

ELO ELITE VALUE-ADDED RESELLER PARTNER AGREEMENT

This Elo Elite Value-Added Reseller (“VAR”) Partner Agreement (“Agreement”) is entered into as of _____, 20__ between Elo TouchSystems (“Elo”), a Business of Tyco Electronics Corporation, and _____ (“Participant”).

1.0 Definitions.

- 1.1 Added Value is the non-Elo component or portion of the total solution which Participant provides to End Users. Examples of Added Value are pre- and post-sales design, configuration, trouble-shooting, and support and the sale of complementary products and services. Participant acknowledges that telesales, catalog sales, and sales over the Internet do not include Added Value if inbound communications from the prospective End User purchaser were exclusively prompted by something other than interaction between Participant’s sales representative and such prospective End User.
- 1.2 Authorized Source means a Point-of-Sale (POS) distributor that is authorized by Elo to redistribute Products within the Territory to Participant.
- 1.3 End User is the final purchaser that has acquired Product for its own Internal Use and not for Resale, remarketing or distribution.
- 1.4 Go to Market Strategy means the strategy approved by Elo for Participant’s sale of Products to the market which includes, but is not limited to, Added Value, integration and onsite service, sales and tech support.
- 1.5 Internal Use is any business use of a Product for an End User’s own internal use, which use is outside the definition of Resale provided below.
- 1.6 Non-Genuine Products are any and all products: (i) to which a Elo trademark or service mark has been affixed without Elo’s consent; (ii) that have not been manufactured by Elo; (iii) are produced with the intent to counterfeit or imitate a genuine Elo Product, or (iv) Products where any form of copyright notice, trademark, logo, confidentiality notice, serial number or other product identifier have been removed, altered, or destroyed.
- 1.7 Participant is a Registered VAR that purchases Products from an Authorized Source and Resells the Product in accordance with the Participant’s Go to Market Strategy.
- 1.8 Products means those Elo hardware products, Software products, and related documentation, which Elo makes available to an Authorized Source for Resale to companies that have achieved Participant’s level of registration, certification, and/or specialization within Elo’s Elite Program described at: www.elotouch.com.
- 1.9 Professional Services means any pre or post-sale services performed by Participant for an End User that provide Added Value for Elo Products. Such services include without limitation pre- and post-sales design, configuration, trouble-shooting, and support on Elo Products.
- 1.10 Resale includes any sales or dispositions of a Product to an End User.
- 1.11 Territory means the country identified by Participant in the applicable Partner Registration Application accepted by Elo.
- 1.12 Unauthorized Elo Product means any genuine Elo Product that Participant purchases or acquires, either directly or indirectly, from any party other than Elo and/or an Approved Source or sells to any party other than an End User. Unauthorized Elo Products do not include Non-Genuine Products.

2.0 Elo Authorization and Resale Rules.

2.1 Elo Authorization. During the term of this Agreement, Elo hereby authorizes Participant to purchase Products only from an Authorized Source, and to resell and/or redistribute such Products in accordance with this Agreement and the Participant's Go to Market Strategy.

2.2 No Resale Outside the Territory. Participant agrees not to solicit Product orders, engage salespersons, Resell, or establish warehouses or other distribution centers outside of the Territory.

2.3 Sales. Participant certifies that it is acquiring the Products for Resale in accordance with this Agreement and Participant's Go to Market Strategy.

2.4 Non-Genuine or Unauthorized Elo Products. Participant acknowledges that purchases and resales of Non-Genuine or Unauthorized Elo Products are not within the scope of this Agreement and Participant is not entitled to the rights granted herein with respect to the resale of such Unauthorized Elo Products. If Elo determines that Participant has resold and/or redistributed Unauthorized Elo Products purchased from non-authorized Sources, then Elo may, at Elo's sole discretion: (a) inspect Participant's purchase and resale records of Elo Product and relevant records and/or (b) suspend shipments to Participant; and/or (c) terminate this Agreement pursuant to Section 9.2 below.

3.0 Added Value Requirement. Each time a Participant resells Products to an End User, Participant will include its Added Value. Participant should be able to demonstrate Products to prospective End Users at the End User's location and make Professional Services available for each Product Resold by Participant.

4.0 Participant Obligations.

4.1 Agreements with an Authorized Source. Participant acknowledges that each Authorized Source may require Participant to enter into other agreements with an Authorized Source. Participant acknowledges and accepts that each Authorized Source is an independent party who is not empowered to act on behalf of Elo or bind or represent Elo in any manner. Therefore, such agreements will be considered executed only between Participant and each Authorized Source with which Participant has entered into such agreements, except to the extent that such agreements specifically identify Elo as a third party beneficiary of such agreements. For the avoidance of doubt, this Agreement shall not constitute a sale, purchase or distribution agreement with Elo. Any arrangements between the Participant and an Authorized Source with respect to the sale, purchase or distribution of Products will need to be defined in separate, specific agreements between Participant and each Authorized Source selected by Participant.

