otherwise approved in writing by MSDP in advance, the Dealer will do each of the following: (a) promote the sale and use of the Products; (b) promptly and effectively respond to questions and service requests from customers and prospective customers; (c) represent the Products in an ethical and professional manner and refrain from any conduct that is or could be detrimental to the reputation or integrity of the Dealer and MSDP or either thereof; (d) use the Intellectual Property only as permitted by MSDP; (e) refrain from questioning or challenging the rights claimed by MSDP or its Affiliate(s) in the Intellectual Property or assisting in any way any other(s) in doing so; (f) comply with all laws and all of the MSDP Policies; and (g) promptly and in timely fashion comply with whatever request may be made by MSDP or any or all of the Distributors relating to any law or expectation thereof or the modification or recall of any or all of the Products.

**3. Termination.** This Agreement will terminate when either Party provides the other Party with written notice of termination, and such termination shall be effective: (a) no sooner than the date of receipt of such notice in the event of a material breach of this Agreement by such other Party; (b) no less than forty-five (45) days after such receipt for termination on other grounds (which may be with or without cause); or (c) as provided in Section 4(e)(ii) of this Agreement. Upon termination of this Agreement, the Dealer shall immediately cease all use of anything which would give the impression that the Dealer is an authorized dealer or representative of or for the Products or has any affiliation whatsoever with MSDP or the Products (except only with respect to the Dealer’s inventory of the Products at the time of termination).

**4. Miscellaneous.** (a) This Agreement and any and all duties and obligations hereunder may not be delegated, transferred or assigned by the Dealer without the express written consent of MSDP. Each delegation, transfer or assignment by the Dealer without such consent shall be void. The relationship between MSDP and the Dealer shall be that of independent contractors, and nothing in this Agreement shall constitute or be deemed to constitute a partnership, joint venture or franchise between MSDP and the Dealer or shall constitute or be deemed to constitute the Dealer as agent of MSDP for any purpose whatsoever. The Dealer shall have no authority or power to bind MSDP or to contract in the name of and create a liability against MSDP in any way for any purpose.

(b) At any time and without prior notice: (i) MSDP may modify any or all of the MSDP Policies and (ii) any or all item(s) of the Products may change, in which case, the Dealer acknowledges and agrees that each of the Distributors may without liability or penalty cancel all pending orders (even if accepted) from the Dealer for such changed item(s) and refuse to accept any new orders from the Dealer for such item(s). Except as otherwise expressly provided in this Agreement, each modification of the MSDP Policies shall be effective immediately, unless MSDP notifies the Dealer in writing of another effective date. MSDP’s interpretation of each of the MSDP Policies will control.

(c) This Agreement shall be governed by and interpreted under the laws of the State of Texas without regard to that state’s conflicts of laws provisions. Any and all disputes arising out of or relating in any way to this Agreement between the Parties (or the Affiliate(s) of either) shall be litigated at the trial level as a bench trial only in federal or state court in El Paso, Texas. The Dealer, on behalf of itself and its Affiliate(s), hereby submits to personal and subject matter jurisdiction in such courts and agrees that neither the Dealer nor the Dealer’s Affiliate(s) will contest venue.

(d) Time is of the essence of this Agreement. This Agreement shall be deemed to reflect the mutual intent of the Parties, and no rule of strict construction shall be applied against either Party. MSDP shall not be liable for loss, damage or delay resulting from any cause whatsoever beyond its reasonable control. In no event shall MSDP be liable for consequential, incidental or special damages, loss or expense to any or all of the Dealer, purchaser(s) or user(s) for any reason(s) whatsoever. In the event of any conflict between the MSDP Policies and this Agreement, the MSDP Policies will control. Wherever required by the context hereof, each pronoun used herein shall be deemed to include both the singular and the plural and to encompass each gender.

