

DISTRIBUTORSHIP AGREEMENT

Between

DELTA CONTROLS INC.

and

[ENTER PARTNER NAME]

Date: **[MONTH, DAY, YEAR]**

This agreement is entered into as of Date (Month/Day/Year), by and between Delta Controls Inc. ("Delta"), with principal corporate offices at 17850 56th Avenue, Surrey, BC, V3S 1C7, Canada, telephone no. 604.574.9444 facsimile no. 604.574.7630 and Distributor Name ("Distributor").

Proprietorship Partnership Corporation

located at Address/City/Prov/PostCode/Country.

Telephone Number: (xxx) xxx-xxxx

Facsimile Number: (xxx) xxx-xxxx

1. DISTRIBUTORSHIP

- 1.1 Subject to the terms and conditions hereof, Delta grants to the Distributor the right to purchase from Delta for resale within the territory described in Schedule A (the "Territory") the products, (including accessories and/or service parts for such products) manufactured by Delta as set out in the product and price list (collectively, the "Products").
- 1.2 Execution of this Agreement is not intended to, and shall not be construed to, create or constitute a franchise, joint venture, partnership, or other joint business relationship between Delta and Distributor or among the other distributors and Distributor expressly acknowledges and agrees that the use of the term "Partner" or "Partnership" is for convenience only and is not an indication of a legal partnership between Delta and Distributor. Additionally, Delta and Distributor expressly acknowledge and agree that the use of the trademarks and logos as specified herein do not form a franchise relationship.
- 1.3 Upon execution of this Agreement, the Delta Partner will immediately place a minimum initial order for the Products specified in Schedule C, which Products are to be used by the Delta Partner for demonstration purposes. Thereafter, the Delta Partner will provide Delta with forecasts of its requirements for Products on a periodic basis or upon request by Delta and will use all reasonable efforts to place orders for Products on a regular and consistent basis, in order to assist Delta in scheduling its production and providing timely shipments to the Delta Partner
- 1.4 The Delta Partner's rights contained herein will be limited as follows:
 - (a) Delta will have the right to sell directly, or through other distributors, Products to original equipment manufacturers who incorporate or attach Products into or to their own products;
 - (b) Delta will have the right to sell directly, or through other distributors, Products to National Account Customers (as defined in Schedule A) within the Territory. A current listing of National Account Customers is set out in Schedule E; and
 - (c) Delta will have the right to sell directly, or through other distributors, products and parts to wholesalers within the territory; and
 - (d) the Delta Partner shall not purchase Delta Products for resale or installation for any industrial related application not controlling HVAC systems without the prior written consent of Delta.

2. DELIVERY AND DELAYS

- 2.1 Delta will be allowed approximately 4 to 6 weeks lead time between receipt of firm orders from the Delta Partner and the shipment of orders. The actual lead time for a specific order shall be confirmed at the time the order is placed.
- 2.2 Although Delta will make every reasonable effort to deliver by the dates requested by the Delta Partner, and within the stated lead times, Delta does not guarantee that it will be able to do so. Further, Delta shall have the right to delay delivery if strike, fire, act of God, unavailability of materials, or any other circumstances not within the reasonable control of Delta which prevents delivery in the normal course of business. The date of delivery will be extended by a period equal to the time lost because of delay.
- 2.3 Delta will arrange for shipment of all orders. Sales and shipment shall be EXW Surrey, BC, unless the Delta Partner is located in the United States of America, in which case, sales and shipment shall be FCA Surrey, BC. Title to (except with respect to any and all intellectual property rights in and to any Products) and all risk of delay in shipment, loss or damage for any Products will pass to the Delta Partner upon delivery by Delta of Products to the carrier. The Delta Partner will pay all loading and freight charges and all Taxes (as defined in Section 4.4 of this Agreement). Delta will only use carriers who agree to directly invoice the Delta Partner or any consignee or third party designated by the Delta Partner. In the event that the Delta Partner requests shipment by special carrier, the Delta Partner will be invoiced by Delta for shipping charges.

- 2.4 If the Delta Partner wishes Delta to insure a particular shipment, the Delta Partner will include instructions for insurance at the time the order is submitted to Delta. Delta will invoice the Delta Partner for the insurance costs. The Delta Partner shall be responsible for submitting and pursuing any and all insurance claims.
- 2.5 Delta will use its best efforts to expedite delivery of Products upon the Delta Partner's request, but cannot guarantee that such a service will be available at the time of request. The Delta Partner will pay Delta's direct costs in expediting any such delivery, such as handling or shipping charges, and Delta will invoice the Delta Partner for all such costs.

3. PRICES, DISCOUNTS AND TERMS OF SALE

- 3.1 Prices to the Delta Partner shall be at Delta's list prices as in effect at time of order (except where the time of delivery is anticipated to be more than sixty (60) days from the date of the order, in which case the applicable prices shall be those in effect at time of shipment), less the applicable discount as may be set forth by Delta in Schedule A. Payments by the Delta Partner for all Products will be made in the currency designated in Schedule A, and all dollar amounts set out or referred to in this Agreement will be deemed to be in the currency so designated. The currency designated in Schedule A may be changed by Delta upon sixty (60) days prior written notice of same to the Delta Partner.
- 3.2 Delta's current Price List for Products is set out in the Delta Online Ordering website (<https://orders.deltacontrols.com/default.asp>), and Delta may at any time change prices, discounts or other terms of sale affecting Products, by issuing new price schedules, bulletins or other notices. In the event Delta increases the price to the Delta Partner for any Products, the Delta Partner will be given sixty (60) days prior written notice of same from Delta.

4. PAYMENT TERMS AND TAXES

- 4.1 Where Delta has in writing approved the Delta Partner's credit, the standard terms of payment for all Delta invoices to the Delta Partner will be Net Cash thirty (30) days from the date of delivery of Products to the carrier for shipment of same to or to the order of the Delta Partner. In such event, payment will be made in the currency specified in Schedule A by corporate cheque or by bank transfer to a bank designated by Delta. Where the Delta Partner fails to make any payment within the period specified in this Section, Delta may revoke the Delta Partner's credit approval upon notice to the Delta Partner. Thereafter, payment for all Delta invoices will be paid pursuant to Section 4.2 of this Agreement, unless and until Delta provides the Delta Partner with written notice of the reinstatement of credit approval.
- 4.2 Where Delta has not provided written approval of the Delta Partner's credit, or where such approval has been revoked, payment for all Delta invoices to the Delta Partner will be as follows:
- (a) Subject to subsection (b), below, payments are to be made prior to the shipment by Delta of any Products in the currency specified in Schedule A:
- (i) by wire transfer to a Canadian bank and account designated by Delta;
- (ii) in the case of an order for Products being for a dollar amount in excess of \$10,000, in addition to the payment options set out above, by bank guarantee in the form of an irrevocable letter of credit, drawn on a bank acceptable to Delta, acting reasonably, and to be held at a Canadian bank designated by Delta, for the benefit of Delta; or
- (b) at the Delta Partner's option, the Delta Partner may elect to establish an irrevocable letter of credit (the "Credit L/C") to be drawn on a bank acceptable to Delta, acting reasonably. The Credit L/C is to be held at a Canadian bank designated by Delta, for the benefit of Delta. Where a Credit L/C is so established, Delta will permit the shipment of Products to the Delta Partner up to one and one-half times the Credit L/C amount on a Net Cash thirty (30) day basis. Where Delta does not receive payment from the Delta Partner (by either wire transfer, or corporate cheque drawn on a bank acceptable to Delta) within such period from the date of shipment, or receives incomplete payment therefor, the terms of the Credit L/C will permit Delta to draw on it in respect of all outstanding invoices upon presentment to the bank holding the Credit L/C of any such overdue invoices and of evidence of shipment. Until another Credit L/C is once again established (for a dollar amount acceptable to Delta), all payments thereafter will be made in accordance with the terms of subsection (a), above.
- 4.3 The Delta Partner will have fifteen (15) days from the date of each invoice to submit to Delta, in writing, any objection that the Delta Partner may have concerning the charges appearing on the invoice. Thereafter, the Delta Partner will be considered to have acknowledged the accuracy of the invoice.
- 4.4 Delta's list prices for Products (see Schedule B) do not include sales, use, excise, goods and services, personal property or any other taxes, duties or other imposts (collectively "Taxes") that may be applicable, and all such Taxes applicable to the sale or use of Products thereunder or otherwise applicable to the transactions governed by this Agreement, will be

paid by the Delta Partner, or in lieu thereof, the Delta Partner will provide Delta with a tax-exemption certificate acceptable to Delta and the relevant taxing authorities.

- 4.5 On any overdue account, the Delta Partner will pay service charges at the lesser rate of either two percent (2%) per month or the maximum permitted by law. In addition, Delta may suspend deliveries and may either decline orders or decline to apply the Delta Partner's discounts to orders placed while a payment is outstanding.
- 4.6 Every order placed by the Delta Partner will be priced according to Section 3.1 of the Agreement.

