

## DIGI-KEY SUPPLIER DIRECT SHIP PROGRAM AGREEMENT

This Digi-Key Supplier Direct Ship Program Agreement (“Agreement”) is made by and between the entity (the “Supplier”) that wants to sell physical products (each a “Product” and together “Products”) on the digikey.com website or other e-commerce websites operated by Digi-Key (each a “Site” and collectively the “Sites”) as part of Digi-Key’s Supplier Direct Ship Program (the “Program”). This Agreement is effective upon Supplier’s acceptance of this Agreement by clicking the “AGREED TO BY SUPPLIER” button located below (the “Effective Date”). By accepting this Agreement, Supplier designates Digi-Key as an authorized distributor of Supplier’s Products, subject to the terms and conditions of this Agreement.

The Program is the process of having Supplier fulfill orders made by third party buyers (“Customers”) using a Site from Supplier’s Product inventory and shipping Products directly to Customers. By clicking the “AGREED TO BY SUPPLIER” button, “Supplier” agrees to be bound by this Agreement, including the Digi-Key Supplier Direct Ship Supplier Policy (the “Policy”) [[ADDENDUM A](#)], which also is part of and incorporated into this Agreement. Supplier represents and warrants that the individual agreeing to this Agreement on behalf of Supplier has the requisite right, power, and authority to enter into this Agreement on behalf of Supplier. Digi-Key reserves the right to change any of the terms and conditions for this Agreement (including the Policy) at any time and in its sole discretion. Any changes to the Agreement will be communicated to the Supplier through the Supplier Direct Ship Program Portal (the “Portal”). Supplier’s continued use of the Program following receiving notice of a change to the Agreement constitutes Supplier’s acceptance of the changes to the Agreement.

This Agreement is in addition to and supplements Digi-Key’s Website Terms of Use. By participating in the Program, Supplier also affirms its agreement to Digi-Key’s Website Terms of Use, as they may be updated as outlined in the Website Terms of Use.

### 1. Digi-Key’s Role

The Program enables Supplier to sell Products through a Site to Customers. Digi-Key provides the Portal, which is the primary web-based interface used by Digi-Key and Supplier in connection with the Program and communications related to the Program. At the time a Customer purchases a Product, Supplier will sell the Product to Digi-Key and Digi-Key will in turn sell the Product to the Customer. Digi-Key will take title to Products at the time Product is shipped to Customer. Digi-Key shall be the seller of record for the transaction.

### 2. General Policies

(a) **Supplier Must Have the Legal Right to Sell.** Supplier may only offer and sell a Product on the Sites through Program that Supplier is authorized to sell. Supplier may need to present documentation confirming such authorization.

(b) **All Products Must Be Authentic.** Supplier may only offer and sell Products on the Sites through the Program that are new and authentic. Supplier must maintain adequate processes and procedures to diligently assure that Products are authentic, authorized for sale, and not stolen, counterfeit, illegal or misbranded. All information Supplier provides about the Product must be accurate, current, and complete and not misleading, deceptive, or fraudulent in any way.

(c) **Supplier Must Abide by the Law.** Supplier must comply with all applicable laws, regulations, legal requirements, and generally accepted industry standards, including but not limited to flow down requirements related to ISO 9001, ISO 14001, ISO 27001, ANSI/EDS 20.20, AS6469, AS9120, ISA and self-regulatory principles, including laws related to marketing, packaging, product safety, product testing, labeling, pricing and packaging, export compliance, and privacy (collectively “Laws”) in connection with this Agreement.

(d) **Certain Products May Not Be Sold.** Supplier may not list any Product or Supplier Product Information (as defined below) on the Sites or otherwise through the Program (i) that is counterfeit, illegal, stolen, or fraudulent, or infringes or misappropriates any third-party intellectual property right, meaning any patent, copyright, trademark, service mark, trade dress, trade name, moral right, trade secret and any other intellectual property right (collectively “Intellectual Property Rights”), (ii) that contains any virus, Trojan horse, worm, malware, or other computer programming that may damage, detrimentally interfere with, or surreptitiously intercept or expropriate any system, data, or personal information, (iii) that contains any material that is obscene, pornographic, or that contains child pornography, (iv) that is subject to or otherwise regulated by the International Traffic in Arms Regulations or other export regulations, (v) that creates any liability for Digi-Key, (vi) that violates any Law, or (vii) that Supplier otherwise does not have the right to sell.