(e) If applicable law contains any requirement that is contrary to, conflicts with or is missing from any provision(s) or part(s) thereof in this Agreement, MSDP, at any time, may elect by written notice to the Dealer (effective upon receipt thereof or as otherwise designated by MSDP therein) that: (i) such requirement be substituted for or added to such provision(s) or part(s) thereof to the minimum extent necessary to validate such provision(s) or part(s) thereof or (ii) this Agreement be terminated. If any provision(s) or part(s) thereof in this Agreement shall be held invalid, the remainder of this Agreement shall continue in full force and effect, and each such provision or part thereof shall be deemed not to be part of this Agreement.

(f) This Agreement and each of the MSDP Policies, as modified from time to time: (i) constitute the entire understanding of the Parties binding upon them; (ii) are intended to govern the relationship between the Parties; (iii) supersede all agreements, representations or statements between the Parties, either oral or written; and (iv) except as otherwise provided herein, may be amended or modified only by a written supplement, duly executed by both of the Parties.

(g) Except as otherwise provided in this Agreement or as the Parties otherwise may expressly agree in writing, no failure, refusal, neglect, delay, waiver, forbearance or omission by MSDP to exercise any right(s) under this Agreement or to insist upon full compliance by the Dealer with the Dealer's duties, obligations or restrictions hereunder shall constitute a novation or waiver of any provision(s) of this Agreement or otherwise thereafter limit MSDP's right to fully enforce any or all of the provision(s) and part(s) thereof of this Agreement.

(h) The following shall survive the termination of this Agreement: (i) Sections 1 and 2(c) through 5 of this Agreement; (ii) each of the definitions contained in this Agreement; and (iii) each of the MSDP Policies which by its own terms expressly states that it survives the termination of this Agreement or which MSDP otherwise designates as so surviving.

(i) Each notice described in this Agreement to either Party must be in writing and shall be sent to the intended recipient (with all fees paid) by certified mail, express courier service, facsimile or e-mail to such recipient's address referred to on the first (1<sup>st</sup>) page of this Agreement and shall be considered effective or received when actually received or refused by such recipient, provided that the sending Party has written confirmation thereof and such refusal was not due electronic or mechanical malfunction or failure.

**5. Certain Definitions.** For purpose of this Agreement: (a) "Nonexclusive Authorized Dealer" means that (i) the Dealer may hold itself out as a dealer authorized by MSDP for the Products during the Term and (ii) MSDP may offer and sell anywhere and everywhere any or all of the Products and anything else directly or indirectly to one or more individuals and entities other than the Dealer; (b) the "Products" means those products made available to the Dealer by any or all warehouse distributors specifically authorized by MSDP to sell to the Dealer (individually, a "Distributor" and collectively, the "Distributors"); (c) the "Term" means the period from the Effective Date until this Agreement is terminated pursuant to Section 3 hereof; (d) the "Intellectual Property" means any or all of the patents, designs, trademarks, service marks, trade names, commercial symbols, copyrights, data, data bases, market information, trade secrets and confidential information in which MSDP or its Affiliate(s) claim(s) rights; (e) "Affiliate(s)" means any or all of the individual(s), entity and entities controlling, controlled by or under common control with the Party identified; (f) the "MSDP Policies" means collectively the then-current version(s) of the announcements and policies (whether in the form of correspondence, memoranda, notices or otherwise) from time to time issued in writing or made available electronically by MSDP to the Dealer and not expressly excluded by MSDP from the MSDP Policies; and (g) a "Party" means MSDP or the Dealer and the "Parties" means MSDP and the Dealer.

Each Party, intending this Agreement to be effective as of the Effective Date, has caused this Agreement to be executed by its duly authorized representative.

**THE DEALER**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Agreed and accepted in El Paso, Texas:  
**MSDP**

By: \_\_\_\_\_  
Dan Gresham  
Chief Executive Officer  
Date: \_\_\_\_\_  
The Effective Date: \_\_\_\_\_

MSD Performance, Inc.  
1490 Henry Brennan Drive.  
El Paso, TX 79936  
Attn: Legal Administrator

Fax: (915) 856-2118  
[mvpofficer@msdperformance.com](mailto:mvpofficer@msdperformance.com)

**FOR IMMEDIATE AUTHORIZATION – SIGN UP AT [www.msdp.mvp.com](http://www.msdp.mvp.com)**