5.0 Pricing.

5.1 Participant Prices. The prices Participant pays for Products will be set by the Authorized Source from which Participant purchases such Products. Subject to Elo's ability to impose maximum resale price limitations, Participant is free to determine its Resale prices unilaterally.

5.2 Special Pricing. Elo may provide Participant's Authorized Source of choice with special pricing for such Authorized Source to provide to Participant. Such special pricing will be limited to Resales of Product in accordance with Participant's Go to Market Strategy and used for Elo product sales within the United States only. Any such agreement between Elo and Participant's Authorized Source must be in writing, including email notification from Elo, and must specify a fixed time period during which such special pricing shall be provided. If no time limit is specified in the written agreement, the time period shall be ninety (90) days from the effective date of the written agreement regarding special pricing. If Elo offers special pricing and Participant submits a purchase order to the Participant's Authorized Source based on such special pricing, Participant accepts that Elo may condition such special pricing on Participant's agreement to Resell the Products in accordance with Participant's Go to Market Strategy. Participant shall not combine

special pricing with any other discount, promotion or negotiated pricing.

- 5.3 If Elo determines that Participant has Resold Products purchased with special pricing provided pursuant to Section 5.2 and 5.3 to any person or entity outside the Go to Market Strategy or combined such special pricing with any other discount, promotion or negotiated pricing, then Elo may, at Elo's sole discretion: (a) invoice Participant for the difference between such additional discount and Participant's then current resale discount, and/or (b) inspect Participant's purchases and relevant records and/or (c) suspend Participant's access to price deviations and other Elo sales and marketing programs; and/or (d) suspend shipments to Participant; and/or (e) terminate this Agreement pursuant to Section 9.2 below.
- 6.0 Minimum Advertised Price (MAP). Participant agrees not to advertise Products lower than the minimum advertised price (MAP) which is 15% below Elo's Manufacture Suggested Retail Price (MSRP). Product MSRP can be obtained by any of Elo's Value Added Distributors or online at www.elotouchexpress.com. MAP percentage is subject to change at Elo's discretion. This agreement applies to Participant's advertised prices in newspapers or catalog print, direct mail pieces, faxes, on radio, television or the Internet, but does not apply to advertised pricing on a website where a customer may access the website by using a unique and assigned password. This policy does not affect the price at which the Participant may sell an applicable Product. The Participant may sell any Product at any price. If Participant advertises Products at prices below the stated MAP, Elo will be entitled to all its rights and remedies available to it, including, without limitation, the right to terminate this Agreement under Section 9.2 below.
- 7.0 Participant's Distribution Rights.
- 7.1 Grant of Rights. During the term of this Agreement, Elo grants to Participant a limited, nonexclusive, revocable license to receive from an Authorized Source and distribute to End Users located in the Territory all proprietary rights embodied in or contained in any Product. Participant may continue such distribution for thirty (30) days following the expiration of this Agreement. Any distribution of Products containing Elo proprietary rights (including, without limitation, all Software) outside the scope permitted by Section 2.0 of this Agreement is prohibited.
- 7.2 Rights Reserved by Elo. Except for the limited license provided to Participant in the preceding Section, Elo reserves all right, title, and interest in and to each proprietary right embedded in or contained in any Product. Participant acknowledges that, except as provided in the Section above, it may not distribute Software to any other person or entity, including, without limitation, other resellers or other registered Participants.
- 7.3 License Restrictions and Conditions. Participant will not remove, alter, or destroy any form of copyright notice, trademark, logo, or confidentiality notice provided with any Product. Participant will not copy or redistribute any item of Software except as specifically permitted in this Section. Participant agrees that it will not redistribute Software (including Software received as part of a Product) received from any source other than Elo or an Authorized Source. Participant will not translate, reverse compile or disassemble the Software, and will transfer to each End User to which Participant resells Products all end-user license terms and end-user documentation provided by Elo and accompanying such Products.
- 7.4 Participant shall not acquire, use, promote or Resell Non-Genuine Products. Additionally, Participant shall notify Elo promptly of the existence, or suspected existence, of Non-Genuine Products in possession of third parties, and further agrees that it will, at Elo's request, assist Elo to diligently pursue an action against any third party in possession of Non-Genuine Products. Participant will not remove, alter, or destroy any form of copyright notice, trademark, logo, confidentiality notice, serial number or other product identifier provided with any Product.
- 7.5 If Participant acquires, uses, promotes or Resells Non-Genuine Products, Elo may take one or more of the following actions, at Elo's discretion: (i) require Participant, within ten days of Elo's request, to recall and destroy all Non-Genuine Products that Participant has sold to End Users and replace such products with legitimate, equivalent Products, (ii) require Participant, within