(e) **Certificates of Authenticity May Be Required.** Upon Digi-Key’s request, Supplier will promptly provide Digi-Key with (i) certificates of authenticity (or similar documentation) for Products, (ii) documentation showing that Supplier has a legal right to sell the Products through the Site, and (iii) documentation showing that Supplier is licensed or otherwise has a right to use any Supplier Product Information.

(f) **Certificate of Compliance.** Supplier warrants and certifies that Products meet the Supplier’s published specifications. Supplier will maintain test reports supporting the published specification and make available to Digi-Key Certificates of Compliance certifying compliance with its published specification. Supplier must provide their standard Certificates of Compliance or can use the general template available on the Supplier Portal.

(g) **If applicable, Supplier Is Responsible for Import/Export Compliance.** The Program is only for Products that are shipped from a location in the United States to a Customer located in the United States. Supplier may import a Product to the United States and then offer the Product for sale within the United States as part of the Program. Supplier agrees to comply with all applicable import and export control laws, restrictions, regulations and orders of the United States or any applicable foreign jurisdictions, agencies or authorities.

(h) **Digi-Key May Remove Products.** Digi-Key in its sole discretion, may prohibit Supplier from listing any Products or providing any Product Information (as defined below). In addition, Digi-Key may remove Supplier’s listings in its sole discretion, including without limitation, in response to notices of alleged infringement or misappropriation of an Intellectual Property Right or if offering a Product violates the terms of this Agreement.

(i) **Supplier May Not Contact Digi-Key Customers.** Supplier may not contact Digi-Key Customers, Customers introduced by Digi-Key to Supplier, to advertise or market Supplier’s

products or services. Customers Supplier had contact with prior to receiving the purchase order from Digi-Key are not subject to this restriction. Supplier may only have contact with Digi-Key Customers as expressly permitted in this Agreement and as requested to do so by Digi-Key. Unless authorized or requested by Digi-Key, all electronic communication between Supplier and Digi-Key Customer must go through the Portal. Supplier must not contact Digi-Key Customer via any other means unless specifically asked to do so by Digi-Key.

(j) **Expected Supplier Performance.** Supplier must meet the minimum performance requirements and service levels set forth in the [Policy](#). Without limiting any of Digi-Key's rights under this Agreement, if Supplier violates any requirement set forth in the [Policy](#), Digi-Key reserves the right to remove Supplier's Products from the Sites.

### 3. Product Approval, Information, Pricing, and Warranty

(a) **Digi-Key Must Approve Products.** Digi-Key has the right to approve all Products offered for sale through the Program. To list a Product for sale on the Sites as part of the Program, Supplier must provide the Product Information (as defined in Section 3(b) below) for each Product Supplier desires to sell. Once Product Information has been submitted for the Products Supplier desires to sell, Digi-Key will notify Supplier through the Portal whether a Product has been approved for sale through the Program. Digi-Key has absolute discretion whether to accept a Product for sale through the Program.

