



AGREEMENT #:XXXXXX

Form #:F7.4.1-10-001

CONFIDENTIAL

In-Bound OEM Agreement

Revision Date (08-31-09)

Rev (4)

INTERNAL Instructions: Because each OEM deal is very specific, this template requires extensive, line by line review by each user. Any and all of the terms may be changed depending on the business needs of any particular situation, and new ones may need to be added. What this template is intended to do is to offer only an example of best of breed terms and conditions to select from, as well as a core set of general terms that are key to any OEM agreement – scope, price, payment terms, quality assurance, forecasts, specifications, warranty, etc. Even so, it bears repeating that the terms themselves are flexible. Delete these instructions before completing and circulating your first draft of the agreement.

There is an Addendum A attached to this template agreement which contains a right of first refusal form agreement. It is also referred to within the template agreement (in which case, it is highlighted in yellow). If you wish to include a right of first refusal, please review that template agreement and consult with LNA counsel.

Finally, intellectual property terms and conditions need to be tailored to each transaction before the document goes out the door. For example, in some instances, LNA is incorporating an unmodified element from a third party into an LNA-branded solution (which would require a license under any applicable patent to use and distribute), in other instances LNA may receive an element from a third party, modify it, and then incorporate the modified element into an LNA branded solution (in which case LNA would need both a license to use/distribute and a license to copy, and to modify/create derivative works). Make sure you consult with LNA counsel to ensure the appropriate IP terms are included before sending any OEM Agreement to a third party.]

OEM AGREEMENT

This original equipment manufacturing (“OEM”) agreement (this “Agreement”) is made as of this ____ day of _____, 2009 by and between [LNA Entity legal name]. (“[LNA Entity short name]”) with a place of business at [ADDRESS], and [Legal name of company whose products will be purchased and resold as part of an LNA product or otherwise under an LNA brand name] (“[XYZShort Name]”), a [state or commonwealth or ‘insert country name’] corporation, with its principal place of business at [ADDRESS].

RECITALS

WHEREAS, [XYZ] (directly and with its affiliate(s) manufactures and sells [describe relevant products], and related items (collectively “[XYZ] Products”) for a variety of [include type, e.g., data/communications] applications and is willing to manufacture and sell [XYZ] Products to [LNA] on an OEM basis, which [XYZ] Products are to be modified by [XYZ]/[LNA] {<= pick one according to your transaction) in accordance with [LNA’s



AGREEMENT #:XXXXXX

Form #:F7.4.1-10-001

CONFIDENTIAL

In-Bound OEM Agreement

Revision Date (08-31-09)

Rev (4)

specifications/specifications to be developed by the Parties] (the “Products”) for [inclusion in or with LNA products, and/or for resale under LNA’s brand]. The list of Products is set forth in Exhibit A hereto; and

WHEREAS, [LNA] desires to purchase the Products from [XYZ] for resale, under [LNA]’ private label, in accordance with the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises, covenants, and conditions contained herein, the parties hereto agree as follows:

1. **SCOPE**

A. [XYZ] agrees to manufacture and sell the Products to [LNA] for resale under [LNA]’s private label. This Agreement sets forth the terms and conditions under which [LNA] may place Orders with [XYZ] for the Products. “Order” means a purchase order issued for the Products by [LNA] to [XYZ] authorizing a release of Products as set forth in such purchase order and which shall be deemed to incorporate all the provisions of this Agreement. Neither party shall be bound by any other terms and conditions proposed by the other, whether in its purchase order, sales acknowledgement, or otherwise, which are additional to or different from the terms and conditions set forth herein.

B. This Agreement does not grant to [XYZ] any privileges or rights to supply any particular quantity of the Products (or components thereof) to [LNA].

C. [XYZ] agrees that it shall not sell the Products, or any [XYZ] products that incorporate [LNA] Specifications (as defined below), or which are unique to the Products, in whole or substantial part, to any third parties.

D. In the event [XYZ] offers [??] for use in a competitive or complementary application(s), then [LNA] shall have the option to include such new [??], at mutually agreed prices, in an amendment to Exhibit A for modification to Product(s) for resale hereunder.

2. **TERM OF AGREEMENT**

This Agreement shall commence on the date hereof and shall continue in full force and effect for a period of [written #] (#) years (the “Term”), unless earlier terminated set forth herein or by mutual agreement of the parties. This Agreement [[may be extended thereafter by mutual agreement of the parties in writing at least three (3) months prior to expiration] or [shall automatically renew thereafter on a year-to-year basis until either party provides the other party with a minimum of a three (3) month advance written notice of its desire not to renew this Agreement]]. [Note to users: The policy is NOT to allow suppliers/vendors commit LNA into auto-renewing contracts. Therefore, only use the auto renew option if that works to LNA’s advantage, subject to LNA GC approval before the template is sent to any third party.]



AGREEMENT #:XXXXXX

Form #:F7.4.1-10-001

CONFIDENTIAL

In-Bound OEM Agreement

Revision Date (08-31-09)

Rev (4)

3. **PRICE**

A. Purchase Price. The "Purchase Price" for each of the Products is specified in Exhibit A. Prices (as listed in Exhibit A) shall [remain firm for the first [x months/year] of the Agreement and] shall be automatically reduced by at least [__] percent (%) annually on each anniversary of the Agreement date]. [XYZ] warrants that the Prices charged for the Products constitute the lowest prices charged by [XYZ] to its customers purchasing any of the Products in the same or less quantities as does [LNA]. In the event that [XYZ] offers prices to any other customer more favorable than those set forth herein, [XYZ] at the same time shall offer the more favorable prices to [LNA]. The Purchase Prices are fixed for the entire Term of the Agreement.

B. Competitive Pricing. If during the term of this Agreement, [LNA] receives a bona fide offer from another supplier to sell the same or similar Products or services as those covered by this Agreement at a price lower than the prices set forth in this Agreement, [LNA] shall provide written notice and reasonable evidence of such offer to [XYZ]. [XYZ] shall, within thirty (30) days of receipt of such notice, either meet said price or, at [LNA]'s request release [LNA] from its obligations under any pending Orders for such Products under this Agreement.

C. Productivity Improvements. In addition to the price reduction described above, [XYZ] will use its best efforts to pursue productivity improvement projects to reduce [XYZ]'s manufacturing costs. [XYZ] and [LNA] will work on continuous material productivity improvement initiatives with a minimum annual price reduction goal of __ percent (%). The parties will meet quarterly to review the status and actions required to complete these initiatives.