5. INFORMATION FURNISHED TO DELTA PARTNER, TRADEMARK MATTERS, AND SOFTWARE LICENSES

- 5.1 The Delta Partner will not divulge or use for its own purposes any Confidential Information (as defined below) except to the extent that Confidential Information must be used in performing the Delta Partner's obligations under this Agreement. In addition, the Delta Partner will take any and all necessary precautions to prevent any disclosure of Confidential Information by any and all of its employees, officers, directors, representatives and agents. The parties agree that all information furnished to or acquired by the Delta Partner in respect of Delta, its business or the Products, except publicly disclosed sales and advertising material, will be deemed as "Confidential Information" under this Agreement. Without limiting the generality of the foregoing, Confidential Information will include, but will not be limited to, information relating to product pricing strategies, Delta's business plans, customer lists, trade secrets, product development plans, and any material or other information designated by Delta as confidential from time to time. Confidential Information will not include any information which was known by the Delta Partner prior to the disclosure of such information from Delta, or information which is generally available to the public other than as a result of a breach by any person of an obligation of confidentiality owed to Delta. The Delta Partner acknowledges that, as between the parties, all right, title and interest in and to all Confidential Information is held by Delta. Upon the expiration or termination of this Agreement, all Confidential Information will be returned to Delta.
- 5.2 The Delta Partner acknowledges and agrees that the trademark DELTA CONTROLS and any and all other trademarks or trade names appearing on or used in connection with any of the Products are the property of Delta and any use by the Delta Partner of any such marks or names whatsoever will accrue solely to the benefit of Delta. No trademark or trade name of Delta may be used upon, or in connection with, any article which may be sold by the Delta Partner but which is not one of the Products. The Delta Partner will not in any way alter, deface, remove, cover up or mutilate in any manner whatsoever, any trademark, serial or model number, symbol, brand or trade name which Delta may attach or affix to or make a part of any of the Products. The Delta Partner will not affix to any Product any additional label, symbol, trademark, brand or trade name, without the prior written approval of Delta.
- 5.3 The Delta Partner agrees not to use as part of its corporate or business name or otherwise, any of Delta's trademarks or trade names, or any other trademark, or trade name so resembling any of them (or any translation of any such trademarks or trade names into any language) so as to be likely to cause confusion, or deception, or in any manner which Delta considers is detrimental or objectionable. The Delta Partner will have the right to identify itself as an authorized distributor of Delta's Products during the term of this Agreement but is granted no license hereunder.
- 5.4 The Delta Partner will grant Delta administrative control (including providing Delta with any password, login, key or other information necessary to exercise control) over any domain name the Delta Partner registers, acquires or licenses that is the same as or confusingly similar to any trademark, trade name or domain name of Delta and will permit Delta to redirect web traffic in respect of the domain name if Delta considers any content objectionable on the website to which the domain name directs.
- 5.5 The Delta Partner's obligations under this Article 5 will survive the termination or expiration of this Agreement.
- 5.6 The Delta Partner acknowledges and agrees that any breach by it of any of its obligations in this Article 5 would result in damages to Delta that could not adequately be compensated by monetary award. Accordingly, in the event of such a breach by the Delta Partner, in addition to all other remedies available to Delta in law or equity, Delta shall be entitled as a matter of right to apply to a court of competent jurisdiction for such relief by restraining order, injunction, decree or otherwise, as may be appropriate to ensure compliance with the provisions of this Article 5 and in protection of Delta's Confidential Information, trademarks, and trade names.
- 5.7 Regardless of any other part of this Agreement, any computer software which is itself a Product or which is contained within any Product (collectively, a "Software Product") and which is ordered by the Delta Partner from Delta will be licensed, but not sold, by Delta to the Delta Partner. The Delta Partner is authorized to sublicense such Software Products to its customers on the terms and conditions set out in Delta's form end user software license agreement (the "End User License"). The present form of the End User License is attached as Schedule D.

- 5.8 The Delta Partner will ensure that a copy of the End User License is given to each customer of a Software Product (and that the terms of such End User License are brought to the attention of each such customer) **prior to** the payment by such customer of any fees for such Software Product. The Delta Partner agrees to complete all “blanks” in the End User License (i.e. with respect to addresses and contact information, and the product name of the relevant Software Product). Delta will have no liability to the Delta Partner or any of its customers with respect to any Software Product other than as expressly provided for in the End User License, except that Delta will indemnify the Delta Partner in respect of any warranties made by the Delta Partner in the End User License. The Delta Partner agrees to consult with Delta in respect of all warranty and/or liability matters arising out of the licensing of any Software Products and agrees to immediately notify Delta in writing in the event that the Delta Partner receives notice of any warranty claim in respect of any Software Product. All or part of the End User License may be revised from time to time by Delta to reflect changes in Delta licensing policies upon thirty (30) days written notice to the Delta Partner.

6. OBLIGATIONS OF THE DELTA PARTNER

- 6.1 While Delta and the Delta Partner agree that they will work together in good faith in the performance of this Agreement and in satisfying customers of the Products, the Delta Partner acknowledges and agrees that notwithstanding any reference to “Delta Partner” it is not at law Delta’s partner and the Delta Partner agrees not to represent itself as such or act as such. Further, the Delta Partner will not act as an agent, employee, joint venturer or legal representative of Delta for any purpose whatever, and will have no power or authority to incur or create any obligations or liability of any kind for, or on behalf of, Delta. The Delta Partner will conduct its business as an independent contractor, and all persons employed in the conduct of such business will be employees of the Delta Partner and all costs and obligations incurred by reason of any such employment will be for the account and expense of the Delta Partner.
- 6.2 The Delta Partner will, at its own expense, use its best efforts to market, sell and support the Products in the Territory.
- 6.3 The Delta Partner agrees not to sell or offer for sale any product which competes with any of the Products, including, without limitation, any DDC product which is not a Delta Product with the exception of existing owners extending and servicing existing HVAC DDC systems, unless otherwise noted in Schedule G.
- 6.4 The Delta Partner will not, directly or indirectly, sell any Products to any National Account Customer, as defined in Schedule E, except at Delta’s request pursuant to Section 6.5 of this Agreement, or unless the Delta Partner is designated by Delta in writing as a representative for such National Account Customer.
- 6.5 In the event that the Delta Partner is designated as a representative for any National Account Customer, the Delta Partner agrees to use the services of other distributors of Delta (i.e. other “Delta Partners”) upon Delta’s request, acting reasonably, in supplying, installing, and/or servicing Products for any such customers where any project and/or installation for any such National Account Customer is located outside of the Territory.
- 6.6 The Delta Partner will maintain the facilities and personnel needed to provide, on a timely basis, the information and assistance needed by its customers and prospective customers, consistent with the standards of a competent and efficient distributor of such Products, or as may be more particularly specified from time to time by Delta.
- 6.7 The Delta Partner will achieve, and use best efforts to exceed, the “Minimum and Projected Annual Purchase Quotas for Delta Manufactured Products” set out in Schedule A of this Agreement. The Projected Annual Purchase Quotas, will be reviewed with the Delta Partner at time of annual agreement renewal and may be adjusted by Delta.
- 6.8 The Delta Partner will enrol suitable representatives of the Delta Partner in the first available technical implementation and service training classes of Delta for all Products that the Delta Partner intends to market and support. The Delta Partner will be responsible for ensuring that its personnel regularly enrol in Delta’s implementation and training classes in order to sell, engineer, install and service the Products competently and to achieve and maintain the level of skill and knowledge required by Delta, acting reasonably.
- 6.9 The Delta Partner assumes sole responsibility and liability for the installation and servicing of the Products, subject to Delta’s warranty as provided in Section 12 of this Agreement.
- 6.10 The Delta Partner will send suitable representatives to the applicable Annual Delta Partner Conference at least once every two years. The Delta Partner will also send suitable representatives to Regional Business meetings as scheduled and as appropriate subject to meeting content.
- 6.11 Other than with respect to any advertising material provided by Delta, the Delta Partner will obtain the prior written approval of Delta for the use of any of Delta’s trademarks and/or trade names on or in connection with any advertising, and all such advertising by the Delta Partner will contain proper notices of Delta’s ownership of such trademarks and trade names. Further, the Delta Partner will provide copies of all such advertising to Delta prior to its use.

- 6.12 The Delta Partner will comply with all applicable laws, including all federal, provincial, state and municipal laws and by-laws, regulations, orders and rules of any kind relating to or affecting the Delta Partner and/or the distribution of the Products. Further, the Delta Partner will use reasonable efforts to protect and promote the reputation and goodwill of the Products and Delta.

7. DELTA'S OBLIGATIONS

- 7.1 From time to time, Delta will furnish to the Delta Partner such catalogues, circulars and other advertising material of Delta in respect of the Products as may be reasonably requested by the Delta Partner. All other advertising of the Delta Partner will be at the Delta Partner's expense
- 7.2 From time to time Delta will offer sales, implementation, service and engineering training classes, for the benefit of its distributors, including, the Delta Partner. Delta implementation and training classes are provided primarily through online training facilities (<http://training.deltacontrols.com>) and in classroom venues from time to time by special announcement only. At the discretion of Delta, any such training may be offered either free of charge, or for a fee covering Delta's costs.