(b) **Product Information.** Using the Portal, Supplier must provide the information requested by Digi-Key for each Product it would like to sell, including the information specified in the Policy, and Supplier also may provide additional information and images to be used in connection with offering the Product for sale on the Sites (collectively, "Product Information"). Supplier is responsible for the accuracy and completeness of all Product Information. Supplier will work with a Digi-Key Account Manager and the tools on the Portal to update Product Information as necessary. Supplier represents and warrants that Supplier has the right to provide all Product Information to Digi-Key and that all Product Information provided is truthful, accurate, not misleading, or otherwise deceptive, will not be defamatory, disparaging, trade libelous, infringing, unlawfully threatening, or unlawfully harassing, is in compliance with Digi-Key's Site Terms of Use, and will not create liability for Digi-Key, and that it will not use Product Information to redirect users of the Sites to any other sales channels. Supplier grants Digi-Key and its affiliates and its service providers, a non-exclusive, royalty-free, perpetual, sublicensable, irrevocable right and license (a) to publish, reproduce, display, distribute, transmit and otherwise use Suppliers' name and trademarks ("Suppliers Marks"), and (b) to publish and perform, reproduce, distribute, transmit, display, modify, create derivative works of, and otherwise use all Product Information, in each case in connection with the Program (including without limitation advertising, marketing and promoting the Products, other products, or the Program through the Site, third party websites, e-mail, social media or any other medium). Digi-Key may remove Product Information from the Sites in its sole discretion with or without notice to Supplier. All materials created by Digi-Key relating to Products or derived from or incorporating Product Information, including, without limitation, data sheets, illustrations, diagrams, 360 imaging, and other materials created by Digi-Key to provide information about Products ("Digi-Key Product Materials"), including all Intellectual Property Rights therein, are exclusively owned by Digi-Key. Digi-Key Product

Materials may not be used by Supplier (or any third party) without Digi-Key's prior written consent.

(c) **Suggested Product Price.** Using the Portal, Supplier shall provide Digi-Key with a suggested resale price for each Product (the "Suggested Product Price"). For each Product, Supplier and Digi-Key shall mutually agree upon a percentage of the Suggested Product Price, which shall be the "Digi-Key Margin."

(d) **Exclusion of Discounts.** Supplier agrees to exclude all promotions, coupons, bundle discounts or similar discounts when calculating a Suggested Product Price, except with the prior written consent of Digi-Key.

(e) **Product Warranty.** Supplier warrants to Digi-Key that:

- (i) no claim, lien, or action exists or is threatened against Supplier that would interfere with the marketing, use, or sale of Products;
- (ii) Digi-Key will receive good and valid title to Products, free and clear of all encumbrances and liens of any kind;
- (iii) Products are new and do not contain used or reconditioned parts, unless otherwise disclosed in writing to Digi-Key;
- (iv) Products sold through the Program will conform to Supplier's specifications in effect at the time of shipment to Customers and be free of defects in material and workmanship; and
- (v) Supplier's standard product warranty provided to end users for Products, and the manufacturer's product warranty provided to end users if Supplier is not the manufacturer, (the "Product Warranty") shall be granted to Digi-Key, and Digi-Key may pass through the Product Warranty to Customers. The Product Warranty period for a Product begins when Supplier ships the Product to the Customer.

#### 4. **Order Processing, Fulfillment, Shipping, and Payment**

(a) **Order Process.** When a Customer orders a Product through a Site, Supplier agrees to sell the Product to Digi-Key and Digi-Key agrees to purchase the Product from Supplier and resell the Product to Customer for the price listed on the Site. Digi-Key shall set prices for the Products on the Sites in Digi-Key's sole discretion. Digi-Key shall be the seller of record to the Customer. Digi-Key will determine sales or use tax and any applicable waste recycling fees as appropriate for the sales transaction. Nothing in this Agreement or elsewhere shall make Digi-Key responsible for taxes on the Suppliers income or gross receipts.

(b) **Order Shipment.** For each Product which is listed for sale on the Sites, Supplier will select, using the Portal, the shipping options and associated shipping fee. For each Product purchased through the Site, Digi-Key will charge the Customer the applicable shipping fee designated by Supplier in the Portal for the Product. Digi-Key will remit the applicable shipping

fee to Supplier (unless Digi-Key assumed shipping cost for the Product to the Customer) as set forth in this Agreement, and Supplier agrees to accept such shipping fee so remitted by Digi-Key as payment in full for Supplier's shipping and handling costs associated with that order. Supplier understands and agrees that its actual shipping and handling costs may not be equal to the shipping fee charged to the Customer and remitted to Supplier.