4. **ESTIMATES AND FORECASTS**

A. [LNA] shall, from time to time, provide to [XYZ] a written, non-binding, good-faith forecast ("Forecast") of the quantity of each Product that [LNA] expects to purchase from [XYZ] during each of the twelve (12) calendar month periods constituting the Term. [LNA] currently intends to, but does not guarantee that it will, purchase such estimated usage quantities and shall use its reasonable efforts to notify [XYZ] in advance of circumstances that may affect its actual purchase quantities. However, [LNA]'s failure to purchase its estimated usage quantities shall not create any liability for [LNA] except as specifically provided in the Paragraphs entitled "Stocked Levels", "Cancellation" and "Termination for Convenience", [LNA] shall not be required to purchase Forecast quantities, and [XYZ] shall not be entitled to any payments, billbacks or price adjustments if [LNA]'s actual purchase levels are below its estimated usages.

5. **STOCKED LEVELS**

A. At all times during the Term, [XYZ] will maintain a stocking level for each Product at least equal to the required inventory level established from time to time relative to the



AGREEMENT #:XXXXXX

Form #:F7.4.1-10-001

CONFIDENTIAL

In-Bound OEM Agreement

Revision Date (08-31-09)

Rev (4)

current Forecast (the "Required Inventory Level"). The Required Inventory Level for each Product shall be set forth in Exhibit B, which shall be signed by both parties upon creation and at each agreed amendment thereto. If this Agreement expires according to its terms and no subsequent agreement is entered into between the parties, [LNA] agrees to purchase [XYZ]'s actual stocked inventory up to the relevant Required Inventory Level at the pricing and on the terms specified in this Agreement within ninety (90) days after the expiration of the Agreement; provided, however, that [LNA] is not responsible for purchasing stocked inventory if [LNA] terminates this Agreement for cause, or to the extent the stocked inventory exceeds the Required Inventory Level set forth for such Product as set forth in Exhibit B.

6. **CANCELLATION**

A. [LNA] may cancel Orders for a specific Product or Products, in whole or in part, due to customer or [XYZ] design changes, customer cancellations, changes in customer specification requirements or similar events. In the event of cancellation of a Order where [LNA] determines that the rescheduling of delivery will not occur, [LNA] will negotiate with [XYZ] to determine to the extent to which [XYZ] will be reimbursed for its actual direct labor and custom materials costs relating to the cancelled Order. Such reimbursement shall not include [XYZ]'s consequential or incidental expenses.

7. **PAYMENT TERMS**

Payment by [LNA] may be made electronically and shall be due net seventy-five (75) days from the date of [XYZ]'s invoice to [LNA].

8. **QUALITY ASSURANCE AND SECURITY**

A. [XYZ] agrees to manufacture the Products in accordance with quality assurance standards as such may be modified from time to time and communicated to and accepted by [LNA] ("Quality Standards"). A current copy of the Quality Standards is attached hereto as Exhibit C. [XYZ] shall test and inspect the Products ordered prior to shipment in accordance with the Quality Standards.

B. [XYZ] further agrees to implement and maintain security measures for the protection of all documentation utilized in or relating to the Products in a manner that is at least as secure as the security measures utilized by [XYZ] in connection with its [XYZ] Products, but in no event less than measures reasonably designed protect against disclosure.

C. Upon [LNA]'s request, [XYZ] shall provide access to its relevant security measures, quality control activity results, data, reports, charts, procedures, manuals, requirements, practices, and methods for incoming or in-process Products.



AGREEMENT #:XXXXXX

Form #:F7.4.1-10-001

CONFIDENTIAL

In-Bound OEM Agreement

Revision Date (08-31-09)

Rev (4)

D. Compliance with the Quality Standards shall not relieve [XYZ] of any obligations under this Agreement or any Order nor shall such compliance be deemed an acceptance of the Products.

E. Upon written request of [LNA], as specified in an Order, [XYZ] will manufacture the Products in accordance with all applicable [Underwriters Laboratory (UL), or other applicable regulatory specified] design, performance, and safety criteria such that the Products are eligible to bear the [UL label or other indicia of compliance]; but all of [XYZ]'s hourly charges and certification fees associated with UL certification shall be invoiced to [LNA] at the rates specified on Exhibit A and/or charged by UL or such other applicable compliance organization].

9. **INSPECTION**

A. At reasonable times following ten (10) business day's prior notice to [XYZ], [LNA] may audit [XYZ] manufacturing facilities, processes, and finished Products prior to the date of shipment to verify compliance with an Order and adherence by [XYZ] to the Quality Standards. Such inspection shall not relieve [XYZ] of any obligations under this Agreement or any Order nor shall such inspection be deemed an acceptance of the Products. [LNA] may stop shipment of ordered Products and expedite shipping at [XYZ]'s expense in the event [XYZ] fails said inspection. If such failure fails Quality Standards by five percent (5%) or more, [XYZ] shall be responsible to repay [LNA] the cost of the audit.

B. [LNA]'s distributors or customers to whom the Products are shipped directly by [XYZ] shall be required to inspect Products promptly following receipt of a shipment. Notice of shipping damage must be given to [XYZ] within ____ () [hours/days] following receipt of a shipment in order to receive credit.

10. **LABELING AND PACKAGING**

A. [LNA] shall market the Products sold hereunder for resale under its own trademarks and trade names. Nothing contained in this Agreement shall be construed as a grant of any right or license from [LNA] to [XYZ] to use any trademark or trade name of [LNA] other than as may be expressly permitted in this Agreement, or by a separate, written agreement between the parties.

B. The Specifications include all of the necessary specifications and artwork for the labeling of the Products. [XYZ] shall label the Products in accordance with the Specifications. [XYZ] agrees to add any other identification to the Products which might reasonably be requested by [LNA] from time to time on mutually agreeable terms.

C. Products shall be packaged by [XYZ] in accordance with [LNA]'s specifications, as provided for in each Order.



AGREEMENT #:XXXXXX

Form #:F7.4.1-10-001

CONFIDENTIAL

In-Bound OEM Agreement

Revision Date (08-31-09)

Rev (4)

11. **IDENTIFICATION**

All Products sold to [LNA] hereunder shall be marked for identification purposes with (i) unit model number; (ii) date and country of origin code ([LNA] shall provide [XYZ] with its system of coding products); and (iii) upon request, an Underwriters Laboratory (UL), CE, ETL, UPC code, or other appropriate indication (e.g., serialization or lot code, if required) on the label ("Identification"), in any event accordance with the Specifications. [XYZ] shall be responsible for producing and affixing the Identification to the Products at no additional cost to [LNA].

12. **DELIVERY**

A. [XYZ] shall deliver all Products is FOB [DESTINATION], freight collect to the location specified by [LNA] in each Order for delivery in accordance with the quoted delivery cycle, and at the prices, specified in Exhibit A. Delivery of Orders may be rejected and payment for Orders may be withheld to the extent proper documentation has not been provided with each delivery, including any required import/export compliance documentation and other documentation reasonably requested by [LNA] for compliance with laws, regulations, and policies applicable to its business. Late delivery will be subject to penalty by [LNA] not to exceed [x] percent (x%) of the value of shipped items subject to such delay. In addition, [XYZ] will be responsible for prepaid expedited air freight costs. Exhibit A may be updated periodically to reflect Product additions and discontinuations.