8. TERM OF AGREEMENT

- 8.1 This Agreement will remain in full force and effect until terminated by either Delta or the Delta Partner in accordance with its terms. This Agreement will remain in effect for one (1) year from the date hereof, subject to earlier termination as provided in this Agreement. This Agreement shall automatically renew for additional one (1) year terms if not terminated as provided in this Agreement. Either party may terminate this Agreement without cause at the end of the each one (1) year term by providing the other party ninety (90) days prior written notice. Either party may terminate this Agreement for cause at any time upon at least twenty (20) days prior written notice to the other. Cause shall be defined as failure to comply with the terms of the Agreement.

9. TERMINATION OF AGREEMENT

- 9.1 This Agreement and the rights granted to the Delta Partner in this Agreement will terminate automatically, and without notice to the Delta Partner, in the event of the insolvency of the Delta Partner, the inability of the Delta Partner to meet its financial obligations as they become due, the filing by or against the Delta Partner of a voluntary or involuntary petition under any bankruptcy, insolvency, reorganization, arrangement or receivership law, the appointment by a court of a temporary or permanent receiver, trustee, or liquidator for the Delta Partner or for any substantial part of its assets, or the making of an assignment by the Delta Partner for the benefit of its creditors.
- 9.2 Delta will have the option to immediately terminate this Agreement upon notice in writing to the Delta Partner upon the occurrence of any of the following events:
- (a) the transfer or attempted transfer by the Delta Partner, by operation of law or otherwise, of any interest in or right, privilege, or obligation under this Agreement or of the assets of the Delta Partner required for the conduct of the Delta Partner's operations, or in the event of any change, however accomplished, without Delta's prior written consent, in the direct or indirect ownership, control or operating management of the Delta Partner;
 - (b) the dissolution of the Delta Partner or the failure of the Delta Partner for any reason to carry on business;
 - (c) the failure of the Delta Partner to pay when due any sum payable to Delta pursuant to this Agreement or any other agreement between Delta and the Delta Partner, and the Delta Partner failing to remedy such failure within thirty (30) days after receiving written notice of the same from Delta;
 - (d) the sale or offering for sale by the Delta Partner of any product which competes with any of the Products, including, without limitation, the sale or offering for sale of any DDC product which is not a Delta Product; with the exception of clause 6.3 of this agreement; or
 - (e) the failure of the Delta Partner to fulfil any provision or obligation under this Agreement, or
 - (f) the failure of the Delta Partner to fulfil responsibilities defined in a completed and executed National Accounts Policy/Agreement.

10. REACQUISITION OF PRODUCTS UPON TERMINATION

- 10.1 Upon the termination of this Agreement by Delta for reasons other than any of those set out in Article 9, the Delta Partner will be entitled to return to Delta's facility in British Columbia, Canada, at the Delta Partner's sole risk and expense, all unused, undamaged and unsold Products in the Delta Partner's stock as at the effective date of termination which were

purchased by the Delta Partner from Delta prior to the Delta Partner receiving notice of termination, provided such Products are in first class saleable condition, are of then-current models, have not been altered outside of Delta's factory, and, as applicable, were not previously incorporated into or attached to any Product. The price to be paid to the Delta Partner for such Products shall be the invoice price paid by the Delta Partner (exclusive of freight or other shipping expenses) at the time such Products were purchased from Delta less twenty-five (25%) percent. Delta has no obligation to accept the return of Products upon termination of this Agreement pursuant to Article 9 or upon the termination of this Agreement by the Delta Partner for any reason whatsoever.

11. OBLIGATIONS UPON TERMINATION

11.1 Upon the termination or expiration of this Agreement for any reason, the Delta Partner will:

- (a) cease to be an authorized distributor of Products and the Delta Partner will pay Delta all sums owing to Delta under this Agreement or any other agreement between the parties;
- (b) discontinue the use of all trademarks and/or trade names of Delta by removing, at its own expense, all signage containing any of the same, and destroy or cease, as appropriate, any form of communication identifying the Delta Partner as an authorized distributor of Products;
- (c) cease to use on any website, whether in visible text or otherwise, terms or visual elements that are the same as or are confusingly similar to trademarks or trade names of Delta and assign and transfer to Delta any domain name it has registered, acquired or licensed that is the same as or confusingly similar to any trademark, trade name or domain name of Delta;
- (d) provide to Delta within 30 days of such termination or expiration a list of all customers of the Delta Partner who have been supplied with any Products by the Delta Partner (such list to include the addresses and phone numbers for such customers and a list of the Products supplied to such customers);
- (e) provide to Delta, at Delta's request, any and all of the information and materials required to be returned to Delta pursuant to Section 5.1; and
- (f) without limiting subsection 11.1(e), the Delta Partner will return all Product lists, catalogues, circulars, sales leaflets, instruction and service manuals, and advertising materials that were furnished by Delta to the Delta Partner without cost.

11.2 If the Delta Partner fails to comply with any of the requirements of this Article 11, then the Delta Partner will reimburse Delta for all costs and expenses, including reasonable attorneys' fees and disbursements, incurred by Delta in effecting or enforcing compliance with it.

12. WARRANTIES, RETURNS

12.1 The warranties set out in this Section 12 of this Agreement are made to the end customer of the Products. The Delta Partner will specifically incorporate the terms of the warranties set out below in each contract for the sale or licensing (as applicable) of Products to its customers. The Delta Partner will not make or give any other warranties on Products except (and only to the extent) as set out below.

12.2 Products (other than any computer software Products which are covered by Section 12.9 of this Agreement) manufactured by Delta are warranted to be free from defects in workmanship and material but only as to such defects discovered within twenty-four (24) months from the date of shipment to the Delta Partner for which notice has been given in writing to Delta prior to the expiration of such 24 month period (the "Limited Warranty"). Delta's sole obligation under the warranty is to provide, without charge, parts and factory labour to remedy any defects of which notice has been given, as set out above, or to replace the defective components of any such Products, at its discretion. Any claim made pursuant to the Limited Warranty, must be made in writing and received by Delta within thirty (30) days after the discovery of the defect. THIS LIMITED WARRANTY IS THE ONLY EXPRESS WARRANTY THAT IS PROVIDED TO THE DELTA PARTNER AND ITS CUSTOMERS. The Limited Warranty gives the Delta Partner and its customers specific legal rights, and either or both may also have other rights which may vary from jurisdiction to jurisdiction. For example, some jurisdictions do not allow limitations on how long certain types of warranties last, in which case such limitations may not apply to the Delta Partners or its customers.

12.3 The above warranty is contingent upon the proper installation, use and maintenance of the Products and will be void in the event of any unauthorised repair or disassembly, or any modification other than normal modifications as are described in Delta's guidelines and/or specifications for any Products. The Limited Warranty does not cover any adjustment, repair or replacement that may be required because of accident, unusual physical, electrical, or electromechanical stress, lightning strike, neglect, misuse, the failure of electrical power, environmental air conditioning, humidity control,