(c) **Digi-Key Takes Title of the Product upon Shipment.** When the Customer finishes the checkout process for ordering a Product, Digi-Key will issue an order to the Supplier for the Product that will include all information Digi-Key determines is necessary for Supplier to fulfill the order ("Transaction Information"). Supplier must provide Digi-Key notice of shipment including ship tracking information following the shipment of Product to the Customer. Once Product is shipped to Customer, Digi-Key will take title to Product. Notwithstanding the foregoing, Supplier assumes all risk of loss at all times until the Product reaches the Customer's final delivery destination.

(d) **The Supplier Product Price and Payment to Supplier.** For each Product, the "Supplier Product Price" shall be the Suggested Product Price less the percentage identified as the Digi-Key Margin for the Product. For each Supplier Product sold through the Program, Digi-Key shall remit to Supplier the "Net Sales Price" for the Product, which shall be the Supplier Product Price plus the applicable shipping fee (unless Digi-Key assumed shipping cost for the Product to the Customer). Digi-Key will calculate the accumulated total Net Sales Price once per week ("Weekly Net Sale Price") at the end of the week. The Weekly Net Sales Price shall include the amount owed to Supplier for all Supplier Products sold during that week. Digi-Key will pay to Supplier the Weekly Net Sales Price, adjusted for returns and refunds, less any amount Supplier owes Digi-Key, within 30 days after the applicable weekly period ended (the 30-day period is required to allow for and support the 30-day product return policy). Digi-Key does not charge any wire transfer fees for outgoing domestic wire transfers. Digi-Key will not be responsible for intermediary fees or wire transfer fees charged by Supplier's financial institution in connection with transferring amounts due to Supplier, and Digi-Key reserves the right to offset and settle such fees, and offset any other amounts Supplier owes Digi-Key, from amounts paid to Supplier.

(e) **Customer Contact By Supplier.** Supplier may only contact the Customer using the Portal and only as it relates to the acceptance and shipment of a Product ordered by Customer as permitted by Digi-Key. Except as expressly permitted in this Agreement or by a separate written agreement by Digi-Key, Supplier may not initiate contact with Customers, including, without limitation, by email, mail, or otherwise. Digi-Key is solely responsible for sending all communications to Customers about orders, including, without limitation, notifications about orders, order fulfillment, and shipping.

(f) **Supplier Is Responsible For Order Fulfillment and Shipment.** Once Digi-Key has transmitted Transaction Information to Supplier, Supplier, will, at its own expense, be solely responsible for, and bear all liability for, the fulfillment of the order in full (unless cancelled as set forth in this Agreement), including without limitation, packaging and shipping Products, paying all shipping charges, securing the services of and payment of any freight forwarder or customs broker service charges (as may be required for any particular shipment), import or export duties, or taxes (as applicable), paying all costs associated with any shipping-related problems or issues, including, without limitation, costs for damaged or lost Products, late shipments, inaccurate

shipments, or delivery errors, and supporting Digi-Key when called upon in providing customer service.

(g) **No Marketing Materials In Packaging.** Supplier may only ship the Product purchased by the Customer and will not include any additional products, materials, or promotional information with the Product or any marketing materials or promotional information for a third party or any coupons or other type of discount offers.

(h) **Risk of Fraud or Loss.** Digi-Key will bear the risk of credit card fraud occurring in connection with an order, except in connection with any Product that is not shipped to the shipping address provided to Digi-Key by the Customer and included in the Transaction Information, in which case Supplier will bear all other risk of fraud or loss and all costs related thereto. For all credit card chargebacks for which Supplier bears the risk, Digi-Key will offset such chargeback amounts against amounts otherwise owed Supplier, or at Digi-Key's option send Supplier an invoice and Supplier will pay such invoice within 30 days of receipt.

(i) **Transaction Limits.** Digi-Key may impose transaction limits on Supplier or Customers and will not be liable to Supplier for blocking or otherwise refusing to proceed with any transaction.

## 5. Cancellations, Returns, and Recalls

(a) **Orders May Be Cancelled and Returned.** Supplier is responsible for processing all Customer cancellations and returns and Supplier shall comply with the cancellation and return requirements set forth in and in accordance with the [Policy](#).