Comment [A1]: Note that penalty can be redesigned to accommodate the particular relationship – flat fee, etc., and feel free to introduce a timeframe, such as "late more than 24 hrs".

B. Except as explicitly set forth in this Agreement, [LNA] shall not be responsible for any other costs or expenses related to the transportation, importation, or exportation of the Products to or from the United States.

C. [XYZ] shall keep readily available shipment records with tracking numbers for at least one hundred eighty (180) days from date of invoice.

13. **TITLE AND RISK OF LOSS**

Title and risk of loss, or damage to, the Products shall pass to [LNA] upon receipt of the Products buy [LNA] at the shipping destination is set forth in the Order. [XYZ] shall be responsible for such shipping with the freight hauler(s) and for insuring such shipments in amounts reasonably acceptable to [LNA]. [XYZ] shall exercise commercially reasonable efforts to recover shipping damages from the freight hauler(s) and insurers, and all such recoveries (net of [XYZ]'s recovery expenses) shall be credited to the account of [LNA].

14. **SPECIFICATIONS**

A. [LNA] shall furnish [XYZ] with its desired specifications for the Products, which shall include, but not be limited to, the design features desired as well as a listing of [LNA] products ("[LNA] Component Products") to be incorporated. [XYZ] shall review the submitted



AGREEMENT #:XXXXXX

Form #:F7.4.1-10-001

CONFIDENTIAL

In-Bound OEM Agreement

Revision Date (08-31-09)

Rev (4)

specifications and request the modifications it deems appropriate, subject to [LNA]'s written approval, which shall not be unreasonably withheld. The parties have agreed that the final specifications for each of the Products shall be contained in [XYZ]'s engineering drawings bearing [LNA]' signatory approval, as they may be amended from time to time by written approval of the parties (the "Specifications").

B. [LNA] reserves the right to request changes to the Specifications at any time during the term of this Agreement; but [LNA] shall in such circumstances be obligated to purchase all of [XYZ]'s then-existing Required Inventory Level of Products carried in [XYZ]'s inventory prior to the change in Specification. In the event [LNA] desires to change the Specifications, [LNA] will submit to [XYZ] in writing any proposed changes to the Specifications and [XYZ] shall notify [LNA] in writing within thirty (30) days of notice thereof of its acceptance of such Specification changes together with any proposed price changes and/or change in delivery schedules. [LNA] must approve and agree in writing to any proposed price change or delivery change. The Specifications (as set forth in [XYZ]'s engineering drawings bearing [LNA]' signatory approval) shall be amended to reflect any such changes. Such changes shall be incorporated by [XYZ] in the current Specifications within thirty (30) days of the date [LNA] notifies [XYZ] in writing that [LNA] accepts any associated price and/or delivery change. [XYZ] shall promptly provide documentation sufficient to [LNA] to justify any proposed price change hereunder.

C. To the extent that the Products include [LNA]'s Component Products or unique designs for Products included in the Specifications, [LNA] shall own all intellectual property rights associated therewith, including modifications thereof.

D. [LNA] may supply [LNA] Component Products to [XYZ] in connection with any Order, or [LNA] may authorize [XYZ] to purchase such [LNA] Component Product directly from [LNA]'s vendor.

15. **LICENSES**

A. [XYZ] shall own all right, title and interest in and to any and all pre-existing [XYZ] intellectual property. To the extent any such intellectual property is included in or with Products, [XYZ] hereby grants [LNA] 1) a nonexclusive, irrevocable, worldwide, paid-up license to use, execute, reproduce, display, perform, distribute (internally and externally) copies of, and prepare derivative works based on, such intellectual property and 2) the right to authorize others to do any of the former. [LNA] shall pass through to its customers a license to use any such intellectual property solely as part of the Product(s).

B. [LNA] shall own all right, title and interest in and to any and all pre-existing [LNA] intellectual property. To the extent any such intellectual property is included in or with Component Products provided by [LNA], [LNA] hereby grants [XYZ] 1) a nonexclusive,



AGREEMENT #:XXXXXX

Form #:F7.4.1-10-001

CONFIDENTIAL

In-Bound OEM Agreement

Revision Date (08-31-09)

Rev (4)

worldwide, paid-up license to use, execute, reproduce, display, perform, distribute internal copies of such intellectual property, in each case internally only within [XYZ] and solely as necessary for the use of Component Products with Products, and 2) a nonexclusive limited license to prepare derivative works based on such intellectual property solely for the purpose of incorporating Component Products for use with Products.

C. As between the parties, [LNA] shall own all right, title and interest in and to any inventions or other intellectual property relating to the Component Products or Products created or reduced to concept during the Term by either party during or as a consequence of the performance of their obligations under this Agreement.

16. ANCILLARY SERVICES

A. During the term of this Agreement, [XYZ] may provide [LNA] with various ancillary services including (but not necessarily limited to) telephone support, technical support, training, product literature, operating manuals, electronic copies of high-resolution photos, features, and benefits, and other assistance useful to [LNA] in selling and maintaining the Products. The cost of all ancillary services, as agreed upon by the parties in writing from time to time prior to performance of the ancillary service by [XYZ], shall be invoiced to [LNA] by [XYZ].

B. **[Optional Paragraph]** Notwithstanding the provisions of the preceding paragraph, [XYZ] shall, at no additional expense to [LNA], provide two (2) training sessions during the first year of the Agreement for [LNA]'s personnel for each Product listed in Exhibit A, including the necessary instructional material to train such [LNA] personnel in the operation, maintenance, service, and repair of the Products furnished hereunder. Such training sessions shall be held at [LNA]'s facility in _____. [XYZ] and [LNA] shall consult with each other respecting the scheduling and length of each of the training sessions, and the number of [LNA] employees to be included in each session. To the extent [LNA] requires additional training; [LNA] shall be responsible for and pay the reasonable cost of such training. [LNA] shall be responsible for reasonable travel and living expenses incurred by [XYZ] employees providing training; provided that any such travel shall be pre-approved by [LNA] and subject to the then-current travel and expenses policies of [LNA].