- transportation, or rotating media not furnished by Delta, the operation with media not meeting or maintained in accordance with Delta's guidelines and/or specifications, or any other causes resulting from other than ordinary use.
- 12.4 The Delta Partner will promptly return to Delta, freight prepaid, any component of any Product which has failed during the warranty period. If examination reveals any manufacturing defect, Delta will either repair or replace, at Delta's option, the component and return it to the Delta Partner freight prepaid.
- 12.5 The Delta Partner and its customer's **exclusive** remedy for any breach of the Limited Warranty is as set forth above. THE DELTA PARTNER AND ITS CUSTOMERS ARE NOT ENTITLED TO ANY DAMAGES, INCLUDING BUT NOT LIMITED TO DIRECT, GENERAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES, except in jurisdictions where such exclusions are prohibited by law. Section 12.7 of this Agreement applies to the Limited Warranty and the terms of that Section are made a part of the Limited Warranty by this reference.
- 12.6 Except to the extent prohibited by applicable law, the above Limited Warranty is the only warranty made to the Delta Partner and its customers and is provided in lieu of any other warranties (if any) created by any documentation or packaging or implied by law, and in particular, and without limitation, the United Nations Convention On Contracts For The International Sale of Goods shall not apply to any Products whatsoever. DELTA HEREBY DISCLAIMS ALL OTHER WARRANTIES, EITHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO ANY (IF ANY) IMPLIED WARRANTIES OF QUALITY, PERFORMANCE, MERCHANTABILITY, DURABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE (INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF FITNESS FOR HIGH RISK ACTIVITIES — see Section 12.10 below), OR LACK OF NEGLIGENCE.
- 12.7 TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL DELTA BE LIABLE FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOSS OF PROFITS OR OF CONFIDENTIAL OR OTHER INFORMATION, FOR BUSINESS INTERRUPTION, FOR PERSONAL INJURY, FOR FAILURE TO MEET ANY DUTY INCLUDING OF GOOD FAITH OR OF REASONABLE CARE, FOR NEGLIGENCE AND FOR ANY OTHER PECUNIARY OR OTHER LOSS WHATSOEVER) ARISING OUT OF OR IN ANY WAY RELATED TO THE USE OF OR INABILITY TO USE THE PRODUCTS, EVEN IF DELTA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 12.8 IF DESPITE THE FOREGOING LIMITATIONS, DELTA SHOULD BECOME LIABLE TO THE DELTA PARTNER OR ITS CUSTOMERS IN RESPECT OF ANY PRODUCT OR ANY WARRANTY IN RESPECT OF THE SAME, THE ENTIRE LIABILITY OF DELTA WILL BE THE LESSER OF THE ACTUAL AMOUNT OF LOSS OR DAMAGE SUFFERED BY THE CLAIMANT AND THE AMOUNT ACTUALLY PAID TO DELTA IN RESPECT OF THE RELEVANT PRODUCT.
- 12.9 Any Product which is computer software will be covered by the warranty provided in Delta's form of End User License Agreement (attached as Schedule D), as amended or revised from time to time, which warranty is subject to compliance by the Delta Partner of the terms set out in Section 5 of this Agreement.
- 12.10 The suitability of Products for the protection of life and/or property is expressly excluded from the warranty provided by Delta. Products manufactured and/or supplied by Delta are intended solely as supplementary to and in no way as a substitute for, those devices required by statute, code, or good practice for the protection of life or property. Products manufactured and/or supplied by Delta for smoke control must be UL864 certified and implemented in accordance to the engineering guidelines thereof. Any other such application of any Product will be considered not in accordance with Delta's guidelines and/or specifications and, in no case, will any liability accrue to Delta for any loss, damage or injury caused by, arising out of, or resulting from any such application.
- 12.11 Further, the Products are not fault-tolerant and are not designed, manufactured or intended for use or reliance in any situation in which any partial or total failure of the Products could lead to death, personal injury or severe physical or environmental damage, or for use as on-line control equipment in hazardous environments requiring fail safe performance, such as (but without limitation) in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, life support machines, or weapons systems.
- 13. LIABILITY AND INDEMNIFICATION**
- 13.1 The Delta Partner agrees to defend, indemnify and hold Delta, its officers, agents and employees, harmless from and against any and all claims, liabilities or costs (including legal fees on a solicitor and client basis) for any loss, damage or injury caused by, arising out of, or resulting from the distribution, sale or licensing of Products by the Delta Partner or any other activities carried on by the Delta Partner pursuant to this Agreement or otherwise in connection with any Products, except and to the extent that any such claims or damages are covered by the Limited Warranty or are the result of the wilful misconduct or gross negligence of Delta.
- 13.2 Delta will defend any suit or proceeding brought against the Delta Partner based upon a claim that Products supplied to the Delta Partner by Delta constitute a direct infringement of any duly issued patent, copyright or other intellectual property right of any other person. Delta must be promptly notified of any alleged infringement claim made against the

Delta Partner, otherwise the foregoing provision will not apply. Delta will not be obligated to defend or be liable for cost and damages, if any alleged infringement results from any compliance by Delta with the Delta Partner's own specifications or designs, or from a modification or alteration of a Product or Part by the Delta Partner or any person other than Delta. Further, in the event of any such threatened or actual suit or proceeding, the Delta Partner agrees to provide such information and assistance in the defence or settlement of the same as may be reasonably requested by Delta, and Delta will not be responsible for any cost, expense, or compromise incurred or made by the Delta Partner without Delta's prior written consent, such consent not to be unreasonably withheld.

14. ARBITRATION

- 14.1 Other than as set out in Section 14.2, if any dispute arises between the parties to this Agreement, touching the meaning of this Agreement, or the rights and liabilities of the parties hereto, the same will be referred to arbitration, conducted pursuant to the *Commercial Arbitration Act* (British Columbia), as amended and in force from time to time (the "Act"). Any such arbitration will be conducted in the English language, in Vancouver, B.C., Canada, and by a single arbitrator who will be mutually agreed to by the parties, failing which such arbitrator will be appointed pursuant to the provisions of the Act. Any such arbitration shall be conducted using the rules of procedure of the British Columbia International Commercial Arbitration Centre in effect as of the date hereof. Where no such rules exist as of the date hereof, such rules in effect as of October 1, 1997 shall apply. The decision and/or award of the arbitrator will be final and binding on the parties and not subject to appeal except as provided in the Act, and any such decision and/or award may be enforced in the same manner as a judgement or order to the same effect, pursuant to the provisions of the Act. The costs of such arbitration will be shared equally between the parties unless otherwise determined by the arbitrator.
- 14.2 Notwithstanding Section 14.1, Delta may take any and all such legal action it deems necessary or desirable in order to seek any and all legal and/or equitable remedies available (including, without limitation, restraining order, or injunctive relief) in order to protect Delta's Confidential Information or any intellectual property right or other proprietary right of Delta.

15. GOVERNING LAW

- 15.1 This Agreement will be governed by and construed in accordance with the internal and domestic laws of British Columbia, Canada without giving effect to the conflict of law rules thereof, and the parties hereby irrevocably submit to the non-exclusive jurisdiction of the courts of the Province of British Columbia with respect to this Agreement.

16. GENERAL

- 16.1 The Delta Partner and Delta agree to co-operate in good faith with each other in connection with any action or step to be taken in connection with this Agreement.
- 16.2 Delta may set-off any amounts owed by it to the Delta Partner against any amounts owed by the Delta Partner to Delta.
- 16.3 This Agreement constitutes the entire agreement between the parties respecting the subject matter hereof and supersedes all prior communications, agreements and discussions between the parties, and no amendment will be valid or binding except as may be agreed to in writing by each party or as may be expressly contemplated by this Agreement. A waiver by either party of any of the terms and conditions of this Agreement at any time or from time to time will apply only to the particular instance or instances for which such waiver has been given and only for the specific purpose given.
- 16.4 In this Agreement, references to "this Agreement" means this agreement, including the exhibits hereto, as amended and in effect from time to time, and any reference to a designated Article, Section, Schedule or other subdivision is a reference to such Article, Section, Schedule or other subdivision of this Agreement.
- 16.5 Section headings are for convenience only and do not form a part of this Agreement and are not intended to be used for purposes of interpretation of the text hereof.
- 16.6 Any notice, direction or communication required or permitted to be given under this Agreement will be in writing and will be sufficiently given if it is personally delivered, mailed by prepaid registered or certified mail, or telecopied to the other party to the attention of the president of such other party at the address and/or facsimile number as set out above for such party, or to such other address or facsimile number as any party may from time to time give notice of in writing. Any notice, direction or other communication given in accordance with this Section will be deemed to have been given or made and received, as applicable, on the date of delivery, if delivered, on the fifth day after mailing, if mailed by prepaid registered or certified mail, or on the day after sending if telecopied and if confirmation of receipt of such telecopy by the receiving machine is provided by either of the sending machine or the receiving machine.

- 16.7 If any provision herein or portion thereof is for any reason held by a court of competent jurisdiction to be invalid, illegal or unenforceable, such invalid, illegal or unenforceable provision will be severable from this Agreement and the remainder of this Agreement will be construed as if such provision or part thereof had been deleted from this Agreement.
- 16.8 This Agreement will ensure to the benefit of and be binding upon the respective successors and permitted assigns of the parties, and may not be assigned by the Delta Partner without the prior written consent of Delta. Delta may assign this Agreement to a purchaser of all or substantially all of the business and/or assets of Delta and in such event will thereupon be released from its obligations under this Agreement.
- 16.9 This Agreement shall not be effective until authorised and executed by the Vice President or another duly authorized officer of Delta.

17. DELTA PARTNER PERFORMANCE AND CUSTOMER SATISFACTION AGREEMENT

- 17.1 The Delta Partner agrees to achieve as a minimum, the sales and market share as set in Schedule A of this agreement. Failing to achieve the minimum sales and market share goals may result in the Delta Partner relinquishing territory status and moving to a less aggressive price list multiplier for a probationary period. Further failure to maintain sales and market share goals will result in termination of the Agreement.
- 17.2 The Delta Partner will allow Delta to survey and audit at random the end users within the Territory to ensure the product has been installed to the satisfaction of Delta and the end user as per Schedule F. Failure to maintain end user customer satisfaction may result in the Delta Partner relinquishing territory status and moving to a less aggressive price list multiplier for a probationary period. Failure to comply with the industry standards for installation and system operation will result in termination of the Agreement.

18. INITIAL ORDER

- 18.1 The initial order is defined in Schedule C. Modifications if any to this Initial Order must be completed with the Delta Regional Sales Manager prior to execution of this Agreement. Execution of this Agreement serves as Delta’s authority to process the Initial Order immediately as defined in Schedule C. Should a purchase order number be required, it is your responsibility to provide same below.

PO Number _____

In witness whereof, the parties hereto have executed this Agreement as of the date set out above.