(b) **Return Policies.** Supplier must offer a thirty (30) day replacement or money-back guarantee for all Products, and be in compliance with return requirements set forth in the [Policy](#).

(c) **Product Recall and Product Advisories.** Digi-Key will have no responsibility or liability for any recalls of Products sold through the Sites. Supplier is solely responsible for any non-conformity or defect in, or any public or private recall of, Supplier's Products. If Supplier, voluntarily or involuntarily, commences a product recall or product advisory program related to Products and Digi-Key agrees, in its sole discretion, to assist Supplier in administering such product recall or product advisory program, then Supplier shall (i) pay all freight, duties, fees or taxes associated with the product recall or product advisory program; and (ii) indemnify and hold Digi-Key harmless from and against all claims, liability, demands, costs, and expenses that may arise or result from Digi-Key's assistance in administering such product recall or product advisory program. Product recall or product advisory administrative actions may involve, but are not limited to, pulling inventory, contacting customers, and returning, scrapping, or reworking inventory.

## 6. Customer Service

(a) **Supplier's Responsibilities.** Subject to the requirements of this Section, Digi-Key shall have primary responsibility for communicating with Customers and coordinating the resolution of Customer disputes, returns, claims, and refunds. Supplier shall provide support to Digi-Key as Digi-Key requests, which may include providing assistance on technical Product

support issues, providing information about Product changes, and providing help in resolving disputes, returns, claims, and refunds.

(b) **Price Adjustments.** Digi-Key reserves the right to provide a price adjustment in the form of a price adjustment or full cash refund (not to exceed the total amount paid by such Customer in connection with the Products, including without limitation, taxes and shipping fees) to a Customer that Digi-Key reasonably determines has not been dealt with correctly or in accordance with the performance requirements and service levels set forth in the [Policy](#), and offset such amounts against amounts otherwise owed Supplier or by billing Supplier for such amounts. Digi-Key will work with Supplier to correct the issue in accordance with the requirements and service levels set forth in the [Policy. If Supplier fails to resolve the issue and Digi-Key reasonable determines that the Customer is entitled to a Price Adjustment, Digi-Key will exercise its right to issue a refund to the Customer in accordance with the rules for Price Adjustment stated here.](#)

## 7. Reporting and Audit Rights

(a) **Supplier Will Provide Reports to Digi-Key If Requested.** Supplier will, within a reasonable period of time (not to exceed 30 days) following request from Digi-Key, provide Digi-Key with any reports, information or other documentation including but not limited to the Supplier's acceptance, acknowledgement and fulfillment of offers relating to Supplier's compliance with this Agreement and applicable Law reasonably requested by Digi-Key.

(b) **Digi-Key's Audit Rights.** Supplier will keep accurate and complete records and accounts related to each Program transaction and this Agreement for a period of at least five (5) years following each Program transaction, and will allow Digi-Key, or its duly authorized representative, the right, upon not less than five (5) business days prior written notice, during the Term of this Agreement and for five (5) years after its termination or expiration, to conduct, during regular business hours, full and independent audits and investigations of all information, records and accounts related to Program transactions reasonably required by Digi-Key to confirm Supplier's compliance with the terms of this Agreement and applicable Law.

## 8. Ownership and Use Rights

(a) **Ownership of the Digi-Key Supplier Direct Ship.** Digi-Key and its service providers and licensors retain all right, title and interest (including all Intellectual Property Rights) in and to (i) the Program component of the Sites, the Sites, and the tools provided to Supplier in connection with the Program and (ii) all data received from Supplier in connection with the Program (other than Product Information). Except for a limited right for Supplier to access the Sites and use the tools made available to Supplier as part of the Program in accordance with and subject to all the terms and conditions of this Agreement, Digi-Key and its service providers and licensors, as applicable, retain all rights in the foregoing and grant no other rights or licenses (whether by implication, estoppel, or otherwise) under any of their Intellectual Property Rights under or in connection with this Agreement.