five days of receiving Elo's written request, to provide Elo with all details related to Participant's acquisition of all Non-Genuine Products, including without limitation, its suppliers, shipping details and all buyers to whom Participant resold Non-Genuine Products, and/or (iii) immediately terminate this Agreement pursuant to Section 9.2.

- 8.0 Participant Benefits. Subject to Participant's Compliance with its obligations under this Agreement, Participant shall be entitled to the following benefits:
- 8.1 Elotouch.com Access. Participant shall have Participant-level access to the information and tools on the Elotouch.com web site, provided Participant's use of such information is subject to the terms and conditions of Elotouch.com and the Confidentiality obligations set forth in this Agreement.
- 8.2 Partner Locator Listing. Unless Participant tells Elo in writing that it may not do so, Elo may include Participant in the Elo Partner Locator tool within the Authorized Source password protected website.
- 9.0 Term and Termination.
- 9.1 Term. This Agreement will expire one (1) year after the effective date defined above, unless extended by written agreement of both parties or sooner terminated pursuant to this Agreement.
- 9.2 Termination. This Agreement may be terminated for convenience, for any reason or no reason, by either party upon no less than thirty (30) days prior written notice to the other. This Agreement may be terminated by Elo for cause upon Participant's material breach of the Agreement, on ten (10) days notice.
- 9.3 Effect of Termination. Upon the termination or expiration of this Agreement, Participant's rights to purchase Products from any Authorized Source shall immediately terminate, Elo shall discontinue all Participant benefits listed in Section 8.0 above, and Participant shall immediately cease to represent itself as an Elo Elite VAR Partner.
- 10.0 Confidentiality and Publicity. In the event that Participant receives from Elo information that is marked as confidential, Participant shall protect that information using the same degree of care as it uses to protect its own sensitive business information, but not less than a reasonable degree of care, and shall not disclose such information to any third party without Elo's prior written consent. Participant shall only use such information in connection with the promotion and Resale of Elo Products. Upon the termination or expiration of this Agreement, Participant will promptly return any confidential information provided by Elo to Participant. Except as expressly provided in this Agreement, neither Elo nor Participant will issue press releases or make other public announcements that identify Participant as an authorized or registered Participant without the express written consent of the other party. In addition, Participant shall at no time (nor cause any third party to) take any action, publish or otherwise communicate anything which is or may be detrimental to the business reputation of Elo.
- 11.0 License to Information. Information made available to Participant through Elotouch.com is made available subject to the terms contained in the Elotouch.com website and any additional terms as Elo may notify Participant of through Elotouch.com. Information provided through Elotouch.com may be used only in connection with Participant's promotion and Resale of Elo Products.
- 12.0 Limited Warranty/Warranty Disclaimer.
- 12.1 Warranty. The only warranty Elo provides with respect to any Product is the written limited warranty statement provided with that Product or, if no warranty statement is provided with a Product, the Limited Warranty Statement available at the following URL: <http://www.elotouch.com>.
- 12.2 Disclaimer. EXCEPT AS SPECIFIED IN THE LIMITED WARRANTY STATEMENT SPECIFIED ABOVE, ALL EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS OR WARRANTIES

INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE (EVEN IF KNOWN TO ELO), NO INFRINGEMENT, SATISFACTORY QUALITY OR ARISING FROM A COURSE OF DEALING, LAW, USAGE, OR TRADE PRACTICE ARE HEREBY EXCLUDED TO THE GREATEST EXTENT ALLOWED BY APPLICABLE LAW. TO THE EXTENT AN IMPLIED WARRANTY CANNOT BE EXCLUDED, SUCH WARRANTY IS LIMITED TO A 90-DAY PERIOD. This disclaimer and exclusion shall apply even if the express warranty set forth above fails of its essential purpose.