Delta Partner: [PARTNER NAME]

by

([NAME AND TITLE OF SIGNATORY])

Date

Delta Controls Inc.

by

(John V. Nicholls - President)

Date

by

(Kurt Graves – Director, Global Inside Sales)

Date

ATTACHMENTS

SCHEDULE	A	Territory and Price List Multiplier
SCHEDULE	B	Price List: https://orders.deltacontrols.com
SCHEDULE	C	New Partner – Minimum Initial Order
SCHEDULE	D	End User Software Use Agreement
SCHEDULE	E	National Accounts Policy/Agreement
SCHEDULE	F	End User Survey
SCHEDULE	G	Competitive Products Declaration and Acknowledgement
SCHEDULE	H	Data Processing Agreement

SCHEDULE A

Territory and Price List Multiplier

Territory

The Delta Partner's Territory is defined as: General Outline of Territory

Exclusive Territory to include: List Exclusive Counties/Areas

Non-Exclusive Territory to include: List Non-Exclusive Counties/Areas

Delta, in its sole discretion, may adjust the Territory from time to time.

National Account Customers

Notwithstanding the foregoing territory, Delta shall maintain National Account Customers, as defined in Schedule E.

Out of Territory Sales:

Out of territory sales may be allowed after written approval from the local partner, the remote partner and Delta. Financial and operational agreements between the involved entities will be set up independent of Delta. Specific guidelines for any bid shall be set forth in the subject agreement.

Currency For Payments

CDN Dollars USA Dollars

Discount Terms for Delta Manufactured Products:

Annual Partner Purchases (Jan 1 – Dec 31)
Discount Rate (from list price): Percentage Discount%

multiplier (for list price): Multiplier –to be multiplied by: List Price

Discount Terms for Delta Manufactured Products: (After 3rd year of operation as a Delta Partner)

Annual Partner Purchases (Jan 1 – Dec 31)	% Discount	Multiplier
A \$200,000 +	80%	0.20
B \$100,000 - \$199,999	79%	0.21
C \$50,000 - \$99,999	77%	0.23
D \$0 - \$49,999	75%	0.25

Reaching the volume milestone at any time will automatically qualify you for the next best multiplier. Failing to maintain volume over the fiscal year (Jan 1 – Dec 31) will move you to the next higher multiplier.

Maintained Growth for Delta Manufactured Products:

Minimum Annual Purchase Quota for the current year of the Agreement is \$xx

All quotas are based on Delta's fiscal year beginning January 1st. The new minimum annual purchase quota will be reviewed with the Partner and adjusted by Delta from time to time.

Discount Terms for Field Devices:

Field Devices	80%	0.20
Delta Electronics	80%	0.20
Tridium	58%	0.42

Product Forecast

The Partner agrees to provide Delta with forecasts of its requirements for Products on an annual basis or as requested periodically by Delta.

Delta may update required quotas on an annual basis.

Acknowledged:

By

Delta Controls Inc.

Date

By

Partner Company Name

Date

SCHEDULE B

Price List

Upon execution of the said agreement and receipt of initial order and subsequent issuance of username and password, the Delta Partner will be able to access the most current price list located <https://orders.deltacontrols.com>.

Example

SCHEDULE C

New Partner - Minimum Initial Order

	Net Price
[Business Development Manager to complete this section]	
TOTAL	
	\$US

Downloadable documents

<p>Delta Brand Guidelines https://support.deltacontrols.com/Marketing/DeltaBrandingGuidelinesLogos</p>
<p>RMA Policy & Procedures https://support.deltacontrols.com/foswiki/bin/view/RMA/WebHome</p>

***Note** The contents of the above listed initial purchase may be modified upon mutual agreement between Delta and the Delta Partner.

SCHEDULE D

End User Software Use Agreement

NOTICE OF LEGAL AGREEMENT: You should carefully read the following terms and conditions. INSTALLING (OR AUTHORIZING INSTALLATION), COPYING OR USING THE SOFTWARE PRODUCT CONSTITUTES YOUR AGREEMENT TO BE LEGALLY BOUND BY THE TERMS AND CONDITIONS OF THIS END USER LICENSE AGREEMENT (“Agreement”). If you are not willing to

agree, _____ (the “Distributor”) is neither

authorized nor willing to license the Software Product to you and you are not authorized to install, use or copy it. **If you do not accept this Agreement, you should promptly return the package as indicated in the Limited Warranty below and the license fee you paid will be refunded.**

As used in this Agreement, “you” means the licensee (either an individual or one entity represented by an agent who is duly authorized to legally bind the entity or individual to this Agreement) of the Software Product. “Software Product” means _____ (insert name of software product), the media in which it exists (e.g. CD or diskette) and any accompanying documentation (whether printed or electronic).

Distributor grants you a nonexclusive license to use the Software Product, provided that you agree to the following:

1. Grant of License and Ownership of Software Product

The Software Product is being licensed, not sold to you. The Software Product is protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. The title and all copyrights and ownership rights for the Software Product and related documents (printed and electronic) are retained by DELTA CONTROLS INC., the licensor of Distributor. You may not copy, alter, or modify the Software Product or any of the documentation for it, or do anything else that would infringe the rights of Distributor or Delta Controls, Inc., except as expressly authorized by this Agreement.

2. Use of the Software

You may receive the Software Product in more than one medium. Regardless of the type or size of the medium, you may use one copy of the Software Product solely for your own internal purposes on only one single computer at a time, unless multi-user support is expressly included for a specified maximum number of simultaneous users. You may copy the Software Product into any machine-readable form for backup purposes.

3. Other Rights and Limitations

You may not reverse engineer, decompile, or disassemble the Software Product, except and only to the extent that such activity is permitted by applicable law notwithstanding this limitation. The Software Product is licensed as a single product and its component parts may not be separated for use on more than one computer. You may not rent, lease or lend the Software Product to others.

You may permanently transfer all of your rights under this Agreement to another, provided you retain no copies, you transfer all of the Software Product (including all component parts, the media and printed materials, any upgrades and this Agreement), and the recipient agrees to the terms of this Agreement. If the Software Product is an upgrade, any transfer must include all prior versions of the Software Product.

If the Software Product is received in more than one medium you may not loan, rent or lease, or otherwise transfer the other medium to another user or location, except as part of the permanent transfer (as provided above) of the Software Product.

4. Limited Warranty and Limitation of Liability

LIMITED WARRANTY. Distributor warrants that the Software Product will perform substantially in accordance with its accompanying documents (printed or electronic) on the date of receipt of the Software Product and for an additional period of twenty-four (24) months from that date. **THIS LIMITED WARRANTY IS THE ONLY EXPRESS WARRANTY THAT IS PROVIDED TO YOU.**

You also have an implied warranty, **BUT ONLY AS TO DEFECTS DISCOVERED DURING THE PERIOD OF THIS LIMITED WARRANTY (24 months)**, and only if an implied warranty is created by your state or other jurisdiction and federal or state law prohibits disclaimer of it (this implied warranty, if applicable, and the above limited warranty are, collectively, the “Limited Warranty”). **AS TO ANY DEFECTS DISCOVERED AFTER THE 24 MONTH PERIOD, THERE IS NO WARRANTY OF ANY**

KIND. Some states or other jurisdictions do not allow limitations on how long an implied warranty lasts, so the above limitation may not apply to you.

To the extent allowed by applicable law, this Limited Warranty is only made to you, the first licensed user of the Software Product, and there are no third party beneficiaries of this Limited Warranty. This Limited Warranty is not intended for and does not apply to anyone else (except as required by law), including anyone to whom you make any authorized transfer of this Agreement.

YOUR EXCLUSIVE REMEDY. Distributor's and its suppliers' (including Delta Controls Inc.) entire liability and your exclusive remedy shall be, at Distributor's option, (a) for Distributor to provide commercially reasonable technical support efforts to repair any defects, or (b) replace the Software Product, or (c) refund the license fee you paid for the Software Product which is returned to Distributor with a copy of your receipt. You may exercise this remedy without charge, except that you are responsible for any expenses you may incur. Any replacement software will be warranted for the remainder of the original warranty period or thirty (30) days, whichever is longer. To exercise your remedy, contact:

Distributor: _____

ATTN: _____

(insert name, title or department responsible for warranty obligations)

Telephone: _____

LIMITATIONS ON REMEDIES AND DAMAGES. Your **exclusive** remedy for any breach of this Limited Warranty is as set forth above. Except for any refund elected by Distributor, **YOU ARE NOT ENTITLED TO ANY DAMAGES, INCLUDING BUT NOT LIMITED TO INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES.** Section 6 of this Agreement (see below) applies to this Limited Warranty and the terms of that section are made a part of this Limited Warranty by this reference. Some states or other jurisdictions do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusion may not apply to you.

This Limited Warranty gives you specific legal rights. You may have others, which vary from jurisdiction to jurisdiction.

5. No Other Warranties

The above Limited Warranty is the only warranty made to you and is provided in lieu of any other warranties (if any) created by any documentation or packaging or implied by law. No other warranties are made with respect to the Software Product by any person, including but not limited to Distributor and its suppliers (including Delta Controls Inc.). **EXCEPT FOR THE LIMITED WARRANTY AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, DISTRIBUTOR AND ITS SUPPLIERS (INCLUDING DELTA CONTROLS INC.) PROVIDE THE SOFTWARE PRODUCT AS IS AND WITH ALL FAULTS, AND HEREBY DISCLAIM ALL OTHER WARRANTIES, EITHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO ANY (IF ANY) IMPLIED WARRANTIES OF QUALITY, PERFORMANCE, MERCHANTABILITY, DURABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE (INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF FITNESS FOR HIGH RISK ACTIVITIES - see Section 8 below), OR LACK OF VIRUSES OR LACK OF NEGLIGENCE.**

ALSO, THERE IS NO WARRANTY OF TITLE, AUTHORITY OR NONINFRINGEMENT IN THE SOFTWARE PRODUCT AND NO WARRANTY AGAINST ANY OTHER THIRD PARTY CLAIMS THAT MIGHT INTERFERE WITH YOUR ENJOYMENT OF THE SOFTWARE PRODUCT.