17. LOANED LNA TOOLING/EQUIPMENT

A. [LNA] may make available to [XYZ] certain tooling or other equipment for use in connection with [XYZ]'s manufacture and supply of Products to [LNA]. [XYZ] shall use such equipment only to manufacture Products for sale to [LNA]. [XYZ] shall (i) keep any tooling or other equipment so provided it separate from [XYZ]'s other tooling, machines or equipment, as the case may be; (ii) at all times identify and label such equipment as being the property of



AGREEMENT #:XXXXXX

Form #:F7.4.1-10-001

CONFIDENTIAL

In-Bound OEM Agreement

Revision Date (08-31-09)

Rev (4)

[LNA]; (iii) prevent any third party from placing a lien on [LNA]'s equipment based on any acts or omissions of [XYZ], and (iv) maintain such equipment as set forth below.

B. Any tooling or other equipment made available to [XYZ] shall at all times remain the property of [LNA]. [XYZ] shall, upon request by [LNA] at any time, return such equipment to [LNA] within two (2) days of written request by [LNA]. [LNA] shall have the right, upon reasonable notice during normal business hours, to retrieve its equipment from [XYZ]'s premises in the event that [XYZ] fails to timely return it within the aforementioned two (2) day period. Absent mutual agreement otherwise at such time, [XYZ] shall return all tooling or other equipment to [LNA] in good working order (subject to reasonable wear and tear associated with permitted use hereunder) at the end of the Term.

C. At its own expense, [XYZ] will maintain [LNA] tooling and other equipment, at a minimum, in the same condition that they were originally transferred to [XYZ]. In the event that there is a catastrophic failure with such equipment, and it is determined not to be due to the negligence of [XYZ], such equipment will be replaced by [LNA]. If [XYZ]'s negligence is cited as the reason for the major failure, then [XYZ] will repair or replace such equipment. New cavitation would not be considered basic maintenance and would be done based on mutual consent between [LNA] and [XYZ], the payment responsibility would be determined based on the reason for the new cavitation. If new cavitation were required due to additional capacity requirements or normal wear and tear, the costs of this cavitation would be the responsibility of [LNA]. If the new cavitation is being acquired to maximize efficiencies for the benefit of [XYZ], then [XYZ] will bear the costs of said cavitation.

18. WARRANTIES, REWORKS, AND RECALLS

A. [XYZ] warrants that the Products shall be free from defects in materials and workmanship and shall conform in all respects to the Specifications for a period of one (1) year from the date of shipment ("Warranty Period"). This warranty does not apply with respect to Products not operated in accordance with written operating instructions or their applicable Specification, or to Products which were subjected to misuse, misapplication, accident, or improper maintenance or storage.

B. Whether or not resold and shipped by [LNA], in the event that a Product is determined by [LNA] to be defective during the Warranty Period, [XYZ], [LNA] shall give written notice of such defective Product(s) to [XYZ] within forty-five (45) days of the date that [LNA] becomes aware of such failure and shall deliver the defective Product(s) to [XYZ] within forty-five (45) days of the date when [LNA] receives possession of such defective Product(s). At [LNA]'s election: i) [LNA] may require that [XYZ] promptly deliver to [LNA] replacement Products, ii) [LNA] may set off that portion of the Purchase Price attributable to the defective Products against current or future amounts owing to [XYZ], or iii) [XYZ] shall credit any amounts owing from [LNA] for that portion of the Purchase Price attributable to the defective



AGREEMENT #:XXXXXX

Form #:F7.4.1-10-001

CONFIDENTIAL

In-Bound OEM Agreement

Revision Date (08-31-09)

Rev (4)

Products. All costs associated with the return of Products to [XYZ] and the redelivery of conforming Products to [LNA] for failure to satisfy the warranty shall be at [XYZ]'s expense. Warranty claims can be made by [LNA] or its distributor or original end-user.

C. Rework. At its election, [LNA] may notify [XYZ] of nonconforming Products and rework such nonconforming Products if necessary to maintain [LNA]'s production flow and normal operations. In such event, [XYZ] shall pay to [LNA] all labor and material costs attributable to [LNA]'s rework.

D. Recalls. In the event that any Products are determined by [XYZ], [LNA], or any governmental agency or court to contain a defect, quality or performance deficiency, or to not be in compliance with any standard or requirement so as to make advisable, in [LNA]'s sole discretion, that the Products be reworked or recalled, the parties will promptly communicate all relevant facts and [XYZ] shall undertake all necessary corrective action at its expense. [LNA] shall cooperate with and use reasonable commercial efforts to assist [XYZ] in connection with any necessary filings and corrective action. Nothing contained in this Section shall preclude [LNA] from taking such action as may be required of it under any law or regulation. If it is necessary to recall any Products resold by [LNA] due to [XYZ]'s failure to manufacture the Products in accordance with the standards and specifications, [XYZ] shall bear all costs and expenses of such recall.

19. **SPARE PARTS, [Optional Section]**

A. During the term of this Agreement, [XYZ] shall provide [LNA] with a spare parts list for the Products ("Spare Parts List"), including mutually agreed upon prices therefore ("Spare Parts Prices"). The initial Spare Parts List is set forth on Exhibit A. The initial Spare Parts List shall be reasonably revised by the parties from time to time to reflect model changes and new Products. Spare Parts Prices shall be subject to the price adjustments set forth in Section 3. Thereafter and during the term of this Agreement, but excluding spare parts included on manufacturer-discontinued Products, [XYZ] agrees to sell spare parts for the Products to [LNA], such as [LNA] may require from time to time, at prices established pursuant to Section 3 hereof. Following termination of the Agreement for any reason and for a period of two (2) years thereafter, [XYZ] agrees to supply [LNA] requirements for spare parts for the Products sold by [LNA] hereunder (except for spare parts associated with manufacturer-discontinued Products) on [XYZ]'s sales terms and at published list prices in effect at shipment of the spare parts order.

B. Notwithstanding the termination or expiration of this Agreement, or if [XYZ] ceases to manufacture the Products, the specific obligation of [XYZ] to furnish [LNA] replacement parts shall continue for a period of two (2) years following the date of such termination, expiration, or cessation of manufacture.



AGREEMENT #:XXXXXX

Form #:F7.4.1-10-001

CONFIDENTIAL

In-Bound OEM Agreement

Revision Date (08-31-09)

Rev (4)

C. The obligation of [XYZ] regarding spare parts set forth in this Section does not modify or supersede [XYZ]'s warranty obligations set forth in Section 18 hereof.

20. **CONFIDENTIAL INFORMATION**

A. The Confidentiality and Non-Disclosure Agreement (the "NDA") executed by the parties, dated as of [DATE], shall continue to apply to Proprietary Information (as defined therein) previously disclosed thereunder or hereafter disclosed in connection with this Agreement.

21. **CORPORATE IDENTIFICATION**

A. [XYZ] acknowledges and agrees that [LNA] shall have exclusive control over the use of corporate names, trade names, trademarks, copyrights, insignia, symbols, and other evidences of [LNA] identification supplied to [XYZ] in connection with the activities undertaken hereunder by [XYZ] with respect to the Products ("Corporate Identification").