- 12.3 PARTICIPANT SHALL NOT MAKE ANY WARRANTY COMMITMENT BEYOND THE LIMITED WARRANTY REFERENCED ABOVE ON ELO'S BEHALF. Participant agrees to indemnify Elo and hold Elo harmless from any warranty made by Participant beyond the limited warranty referenced above.
- 13.0 Limitation of Liability. NOTWITHSTANDING ANYTHING ELSE HEREIN, ALL LIABILITY OF ELO AND ITS SUPPLIERS FOR CLAIMS ARISING UNDER THIS AGREEMENT OR OTHERWISE SHALL BE LIMITED TO THE MONEY PAID BY PARTICIPANT TO ITS AUTHORIZED SOURCE FOR PRODUCTS IN THE THREE (3) MONTHS PRECEDING THE EVENT OR CIRCUMSTANCES GIVING RISE TO SUCH LIABILITY. THIS LIMITATION OF LIABILITY IS CUMULATIVE AND NOT PER INCIDENT.
- 14.0. Waiver of Consequential Damages. IN NO EVENT SHALL ELO OR ITS SUPPLIERS BE LIABLE FOR ANY INCIDENTAL, SPECIAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES, LOST REVENUE, LOST PROFITS, OR LOST OR DAMAGED DATA, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EVEN IF ELO OR ITS SUPPLIERS HAVE BEEN INFORMED OF THE POSSIBILITY THEREOF.
- 15.0 Miscellaneous.
- 15.1 Pre-Existing Agreements. If Elo and Participant have signed a Pre-Existing Agreement that is in effect as of the day Participant submits this Agreement, the Pre-Existing Agreement shall take precedence over this Agreement. If no Pre-Existing Agreement exists, this Agreement comprises the complete agreement between the parties hereto concerning the subject matter herein and replaces any prior oral or written communications between the parties, all of which are excluded. There are no other conditions, understandings, agreements, representations, or warranties, expressed or implied, which are not specified herein. This Agreement may only be modified by a written document executed by Elo and Participant.
- 15.2 Choice of Law. The validity, interpretation, and enforcement of this Agreement shall be governed by the domestic laws of the State of New York, United States of America, as if performed wholly within the State and without giving effect to principles of conflicts of laws, and the State and Federal courts of New York shall have exclusive jurisdiction over any claim arising hereunder, except as expressly provided below. Notwithstanding the foregoing, either party may seek interim injunctive relief in any court of appropriate jurisdiction with respect to any alleged breach of such party's proprietary rights. The parties specifically disclaim the application of the UN Convention on Contracts for the International Sale of Goods to the interpretation or enforcement of this Agreement.
- 15.2 Assignment. Neither this Agreement, nor any rights under this Agreement, may be assigned by Participant without the express prior written consent of Elo. Any attempted assignment in violation of the preceding sentence shall immediately terminate the Agreement and be without legal effect.
- 15.3 Relationship of the Parties; No Partnership. Each party to this Agreement is an independent contractor. This Agreement does not create any agency, partnership, joint venture, employment or franchise relationship. Furthermore, no labor relationship between Elo and Participant employees is created hereby. Participant shall indemnify and hold Elo harmless of any claim or judicial action whatsoever from any Participant employee, including any and all actions or claims arising in connection with the noncompliance by Participant of any applicable laws, including any labor laws and/or social security regulations. Neither party has the right or

authority to, and shall not, assume or create any obligation of any nature whatsoever on behalf of the other party or bind the other party in any respect whatsoever. Notwithstanding the use of the term "Partner" in this Agreement, the parties do not intend to create any legal relationship of Partnership between them, and neither will assert to any third party or otherwise claim that such a legal relationship exists between them.

- 15.4 Survival. All terms of this Agreement, which by their nature extend beyond the date the Agreement ends, remain in effect until fulfilled.
- 15.5 Notices. All notices required to be provided under this Agreement shall be provided (a) by Participant, to _____, and (b) by Elo, to the electronic mail address provided by Participant with its Elite Partner Registration application. Notices shall be deemed received one business day after being sent by email.
- 15.6 Compliance with Laws: In its performance of this Agreement, Participant will comply with all laws, all licenses, permits and approvals required by any government or authority, including any recycling or take-back programs applicable to packaging, Resale or use of Products, and shall comply with all applicable laws, rules, policies and procedures including without limitation the US Foreign Corrupt Practices Act (collectively "Applicable Laws"). Participant will indemnify and hold harmless Elo for any violation by Participant of any Applicable Laws.
- 15.7 Other Remedies. All Elo remedies specified in this Agreement shall be in addition to, and shall in no way limit, any other rights and remedies that might be available to Elo, all of which Elo hereby expressly reserves.

IN WITNESS WHEREOF, Participant and Elo have each caused this Agreement to be signed and delivered by its duly authorized officer, all as of the Effective Date.

Elo TouchSystems,
A Business of Tyco Electronics Corporation

Participant:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

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