6. Exclusion of Incidental, Consequential and Certain Other Damages

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL DISTRIBUTOR AND ITS SUPPLIERS (INCLUDING DELTA CONTROLS INC.) BE LIABLE FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOSS OF PROFITS OR CONFIDENTIAL OR OTHER INFORMATION, FOR BUSINESS INTERRUPTION, FOR PERSONAL INJURY, FOR FAILURE TO MEET ANY DUTY INCLUDING OF GOOD FAITH OR OF REASONABLE CARE, FOR NEGLIGENCE AND FOR ANY OTHER PECUNIARY OR OTHER LOSS WHATSOEVER) ARISING OUT OF OR IN ANY WAY RELATED TO THE USE OF OR INABILITY TO USE THE SOFTWARE PRODUCT, EVEN IF DISTRIBUTOR OR DELTA CONTROLS INC. HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

7. Limitation of Liability and Exclusive Remedy

NOTWITHSTANDING ANY DAMAGES THAT YOU MIGHT INCUR FOR ANY REASON WHATSOEVER (INCLUDING WITHOUT LIMITATION, ALL DAMAGES REFERENCED ABOVE AND ALL DIRECT OR GENERAL DAMAGES), THE ENTIRE LIABILITY OF DISTRIBUTOR AND ITS SUPPLIERS (INCLUDING DELTA CONTROLS INC.) UNDER ANY PROVISION OF THIS AGREEMENT OR THE LIMITED WARRANTY, AND YOUR EXCLUSIVE REMEDY AGAINST ALL OF THE FOREGOING (except for any remedy of repair or replacement elected by Distributor under the Limited Warranty), SHALL BE LIMITED TO THE AMOUNT ACTUALLY PAID BY YOU FOR THE SOFTWARE PRODUCT.

8. High Risk Activities

The Software Product is not fault-tolerant and is not designed, manufactured or intended for use or reliance in any situation in which any partial or total failure of the Software Product could lead to death, personal injury or severe physical or environmental damage, or for use or relicense as on-line control equipment in hazardous environments requiring fail safe performance (collectively, "High Risk Activities"), such as (but without limitation) in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, life support machines, or weapons systems.

9. Termination

Distributor may terminate this Agreement if you fail to comply with any of its terms and may exercise any or all of its rights under this Agreement or under applicable law. Upon any termination, you agree to return or, at Distributor's direction, destroy all copies of the Software Product and all of its component parts and to make no further use of it.

10. Other Terms

This Agreement will be governed by the laws of the Province of British Columbia, and the laws of Canada applicable therein. The courts of British Columbia will have the non-exclusive jurisdiction to entertain any action or proceeding brought by the parties in connection with this Agreement, and the parties each irrevocably submit to the jurisdiction of such courts.

Should any provisions of this Agreement subsequently be determined to be illegal or unenforceable, such provision will at that time be deemed omitted from this Agreement, and all other provisions will be unaffected and will continue in full force and effect.

SCHEDULE E

NATIONAL ACCOUNTS POLICY/AGREEMENT

Purpose

It is the practice of Delta Controls Inc. to establish policies that contribute to the ongoing success of the Delta Partnership. This practice, grounded upon the strength of the Delta partnership, requires a robust National Account process. National Accounts are a vital component of our sales strategy.

The purpose of this policy is to establish clearly defined guidelines under which National Accounts are managed, ensuring:

- the overall quality of project execution and post-project service provided to the National Account customer meets the high standards expected of the Delta Controls brand.
- a method/mechanism whereby Partners can do business beyond a contractual, regional or national boundary

Delta Controls will approve and maintain all National Account Agreements. It is understood that the crossing of geographic boundaries for National Accounts is a practice that is permitted only in accordance with the terms and conditions of the Delta distributor agreement.

National Accounts Program

National Accounts represent a strategically important sales opportunity targeted towards national and multi-national organizations. This National Account Program is designed to address their unique characteristics, and to provide the Lead Partner with a mechanism to distribute Delta Controls product for a National Account customer's project beyond the territory defined in the Partner's Delta Controls Distributor Agreement.

The National Accounts Program has been developed to provide policies and guidelines to clarify the duties and responsibilities of the affected Partners where applicable, of Delta Controls, and to ensure that the National Account Customer receives the best possible experience in dealing with Delta Controls and the Delta Controls' Partnership.

Scope

This policy applies to the Delta Partnership on a global basis.

Definitions

National Accounts	An end user/owner, design-build firm ¹ or energy services company (ESCO), having an on-going ² business relationship with a Delta Controls Partner, and wishes for that Partner to provide them with construction services outside of a Partner's defined territory. The National Account customer will typically have their office, or initial project located within the Lead Partner territory, but there may be exceptions to this granted by Delta Controls management. The National Account will have an active, signed National Accounts Policy/Agreement with Delta Controls. This National Accounts Policy/Agreement (Schedule E) must be executed in advance of any project being started outside of the Lead Partner's territory. A listing of the current National Account Customers is available on the Delta Sales Support Site: https://support.deltacontrols.com/twiki/pub/Salestools/WebHome/Delta_National_Account.pdf .
Lead Partner	The Delta Controls Partner who has developed the on-going business relationship with the customer, and has executed the National Accounts Policy/Agreement Schedule E with the National Account. The Lead Partner has full responsibility for the customer's satisfaction. To that end, the Lead Partner will define the best approach for deploying the project.
Local Partner	Delta Controls Partner other than the Lead Partner who has distribution rights for Delta Controls products within the territory where a National Account customer project is being built.
Inside Sales Managers	Technical-sales experts employed by Delta Controls who have the skill set and level of technical expertise with Delta Controls Product and its applications to effectively provide sales-engineering and marketing support to the Delta Controls' Partnership.
Due Diligence	The process whereby Delta Controls management will assess and approve a National Account opportunity.

¹ The design-build contracting firm is to be an independent organization, not the Partner organization or Partner's parent organization, or an organization in any way financially or organizationally affiliated with the Delta Partner organization.

² A national account is active if the Delta Partner has been doing projects for the national account within the last two years.

Delta Corporate Accounts Delta Controls Corporate National Accounts

In some cases, the National Account may be direct with Delta Controls. In this case, the agreement is between Delta and the client. Delta will coordinate the Partner involvement as needed. Delta may provide engineering services and project management for the client. In all cases Delta will coordinate with the local Delta Partners to bring as much of the work as possible to the Partner(s).

Further Clarifications

What is an end user/owner?

An entity that legally owns, leases or manages the building/facility. They may or may not occupy it themselves, but they own it and/or control the ultimate purchasing decision.

What is a Design-Build Contractor?

From Wikipedia: Design-build (or design/build, and abbreviated D-B or D/B accordingly) is a project delivery system used in the construction industry. It is a method to deliver a project in which the design and construction services are contracted by a single entity known as the design-builder or design-build contractor. In contrast to "design-bid-build" (or "design-tender"), design-build relies on a single point of responsibility contract and is used to minimize risks for the project owner and to reduce the delivery schedule by overlapping the design phase and construction phase of a project.

A design-build contractor must be able to make the purchasing decision for the controls. This could include assignment of purchase of the controls to another contracting entity. The design-build contractor must engage the Partner as part of the design team, and not put the controls out for bid to competitive controls suppliers.

The Delta Partner cannot have a national account with themselves

What is an Energy Services Company?

Also known as a "Performance-Based Contractor," an ESCO typically does not own the facility (although they sometimes own it and lease it back to the end-user). The ESCO has the authority to make the purchasing decision and bring the Partner into the Project. These projects are not bid against a local controls competitor; the Partner is part of the ESCO's team (like a design-build team).

Overall Guidance and Philosophy as to what a national account should be

- A test of whether the Partner is doing the right thing or not is: does Delta have a better chance of securing the work with or without this national account agreement? If the answer is "without," then something is wrong. If local competitors are bidding against the national account Partner and the local Partner is precluded from bidding it, something is wrong. The local partner would normally represent the best chance at getting the project due to lower costs, and local market connections.
- The national account entity may be paying a premium to use the national account Partner to maintain consistency, maintain quality, reduce design review and delays. In some cases, there may be cost savings due to the streamlining of programming, graphics and design. The client may choose the National Account path so that they do not have to "re-train" a new Partner every time they start another project.
- As stated in the official National Account Policy, the Partner holding the national account is required to contact Delta to advise of the upcoming national account project in advance.
- Timely and open communication amongst the host Partner and the local Partner are critical in coordinating sales efforts and avoiding Partner-to-Partner conflicts.