B. [XYZ] agrees not to manufacture and/or sell to anyone other than [LNA] any Products which contain such Corporate Identification and further acknowledges that the existence and implementation of this Agreement shall not be construed as granting or implying any rights of ownership, license, or use to [XYZ] under such Corporate Identification other than as specifically provided herein.

C. [XYZ] agrees not to use any Corporate Identification or simulation thereof, including, but not limited to, references to [LNA]; and references to corporate codes, drawings, or Specifications in any of [XYZ] advertising or promotional efforts with respect to activities undertaken by [XYZ] under this Agreement without [LNA]' prior written consent.

D. [XYZ] agrees to remove any Corporate Identification prior to any disposition of Products rejected or not purchased by [LNA]. [XYZ] further agrees to indemnify [LNA] against any claim arising out of [XYZ]'s failure to comply with this Section.

22. **PATENT INFRINGEMENT**

Except for claims associated with or arising solely out of [LNA] Component Products and/or solely out of unique [LNA] designs included in the Specifications at [LNA]'s express written request, [XYZ] agrees to indemnify and hold harmless [LNA], its directors, officers, employees, distributors, and end users of the Products ("Indemnified Parties") against any claim, suit, or proceeding alleging that the Products infringe any third party U.S. patent, copyright, trademark, or service mark (a "Claim"); provided that [XYZ] is notified by [LNA] promptly in writing of any such Claim, and such alleged infringement is not attributable solely to [LNA] Component Products, and pay any liability, loss, expense or damage that any Indemnified Party may incur as a result of such Claims, including reasonable attorney's fees. In the event that any



AGREEMENT #:XXXXXX

Form #:F7.4.1-10-001

CONFIDENTIAL

In-Bound OEM Agreement

Revision Date (08-31-09)

Rev (4)

Products are found to be infringing, [XYZ] shall, at its option and expense (a) procure for [LNA] and any Indemnified Party the right to continue using the Products, (b) modify the Products so that they become non-infringing, (c) replace the Products with non-infringing products, or (d) remove such Products and refund all monies paid by [LNA] for the Products. Conversely, [LNA] will indemnify [XYZ] against any claim, suit, or proceeding alleging that [LNA] Component Products on a stand alone basis as supplied by [LNA], and/or unique components included in a Specification at [LNA]'s express written request, constitute an infringement of any third party U.S. patent, copyright, trademark or service mark. [LNA] will indemnify and hold harmless [XYZ], to the extent such infringement claim is attributable solely to such [LNA] Component Product as supplied by [LNA] and/or to such unique design or component requested by [LNA], and pay any liability, loss, expense or damage that any [XYZ] may incur as a result, including reasonable attorney's fees.

23. **INDEMNIFICATION**

A. [XYZ] shall indemnify, defend, and hold [LNA] harmless from any liability, loss, damage, claims, suits, cost, or expense (including reasonable attorney fees) for (i) personal injuries, including death, or damage to tangible personal property caused by or arising out of or in connection with [XYZ]'s gross negligence or willful misconduct, (ii) any hazard, defect, or alleged hazard or defect in the design, manufacture, materials, workmanship, sale, or use of any Product hereunder, including, but not limited to, any failure or alleged failure to warn of a hazard, defect, or alleged hazard or alleged defect of a Product, which results in personal injury, including death, or damage to or destruction of tangible personal property, or (iii) the recall of any Product hereunder.

B. [LNA] shall indemnify, defend, and hold [XYZ] harmless from any liability, loss, damage, claims, suits, cost, or expense (including reasonable attorney fees) for personal injuries, including death, or damage to tangible personal property caused by or arising out of or in connection with [LNA]'s gross negligence or willful misconduct.

24. **INSURANCE**

[XYZ] shall maintain the following insurance coverage: (1) Workers' Compensation, in accordance with ['applicable state law' or if international, 'applicable law']; (2) Employer's Liability Insurance with minimum limits of [\$2,000,000] per occurrence; and (3) Commercial General Liability Insurance, including coverage for Products/Completed Operations Liability and Contractual Liability Insurance, during the term of this Agreement and for five (5) years after the expiration or termination of this Agreement, with minimum limits of [\$5,000,000] combined single limit. [XYZ] shall name [LNA] as an additional insured under such policies and shall furnish evidence of such insurance upon [LNA]' request. The preceding policy limits can be met through primary and/or umbrella (excess) liability insurance coverages.



AGREEMENT #:XXXXXX

Form #:F7.4.1-10-001

CONFIDENTIAL

In-Bound OEM Agreement

Revision Date (08-31-09)

Rev (4)

25. LIMITATION OF LIABILITY

NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, EXCEPT FOR THE INDEMNIFICATION OBLIGATIONS HEREUNDER AND ANY BREACH OF SECTIONS 20 OR 26, NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY (OR TO ANY PERSON OR ENTITY CLAIMING THROUGH THE OTHER PARTY) FOR LOST PROFITS OR FOR SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN ANY MANNER CONNECTED WITH THIS AGREEMENT, ANY TRANSACTION DOCUMENT OR THE SUBJECT MATTER THEREOF, REGARDLESS OF THE BASIS ON WHICH THE PARTY IS ENTITLED TO CLAIM DAMAGES FROM THE OTHER PARTY (INCLUDING FUNDAMENTAL BREACH, NEGLIGENCE, MISREPRESENTATION, OR OTHER CONTRACT OR TORT CLAIM) AND WHETHER OR NOT SUCH PARTY HAS BEEN INFORMED OF, OR OTHERWISE MIGHT HAVE ANTICIPATED, THE POSSIBILITY OF SUCH DAMAGES.

26. COMPLIANCE WITH LAWS

A. General Compliance. [XYZ] shall be responsible for compliance with any and all laws, rules and regulations applicable to the performance of its obligations hereunder, including, but not limited to the classification, import, export, proper labeling, and packaging of the Products. [XYZ] shall be responsible for providing accurate and complete customs documentation to the extent required for the Products, and notwithstanding anything to the contrary hereunder any and all payments hereunder shall be subject to [LNA]'s verification of the completeness and accuracy of any such required documentation. [LNA] shall be responsible for compliance with any and all laws, rules and regulations applicable to the performance of its obligations hereunder, including without limitation as they relate [LNA]'s import/export activities independent of [XYZ]'s responsibilities hereunder.