Shared Activity An activity that requires clear communication, continuous dialogue, and shared responsibility between participants.

Account Management Lead responsibility for project and relationship management as it relates to the National Accounts and key influences. The National Account is the responsibility of the Lead Partner.

Partner Driven Lead Partner fully manages the needs of the Customer and the sales cycle with the assistance from Delta and Local Partner(s), where applicable.

Delta Driven Delta (Inside Sales Managers & Sales Managers) actively participate in the sales cycle. Delta and the Partner/Customer manage the delivery.

General Responsibilities

Delta Controls

In general, it is the responsibility of Delta Controls to ensure that there is a valid, and on-going business relationship between that Lead Partner and the National Account customer. Delta Controls will ensure that the National Account customer is being adequately serviced. If it is determined that the National Account customer is not being properly serviced by the Lead Partner, then at Delta Controls discretion, the National Account agreement for that National Account customer may be revoked, at any time.

It is Delta Controls responsibility to ensure that the National Account agreement provides a benefit to the Delta Controls brand, and may at any time revoke the National Account Agreement, at its sole discretion, at any time.

Delta Controls will provide a list of the existing National Account agreements to the Partnership.

Delta Controls will inform the Local Partner of a National Account project that is occurring within their Delta Controls territory.

Delta Controls sales management will assist the Lead Partner in negotiating service agreements with the Local Partner to support the Local site, if required.

Lead Partner

In general, it is the responsibility of the Lead Partner to ensure that the quality of project and service to their National Account customer is maintained to the National Account customer's expectation.

The relationship with the National Account customer is the responsibility of the Lead Partner, and it is the Lead Partners responsibility to design a scope of work, utilizing the best resources possible to ensure that the integrity of the relationship is maintained.

The Lead Partner will use the table provided in Appendix B to define a preferred template for executing projects for the Specific National Account customer. This completed table will be presented to Delta Controls management prior to Delta Controls beginning their due diligence on the National Account opportunity.

If the Lead Partner chooses to not perform the local installation, servicing or other deliverables themselves, they are requested to review the capabilities and willingness of the Local Partner to perform the work for them under a sub-contract. If neither the Lead nor the Local Partner is performing the work at the site, the Lead Partner will not use a current or potential competitor of the Local Partner to perform the work.

If the Lead Partner is not intending to perform ongoing service work at the facility post construction, then they will negotiate a service agreement with the Local Partner to perform this work on their behalf.

Participation

The charts attached in Appendix B are to be used as guidelines to define a clear scope of work including activities, duties and responsibilities of the parties involved in the delivery of the solution to a National Accounts Customer Policy/Agreement. The Lead Partner should complete the Appendix B for Delta Controls review, as part of the National Account due diligence process. The intent is for the Lead Partner to define the 'template' that they intend to use as they complete projects for their National Account Customer. The Schedule B will be published on George (Delta's knowledge management web-portal), along with lead partner contact information.

In the situation where the Lead Partner has the capability to do the entire project in the remote location without any local support, the Lead Partner assumes all responsibility for design, execution, commissioning and warranty support. If the Lead Partner cannot do the installation or commissioning, they are not allowed to use a current or potential competitor to do so in the local market. When a National Account project is being planned, the Lead Partner will use the pre-defined template for the National Account customer to begin discussion with Delta and the Local Partner (if required) for the specific opportunity.

When a National Account has a facility outside of the Lead Partner's contractual territory, the Lead Partner/Delta shall advise Delta Controls sales management of the pending project prior to tender. Delta Controls sales management will then advise the Local Partner in a timely manner.

Delta reserves the right to approve a local Partner for participation in any National Account project.

Customer Satisfaction

If the National Accounts Customer communicates dissatisfaction to Delta Controls and the Lead Partner does not adequately resolve the issue to the satisfaction of the National Account, Delta reserves the right to modify the National Account status with the specific purpose to ensure a satisfied customer. Delta, in each case, will work closely with the Lead Partner and the Local Partner (if appropriate) in this process. This process would involve an assessment of the Partners abilities to effectively deliver the solution on a timely, as specified basis.

Non-fulfillment of Responsibilities of National Accounts Program

An important distinction will be made between non-participation (a “no thanks”) and non-fulfilment of responsibilities as defined in the completed and executed National Accounts Policy/Agreement (a broken promise). The Local Partner may choose non-participation without any consequences. However, non-fulfilment of the responsibilities that participants have agreed to in the National Accounts Program jeopardizes our ability to provide the highest quality product and service. It creates a negative perception of our work and may damage relationships with the customer.

To ensure the success of the National Accounts Program, Delta Controls Inc. will administer the guidelines in this document. If these obligations are not fulfilled, penalties may include:

- ✓ Increase in Delta multiplier.
- ✓ Loss of territory exclusivity
- ✓ Loss of territory.
- ✓ Loss of ability to participate in the National Accounts Program.
- ✓ Termination as a Delta Partner.

“National Accounts Policy” document change history

Rev no.	Date issued	Description of change(s)
1.3	30April18	Addition of clarifications, addition of Delta Corporate National Accounts
1.2	10Jul10	Revisions of responsibilities; addition of ESCO’s; addition of Client Agreement
1.1	9Jan07	GRP- Minor Edit Council Draft for formalization in Delta Agreement
1.0	20October05	Council Final Draft
0.9	30May05	GRP- Incorporating all changes- I think- for final review.
0.8	11Apr05	GRP-Incorporating Partner Council Further Changes
0.7	31March05	GRP- Incorporating Partner Council Changes
0.6	Sept04	GRP. Incorporating Partner Council changes.
0.5	7Sept04	G Pedwell document edit and changes.
0.4	30Aug04	Incorporated two tables into one as per BMG’s request.
0.3	23Aug04	BMG defines steps in cycle; inclusion of BMG’s excel spreadsheet.
0.2	17Aug04	Removed errors from search & replace.
0.11	17Aug04	Incorporation of BMG’s feedback.
0.1	21July04	initial draft.

Current National Accounts and National Account Agreement

National Accounts

Delta Partner

See current listing On the Delta Sales Support Site

https://support.deltacontrols.com/foswiki/pub/Salestools/WebHome/Delta_National_Accounts.pdf

EXAMPLE

Appendix A

National Account Agreement

This Agreement is entered into as of _____, 201_ by and between Delta Controls Inc. ("Delta"), with principal corporate offices at 17850 56th Ave., Surrey, BC, V3S 1C7, Canada

and _____ ("Distributor")

and _____ ("Customer")

Whereas Delta is a manufacturer of DDC control products, parts and accessories (the "Products") and the Distributor is the authorized distributor of the Products pursuant to a distributorship agreement between Delta and the Distributor (the "Distributorship Agreement");

Whereas the Distributorship Agreement provides for the designation by Delta of certain customers as National Account Customers and the allocation by Delta of such National Account Customers to specific distributors;

Whereas the Customer desires to be designated as a National Account Customer and allocated to the Distributor; and

Whereas the Distributor desires the Customer to be allocated as a National Account Customer.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the mutual premises, promises and conditions herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

11. Covenants

1.1 Delta hereby designates and allocates the Customer as a National Account Customer of the Distributor within the Territory.

1.2 Pursuant to the Distributorship Agreement Delta will provide Products and offer training to the Distributor.

1.3 Delta will use reasonable efforts to ensure that other distributors of Delta within the Territory do not sell products and related services to the Customer.

1.4 The Distributor will provide a uniform, consistent and high standard of service to the Customer consistent with the standards of a competent and efficient distributor of the Products, or as may be more particularly specified from time to time by Delta.

1.5 The Distributor will provide to, and install and service for, the Customer, at a fair market value, all Products as reasonably requested from time to time by the Customer (subject to availability).

1.6 Subject to section 2.0 hereof, the Customer will exclusively use the services of the Distributor, or any other distributor allocated by Delta, for the supply, installation and servicing of all Products required by the Customer within the Territory.

12. Termination

2.1 Subject to section 2.2 hereof, this Agreement may be unilaterally terminated by any of the parties hereto on 30 days notice in writing to the other parties.

2.2 This Agreement will automatically terminate upon the termination of the Distributorship Agreement.

2.3 The Term of This Agreement is for a period of three years from date of acceptance.

13. General

3.1 The parties agree to cooperate in good faith with each other in connection with any action or step to be taken in connection with this Agreement.

3.2 This Agreement will be governed by and construed in accordance with the laws of British Columbia, Canada and the federal laws of Canada applicable therein, and the parties hereby irrevocably submit to the non-exclusive jurisdiction of the courts of the Province of British Columbia with respect to this Agreement.

3.3 As between Delta and the Distributor this Agreement does not create any rights or obligations in addition to those contained in the Distributorship Agreement and in the event of any inconsistency or conflict between this Agreement and the Distributorship Agreement, the terms and conditions of the Distributorship Agreement shall prevail.

3.4 Distributor shall provide the Customer contact information (address, phone, email) to Delta and update it as necessary. Attach the contact information to this agreement. Email insidesales@deltaccontrols.com with updates.

3.5 Distributor shall provide the location information for each Customer site on which Delta product is installed. Email insidesales@deltaccontrols.com with updates.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set out above.

Delta Controls Inc.

by _____

Distributor:

by _____

Customer:

by _____

Appendix B

Project Responsibilities Guidelines (to be completed by the Lead Partner)

X = responsibility O = optional participation S = shared responsibility

	Delta Controls Lead Partner	Local Partner	National Account	Third Party
IDENTIFICATION				
National Account Approval				
Project Engineering				
Contract Administration				
Submittals				
Project Management				
Panel Fabrication				
State Licensing				
Installation				
Commissioning				
Training on Site				
Training at Factory				
As built drawings				
Warranty				
Service Agreement				
Remote 24/7 Response				

Lead Partner Turn-Key Solution

In the situation where the Lead Partner has the capability to do the entire project in the remote location without any local support, the Lead Partner assumes all responsibility for design, execution, commissioning and warranty support. If the Lead Partner cannot do the installation or commissioning, they are not allowed to use a current or potential competitor to do so in the local market.

SCHEDULE F

End User Survey

Delta Controls Quality Assurance Survey

Customer _____

Address _____

Telephone _____

Delta Partner _____

Address _____

Telephone _____

Did the Hardware Products meet your expectations?

Did the Software Products meet your expectations?

Are you satisfied by the technical ability of your Delta Partner?

Does your Delta Partner provide the necessary service and maintenance?

Did you receive adequate training to operate your Delta Control System?

Does your Control System installation meet industry standards for quality?

Additional Comments:

SCHEDULE G

Competitive Products Declaration and Acknowledgement

Pursuant to the clause 6.3 this serves to declare competitive products that are currently offered and will continue to be offered by the Delta Partner

Competitor 1 _____

Competitor 2 _____

Initial Partner _____

This serves to acknowledge the above declaration of competitive product representation

Initial Delta _____

Example

SCHEDULE H

Data Processing Agreement

This Data Processing Agreement (“DPA”) forms part of the D<whatever product this refers to> Service Agreement (the “Subscription Service”) between COMPANY, and its affiliated companies, having its office located at ADDRESS (“**Data Processor**”)

and

Delta Controls Inc., having its corporate office located at 17850 56 Ave, Surrey, BC V3S 1C7, Canada (“**Data Sub-processor**”)

Together hereinafter referred to as the “Parties”.

1. DEFINITIONS

“**Data Controller**” means the entity which determines the purposes and means of the Processing of Personal Data.

“**Data Processor**” means the entity which Processes Personal Data on behalf of the Data Controller.

“**Data Protection Laws**” means all laws and regulations, including laws and regulations of the European Union, Canada, United States and other jurisdictions applicable to the Processing of Personal Data under the Subscription Service.

“**Data Subject**” means the individual to whom Personal Data relates.

“**Personal Data**” means any information relating to an identified or identifiable person. The types of Personal Data Processed under this DPA include but are not limited to the following: name, business contact information including but not limited to address, phone number, email, job title, company, location.

“**Processing**” means any operation or set of operations which is performed upon Personal Data, whether or not by automatic means, such as collection, recording, organization, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction (“Process”, “Processes” and “Processed” shall have the same meaning).

“**Security Breach**” means any accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to any Personal Data transmitted, stored or otherwise Processed on the Data Processor’s equipment or facilities.

“**Data Sub-processor**” means any sub-contractor engaged by the Data Processor that will Process Personal Data on behalf of the Data Controller through the Data Processor.

2. PROCESSING OF PERSONAL DATA

- 2.1. The Data Sub-processor shall Process Personal Data provided by the Data Processor in accordance with the requirements of the Data Protection Laws. If the Data Sub-processor believes or becomes aware that any of the Data Processor’s instructions conflicts with any Data Protection Laws, the Data Sub-processor shall inform the Data Processor, who in turn shall inform the Data Controller.
- 2.2. During the term of the Subscription Service, the Data Sub-processor shall only Process Personal Data on behalf of and in accordance with the Subscription Service and Data Processor’s instructions, except as required to comply with a legal obligation to which the Data Sub-processor is subject. In such a case, the Data Sub-processor shall inform the Data Processor, who in turn shall inform the Data Controller of that legal obligation.
- 2.3. The categories of Personal Data that the Data Sub-processor will Process as part of the Subscription Service is determined and controlled by the Data Controller at its sole discretion.

3. CONFIDENTIALITY

- 3.1. Without prejudice to any existing contractual arrangements between the Parties, the Data Processor and the Data Sub-processor shall treat all Personal Data as strictly confidential and it shall inform all its employees, agents and/or approved Data Sub-processors engaged in processing the Personal Data of the confidential nature of the Personal Data. The Data Processor and the Data Sub-processor shall ensure that all such persons or parties have signed an appropriate confidentiality agreement, are otherwise bound to a duty of confidentiality, or are under an appropriate statutory obligation of confidentiality.

4. SECURITY

- 4.1. The Data Processor and the Data Sub-processor shall implement appropriate technical and organizational measures to ensure a level of security of the processing of Personal Data appropriate to the risk. These measures shall include as appropriate:
- (a) measures to ensure that the Personal Data can be accessed only by authorized employees;
 - (b) the ability to ensure the ongoing confidentiality, integrity, availability and flexibility of processing systems and services;
 - (c) the ability to restore access to Personal Data in a timely manner;
 - (d) a process for regularly identifying vulnerabilities, as well as testing, assessing, and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing of Personal Data;
- 4.2. The Data Processor and the Data Sub-processor shall demonstrate the measures they have taken pursuant to this Article 4 and shall allow the Data Controller to audit and test such measures. The Data Controller shall give at least 30 days' notice to the Data Processor or the Data Sub-processor to carry out or have carried out by a third party who has entered into a confidentiality agreement with the Data Processor or the Data Sub-processor, audits of the Data Processor's or the Data Sub-processor's operations as these relate to the Personal Data. The Data Processor or the Data Sub-processor shall cooperate with such audits carried out by or on behalf of the Data Controller and shall grant the Data Controller's auditors reasonable access to any devices involved with the Processing of the Personal Data. to ascertain the Data Processor's or the Data Sub-processor's compliance with this Data Processing Agreement.

5. SUB-PROCESSORS

- 5.1. The Data Processor engages only the following sub-Processors for the purpose of the provision of the Subscription Service:
- Delta Controls Inc.
- 5.2. Notwithstanding any authorization by the Data Controller within the meaning of the preceding paragraph, the Data Processor shall remain fully liable, including but not limited to indemnifying against any third party damages alleged against Data Controller, in relation to the Data Controller for any actions of any such Data Sub-processor that fails to fulfil its data protection obligations or causes any other damage to Data Controller.
- 5.3. The Data Processor acknowledges and agrees to the Data Sub-processor and Data Sub-processor's affiliated companies respectively may engage third-party Data Sub-processors in connection with the provision of the Subscription Service.
- 5.4. The Data Processor shall ensure that the Data sub-Processors are bound by the same data protection obligations of the Data Processor under this Data Processing Agreement, shall supervise compliance thereof, and must in particular impose on its own Data Sub-processors the obligation to implement appropriate technical and organizational measures in such a manner that the Processing will meet the requirements of Data Protection Laws.

6. ASSISTANCE TO DATA CONTROLLER

- 6.1. The Data Sub-processor shall assist the Data Processor by appropriate technical and organizational measures, insofar as this is possible, for the fulfilment of the Data Controller's obligation to respond to requests for exercising the Data Subjects' rights under the Data Protection Laws.
- 6.2. The Data Sub-processor shall make available to the Data Processor all information necessary to demonstrate compliance with the Data Controller's obligations and allow for and contribute to audits and data protection impact assessments, conducted by the Data Controller.

7. INFORMATION OBLIGATIONS AND SECURITY BREACH MANAGEMENT

- 7.1. When the Data Sub-processor becomes aware of a Security Breach that impacts the Processing of the Personal Data that is the subject of the Subscription Service, it shall promptly notify the Data Processor, who in turn will notify the Data Controller about the Security Breach and shall follow the Data Controller's instructions with regard to such incidents.
- 7.2. The Data Sub-processor shall at all times have in place written procedures which enable it to promptly respond to the

Data Processor about a Security Breach, who in turn will support the Data Controller in the event that the Data Controller needs to notify under applicable Data Protection Laws.

8. RETURNING OR DESTRUCTION OF PERSONAL DATA

8.1. Upon termination of this Data Processing Agreement, upon the Data Controller's written request, or upon fulfillment of all purposes agreed in the context of the Subscription Service whereby no further processing is required, the Data Processor and the Data Sub-processor shall, at the discretion of the Data Controller, delete or destroy all Personal Data.

9. DURATION AND TERMINATION

- 9.1. This Data Processing Agreement shall come into effect on the same date as the Subscription Service.
- 9.2. Termination or expiration of this Data Processing Agreement shall not discharge the Data Processor from its confidentiality obligations pursuant to Article 3.
- 9.3. This Data Processing Agreement shall terminate on the same date as the termination date of the Subscription Service. The Data Processor and the Data Sub-processor shall process Personal Data until that termination date.

On behalf of Delta Controls Partner

Date

On behalf of Delta Controls Inc.

Date