B. Environmental Compliance. Vendors and suppliers, including [XYZ], are responsible for the care, control and management of their products, materials and wastes, including the proper off-site disposal of all waste materials in accordance with all applicable legal requirements. To the extent applicable, Material Safety Data Sheets (MSDS) must be provided to the [LNA] Environmental Coordinator for any oils, lubricants, chemicals, cleaners, paints, or adhesives prior to being brought to site. With regard to [XYZ]'s production processes, (i) all liquid product or waste material must be stored in compatible and secure containers, adequately labeled with environmental and safety information, and remain covered at all times when not in use, and (ii) all product and waste materials must be properly segregated. Product or waste material must not be placed in drains, sumps or trenches or outside of any [LNA] facility unless authorized in writing by the [LNA] Environmental Coordinator. In the event of an environmental emergency, or incident pertaining to the transportation of goods to and from the local [LNA] facility, vendors and suppliers shall immediately contact the local [LNA] Environmental Coordinator and indicate: (a) what was spilled, (b) the location of the spill, and



AGREEMENT #:XXXXXX

Form #:F7.4.1-10-001

CONFIDENTIAL

In-Bound OEM Agreement

Revision Date (08-31-09)

Rev (4)

(c) the quantity spilled. Vendors and suppliers, including [XYZ], shall obtain and comply with all applicable permits required by local, state and federal regulations, or by [LNA]. Vendors and suppliers, including [XYZ], are expected to follow all appropriate environmental, health and safety rules and regulations while on [LNA] property.

C. In addition to the foregoing, [XYZ] shall use all commercially reasonable efforts to provide promptly any and all information that [LNA] may reasonably require regarding its compliance efforts, including without limitation information regarding [XYZ]'s use or inclusion in any processes or materials required for the performance of its obligations hereunder of any substances and/or materials subject to local or global environmental regulation, e.g., the rules and regulations of the Environmental Protection Agency in the US, the European Union Directives concerning (i) the Restriction of Hazardous Substances (ROHS), Directive 2002/95/EC, and (i) the Registration, Evaluation, Authorization and Restriction of Chemicals (REACH), EC 1907/2006.

D. LNA is encouraging our suppliers to consider pursuing ISO 14001 Registration and/or the implementation of an EMS (Environmental Management System), ensure knowledge of and compliance with relevant environmental legal and regulatory requirements, maintain thoughtful supplier selection, and reduce existing or potential negative environmental impacts associate with manufacturing processes and/or business or practices.

27. **TERMINATION**

A. Termination for Convenience. [LNA] may terminate this Agreement for its convenience on 90 days advance written notice to [XYZ]. In the event of such termination, [LNA] shall bear the actual costs of i) material actually procured by [XYZ] to fill [LNA]'s Orders scheduled for delivery within 30 days from the date of [LNA]'s notice for termination, where such material has been fabricated for [LNA] and is not resalable in the course of [XYZ]'s business ("Custom Materials") and ii) the [XYZ]'s actual on hand Stocked Inventory but no more than the amount identified in the Paragraph entitled "Stocked Inventory". [XYZ] must support its costs of the Custom Materials to [LNA] which may include providing written evidence and allowing [LNA]'s audit of [XYZ]'s invoices and records pertaining to the Custom Materials.

B. Termination for Cause. If either party shall be in breach of any obligation hereunder, the non breaching party may, upon thirty (30) days prior written notice, terminate this Agreement; provided, however, if within said 30-day period, the breaching party cures the breach, then the non breaching party shall not terminate this Agreement. Notwithstanding the foregoing right to cure, a party's repeated breaches of this Agreement, whether or not cured, shall be grounds for terminating the Agreement on five days advance written notice. In the event of termination by [LNA] for [XYZ]'s breach, at [LNA]'s election, [XYZ] shall deliver the Products subject to any uncanceled Orders to the extent still desired by [LNA], and [LNA] shall not be liable to [XYZ] for the purchase of any Stocked Inventory or Custom Material. During the term



AGREEMENT #:XXXXXX

Form #:F7.4.1-10-001

CONFIDENTIAL

In-Bound OEM Agreement

Revision Date (08-31-09)

Rev (4)

of this Agreement, if either party to this Agreement shall become bankrupt, insolvent, enter into any arrangement for the benefit of creditors, or if a receiver is appointed for all or substantially all of either party's assets and such receiver shall not be discharged within thirty (30) days after such appointment, the other party may immediately terminate this Agreement.

C. **[INCLUDE THIS HIGHLIGHTED LANGUAGE AND THE REFERENCED APPENDIX A ONLY IF A RIGHT OF FIRST REFUSAL IS IN THE COMPANY'S BEST INTEREST => [XYZ] hereby agrees to enter into and grant [LNA] the right of first refusal with regard to any bona fide, good faith proposal for the purchase of all or substantially all of its assets or a controlling portion of the voting stock of [XYZ] on substantially the terms and conditions set forth in Addendum A, which shall be executed by the parties contemporaneously herewith and shall be incorporated herein by reference. To the extent [LNA] elects not to exercise its right of first refusal as set forth in Addendum A,]** If [XYZ] should sell all or substantially all of its assets or stock to a third party, or if a change in control of [XYZ] occurs in another form, [XYZ]'s purchaser or the surviving entity shall be obligated to continue to supply Products to [LNA] for at least twelve (12) months from the date of such transaction, and [XYZ], as part of any transaction, shall require such purchaser or surviving entity to assume this obligation; provided, however, that [LNA] shall have the right to terminate this Agreement under either of the provisions set forth above. If the purchaser or surviving entity is a competitor of [LNA], then in addition, [LNA] may, upon such sale or other change of control, at its option, immediately terminate this Agreement and/or any Orders placed hereunder by notice effective as of the date thereof. Any termination pursuant to this Section 26.C shall still be subject to the obligations contained in the penultimate sentence of Section 26.A hereof.

D. Any termination under this Section shall not prejudice either party's rights to performance or payment which arose and may be then due under the Agreement prior to the effective dated of such termination. Termination or expiration of this Agreement shall not affect the rights or obligations of either party to the other under any Order placed prior to the effective date of such termination or expiration.

28. FORCE MAJEURE

A. Neither party shall be liable for any delay or failure to perform hereunder to the extent such delay or failure is caused by fire; flood; war; civil commotion; compliance with any laws, regulations, orders, acts or requirements from the government, civil or military authorities; acts of God or by the public enemy, or other acts or events beyond its reasonable control. The existence of any such causes or delay shall justify the suspension of performance and shall extend the time of performance to such extent as may be necessary to enable it to perform its obligations hereunder in the exercise of reasonable diligence after the causes of delay have been removed. Notwithstanding the foregoing, in the event of the existence of any such causes of delay, the party claiming the delay must promptly advise the other of the existence of same and the reasons therefore and such party shall have the right to cancel any Orders placed to the extent



AGREEMENT #:XXXXXX

Form #:F7.4.1-10-001

CONFIDENTIAL

In-Bound OEM Agreement

Revision Date (08-31-09)

Rev (4)

such delay shall delay delivery of Products by more then [sixty (60)] days beyond the originally scheduled delivery date, without any liability to the other.

B. In the event of a Force Majeure condition involving performance by [XYZ] at a facility outside o the United Stated, [XYZ] guarantees that the performance of all its obligations hereunder will be carried out by its facilities located in the United States. If no United States facilities exist, the paragraph immediately above shall apply.

29. RELATIONSHIP OF PARTIES

It is expressly understood and agreed that [XYZ] and [LNA] are engaged in an independent business and that each shall perform its obligations throughout its business relationship with the other party as an independent contractor and not as an agent or employee of the other. Each has and hereby retains the right to exercise full control of and supervision over the performance of its own obligations hereunder and full control over the employment, direction, compensation, and discharge of its own employees assisting in the performance of such obligations. Each shall be responsible for its own acts and those of its subordinates, employees, agents, and subcontractors during the performance of its obligations for the duration of its business relationship with the other. Nothing contained in this Agreement shall be construed as creating a partnership, joint venture, or similar arrangement between [XYZ] and [LNA].

30. ASSIGNMENT/TRANSFER

Neither party may assign or transfer this Agreement nor any of its rights or obligations hereunder nor shall a subcontract or other delegation of duty be made to any parties for the furnishing of any of the completed or substantially completed Products, spare parts or work covered by this Agreement without the other party's prior written consent, which may not be unreasonably withheld. Notwithstanding the preceding sentence, either party may, subject to Section 27.C above, assign or transfer this Agreement or any of its rights or obligations hereunder to any Affiliate or to any third party that acquires all or substantially all of the assets of its business without the prior written consent of the other party; provided that this clause shall not apply to any attempt by [XYZ] to assign or transfer its rights and obligations under this agreement to a competitor of [LNA] – any such assignment or transfer shall in all cases require the prior written consent of [LNA]. For purposes of this Agreement, an "Affiliate" of a party means a person or entity that, directly or indirectly, controls, is controlled by, or is under common control with such party as of the date hereof.

31. GOVERNING LAW/RESOLUTION OF DISPUTES

A. This Agreement shall be governed by and construed in accordance with the laws of the State of Connecticut (as if by residents thereof), without regard to its conflicts of laws



AGREEMENT #:XXXXXX

Form #:F7.4.1-10-001

CONFIDENTIAL

In-Bound OEM Agreement

Revision Date (08-31-09)

Rev (4)

provisions. The United Nations Convention on the International Sale of Goods is expressly excluded.

B. The Parties shall endeavor to remediate any disputes arising under this agreement in good faith between them for not less than ninety (90) days, taking steps to ensure that senior management is aware of such disputes and, if they are not resolvable within forty-five (45) days without their participation, senior management will be actively engaged thereafter in dispute resolution efforts. At the end of such ninety (90) day period, if such dispute has not been resolved, the parties shall engage in non-binding mediation upon mutually acceptable terms as to location and the number of participants and the rules to be applied in such mediation. The parties will also agree regarding the duration of any such mediation. If the mediation has not commenced within thirty (30) days following the end of the initial ninety (90) day period for two-party dispute resolution, or has been concluded without acceptable resolution of the dispute, either Party may notify the other of their intent to arbitrate the dispute; provided that no such notice may be served during good faith attempts to mediate which through no fault of either Party, result in a mediation that requires more than thirty (30) days to conclude.

C. To the extent a dispute arising under or in connection with this Agreement or any other document pertaining to this Agreement has not been settled by either of the foregoing alternative dispute resolution processes, it shall be finally settled by arbitration at the American Arbitration Association ("AAA") in Hartford, Connecticut, before a panel of three neutral arbitrators, one selected by each party and a third selected by those two or, failing their ability to agree on a third, the third shall be appointed by the AAA which arbitration shall be conducted under AAA's commercial arbitration rules then in effect at the time of this Agreement. The decision of the arbitrators shall be final and binding upon the Parties, shall not be appealable, and judgment on the award rendered may be entered in any court of competent jurisdiction. The arbitrators may award actual direct damages only, and will have no authority to award special, consequential, punitive or other damages. Each party will bear equally the costs and expenses of AAA (with the exception of filing fees relative to claimed amounts in dispute) and of the arbitrators. Each party will bear its own costs and expenses, including legal expenses. All arbitration proceedings shall be confidential, except to the extent that disclosure is necessary to enforce an arbitration award in a court of competent jurisdiction. Notwithstanding anything to the contrary, either Party shall have the right, without waiving any remedy under this Agreement, to seek from any court of competent jurisdiction (a) equitable relief and (b) any interim or provisional relief that is necessary to protect their rights or property.

32. WAIVER

No waiver or breach by either party of any terms, conditions or obligations shall be deemed a waiver or similar terms, conditions or obligations in the future nor shall a waiver by either party of any breach be deemed a waiver of subsequent breaches of the same or similar nature.



AGREEMENT #:XXXXXX

Form #:F7.4.1-10-001

CONFIDENTIAL

In-Bound OEM Agreement

Revision Date (08-31-09)

Rev (4)

33. **SEVERABILITY**

If any of the provisions of this Agreement shall be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not invalidate or render unenforceable the entire Agreement, but rather the entire Agreement shall be construed as if not containing the particular invalid, illegal, or unenforceable provision or provisions, and the rights and obligations of each party shall be construed and enforced accordingly. However, in the event such paragraph or clause is considered an essential element of this Agreement, the parties shall promptly and in good faith negotiate a replacement therefore consistent with the original intent of the parties.

34. **SURVIVAL**

All representations, warranties, duties, and obligations of [XYZ] hereunder which by their nature are intended to continue beyond the expiration or termination of this Agreement shall survive the expiration or termination of this Agreement.

35. **NOTICES**

All notices required to be sent hereunder shall be in writing and sent by fax, overnight carrier (such as FedEx), or first class mail to the following addresses:

If to [LNA Entity Legal Name]: [LNA]

Email:

Fax:

Attention:

If to [XYZ Legal Name]: [XYZ]

Email:

Fax:

Attention:

or to such other addresses as the parties may designate in writing from time to time.

36. **INCONSISTENT FORMS.**

In the event of any inconsistency between the terms of this Agreement and any form, invoice or other standard document used by a party, the terms of this Agreement shall take precedence.



AGREEMENT #:XXXXXX

Form #:F7.4.1-10-001

CONFIDENTIAL

In-Bound OEM Agreement

Revision Date (08-31-09)

Rev (4)

37. **ENTIRE AGREEMENT.**

This Agreement, and the Exhibits [and the Appendix] attached hereto, and all documents expressly incorporated herein be reference constitute the entire Agreement between the parties and supersede all previous understandings, representations, and agreements with respect to the subject matter hereof (other than the NDA referred to in Section 19, which shall remain in effect). This Agreement shall not be amended or modified except upon the written consent of both parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first written above.

[LNA Entity Legal Name]

[XYZ Legal Name]

Printed Name: _____

Printed Name: _____

Signed Name: _____


Signed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

	AGREEMENT #:XXXXXX										
	Form #:F7.4.1-10-001										
CONFIDENTIAL	In-Bound OEM Agreement	Revision Date (08-31-09)	Rev (4)								
<div>EXHIBIT A</div> <div>[XYZ] PRODUCTS</div> <table><thead><tr><th><u>[LNA] Part Number</u></th><th><u>[XYZ] Cross Reference (where applicable)</u></th><th><u>Description</u></th><th><u>Price (USD)</u></th><th><u>Delivery Cycle</u></th><th><u>Spare Part Yes/No</u></th></tr></thead></table>						<u>[LNA] Part Number</u>	<u>[XYZ] Cross Reference (where applicable)</u>	<u>Description</u>	<u>Price (USD)</u>	<u>Delivery Cycle</u>	<u>Spare Part Yes/No</u>
<u>[LNA] Part Number</u>	<u>[XYZ] Cross Reference (where applicable)</u>	<u>Description</u>	<u>Price (USD)</u>	<u>Delivery Cycle</u>	<u>Spare Part Yes/No</u>						
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AGREEMENT #:XXXXXX

Form #:F7.4.1-10-001

CONFIDENTIAL

In-Bound OEM Agreement

Revision Date (08-31-09)

Rev (4)

EXHIBIT B

REQUIRED INVENTORY LEVELS



AGREEMENT #:XXXXXX

Form #:F7.4.1-10-001

CONFIDENTIAL

In-Bound OEM Agreement

Revision Date (08-31-09)

Rev (4)

EXHIBIT C
QUALITY STANDARDS



AGREEMENT #:XXXXXX

Form #:F7.4.1-10-001

CONFIDENTIAL

In-Bound OEM Agreement

Revision Date (08-31-09)

Rev (4)

Appendix A

[only include this appendix if electing to request a right of first refusal]

Right of First Refusal Agreement

In consideration of the OEM Agreement executed contemporaneously herewith, the parties agree as follows:

- (a) Should any [XYZ] shareholder, director, officer, or investor (including any holder of debt convertible to preferred or common equity) (each, and "Investor") propose that [XYZ] accept one or more bona fide offers (collectively, a "Purchase Offer") from any person(s) to purchase or otherwise acquire all or substantially all of the shares or assets of [XYZ], or any lesser portion of the same that would result in effective control over [XYZ], [XYZ] shall promptly but in any event not less than **twenty (20) days** prior to the expiration of such Purchase Offer, deliver a notice (the "Notice") to [LNA] stating the terms and conditions of such Purchase Offer including, without limitation, the number of shares/list of assets proposed to be sold or transferred, the nature of such sale or transfer, the consideration to be paid, and the name and address of each prospective purchaser or transferee.
- (b) [LNA] shall have the right, in its sole discretion, exercisable at any time within **fifteen (15) days** after [LNA]' receipt of the Notice, to purchase all or any portion of the shares/assets on the same terms and conditions set forth in the Purchase Offer (the "Right of First Refusal").
- (c) Any attempt by an Investor to transfer shares or assets in violation of clauses (a) and (b) above shall be void and [XYZ] agrees it will not effect such a transfer, nor will it treat any alleged transferee as a holder of such shares or assets without the written consent of [LNA].
- (d) Each certificate representing shares of the capital stock of [XYZ] now or hereafter owned by the Investors or otherwise issued shall bear the following legend:
 - a. "THE SALE, PLEDGE, HYPOTHECATION OR TRANSFER OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE IS SUBJECT TO THE TERMS AND CONDITIONS OF A CERTAIN RIGHT OF FIRST REFUSAL AGREEMENT BETWEEN [XYZ LEGAL NAME] AND [LNA ENTITY LEGAL NAME]. COPIES OF SUCH AGREEMENT MAY BE OBTAINED UPON WRITTEN REQUEST TO THE SECRETARY OF THE CORPORATION."
- (e) This Right of First Refusal Agreement shall survive the termination of the OEM Agreement, and shall terminate upon the earliest to occur of one of the following events, and shall not apply to any transfer by an Investor in connection with any such event:
 - a. The liquidation, dissolution or cessation of business operations of [XYZ]; or



AGREEMENT #:XXXXXX

Form #:F7.4.1-10-001

CONFIDENTIAL

In-Bound OEM Agreement

Revision Date (08-31-09)

Rev (4)

- b. The execution by [XYZ] of a general assignment for the benefit of creditors and appointment of a receiver or trustee to take possession of the shares and assets of [XYZ].
- (f) At any time following the termination of this Right of First Refusal Agreement in accordance herewith, any holder of a stock certificate legended pursuant to (d) above may surrender such certificate to [XYZ] for removal of such legend and [XYZ] will duly reissue a new certificate without the legend.
- (g) This Right of First Refusal Agreement and the rights and obligations of the parties hereunder shall inure to the benefit of, and be binding upon, the parties' respective successors, assigns and legal representatives.
- (h) This Right of First Refusal Agreement may only be amended or modified by mutual agreement in writing executed by the parties.
- (i) Any notice required or permitted by this Right of First Refusal Agreement must be in writing and shall be deemed sufficient on the date of delivery if delivered personally or by over night courier or sent by facsimile, or forty-eight (48) hours after being deposited in the US mail, as certified or registered mail, with postage prepaid, and addressed to the party to be notified at such party's address or fax number set forth below (or as subsequently modified by written notice).
- (j) If one or more provisions of this Right of First Refusal Agreement are held to be unenforceable under applicable law, the parties agree to renegotiate the provision in good faith. In the event that the parties cannot reach a mutually agreeable and enforceable replacement for such provision, then (a) such provision shall be excluded from this Right of First Refusal Agreement, (b) the balance of the provisions shall be interpreted as if such provision were so excluded, and (c) the balance of this Right of First Refusal Agreement shall be enforceable in accordance with its terms.
- (k) This Right of First Refusal Agreement and all acts and transactions pursuant hereto and the rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with the laws of the state of Connecticut, without giving effect to principles of conflicts of law.
- (l) This agreement may be executed with two or more counterparts, each of which shall be valid and all of which together shall constitute one complete instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Right of First Refusal Agreement to be executed as of the day and year last set forth below.



AGREEMENT #:XXXXXX

Form #:F7.4.1-10-001

CONFIDENTIAL

In-Bound OEM Agreement

Revision Date (08-31-09)

Rev (4)

[LNA ENTITY LEGAL NAME]

[XYZ LEGAL NAME]

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____