(b) **Ownership of Transaction Information.** Digi-Key shall own all Transaction Information and all other data and information relating to orders or Products (excluding Product Information), including but not limited to information that is entered into the Portal or a tool

provided by Digi-Key in connection with the Program, information that is created as a result of a transaction, and ratings and reviews provided by Customers. All such information is subject to the Digi-Key's Privacy Notice and any additional privacy guidelines posted by Digi-Key on the Portal.

(c) **Use of Transaction Information.** Supplier may only use Transaction Information to further a transaction related to this Agreement, in accordance with the terms of the Agreement, Digi-Key's Privacy Notice, and applicable Law. Supplier will not (i) disclose or convey any Transaction Information to any third party (except as necessary for Supplier to perform its obligations under the Agreement); (ii) use any Transaction Information to conduct customer surveys or for any marketing or promotional purposes; (iii) contact a Customer that has ordered a Product (other than shipping a Product to the Customer and in connection with providing customer service relating to a Product); (iv) target communications of any kind on the basis of the intended recipient being a user of one of the Sites; or (v) use any information about Customers gained through the Program to directly solicit such Customers through any other sales channels. The foregoing does not prevent Supplier from using information Supplier gathered independent of the Program, provided that Supplier does not target communications of any kind on the basis of the intended recipient being a user of one of the Sites.

(d) **Point Of Sales Report.** Digi-Key will furnish a monthly Point-of-Sale report (a "POS Report") to Supplier, upon request of Supplier, which may only be used for revenue recognition, sales force compensation, and other internal bookkeeping purposes.

(e) **Ratings and Reviews.** Digi-Key may use mechanisms that rate or review, or allow shoppers to rate or review, Products and Supplier's performance as a Supplier and Digi-Key may make these ratings publicly available. Digi-Key will have no liability to Supplier for the content or accuracy of any ratings or reviews. Supplier will have no ownership interest in or license to use any rating or reviews posted on the Sites.

(f) **Suggestions and Feedback.** If Supplier provides or makes suggestions, comments, ideas, improvements or other feedback or materials to Digi-Key in connection with the Digi-Key Program, a Site, or other subject matter of this Agreement, Digi-Key may disclose, reproduce, modify, license, transfer and otherwise distribute, and use and exploit any of the foregoing feedback or materials in any manner without limitation.

## 9. Taxes

(a) **Seller of Record.** Digi-Key will be the seller of record for Products sold through the Program to Customers.

(b) **United States Sales Tax and Other Applicable Taxes.** Digi-Key will collect and process all applicable United States sale taxes and other local taxes related to the sales of the Product from Digi-Key to the Customer. Digi-Key will not be responsible for any income taxes, import tax or other tax obligation related to the sale of the Product from the Supplier to Digi-Key.

## 10. Proprietary Information

(a) **Digi-Key's Proprietary Information.** In connection with this Agreement, the Digi-Key may from time to time furnish Supplier certain information concerning the Digi-Key's



business and customers, including by way of example but not limited to, Transaction Information, customer lists, personal data, sales information, including Point-of-Sale (POS) Reports, volume sales data, pricing data, and other information relating to customer methods, operations, financing, and services of Digi-Key (“Digi-Key’s Proprietary Information”). Digi-Key’s Proprietary Information is furnished to Supplier for its internal use only and for the limited purposes of allocating sales commissions to its sales representatives and performing market research and analysis. Accordingly, Supplier agrees to the following:

- (i) Digi-Key’s Proprietary Information shall be and remain the property of the Digi-Key and Supplier acknowledges that the Digi-Key’s Proprietary Information constitutes confidential trade secrets of Digi-Key. Supplier will not, during the term of this Agreement, or thereafter, directly or indirectly, disclose to others or use the benefit of any person, corporation, or other entity, or itself, any of the Digi-Key’s Proprietary Information, without the prior written consent of Digi-Key.
- (ii) Supplier agrees that Supplier shall keep and maintain Digi-Key’s Proprietary Information in a manner so as to prevent disclosure to any third party and to limit access to Digi-Key’s Proprietary Information to such of its employees as are absolutely required to have such access for the purposes described above. Supplier agrees Supplier shall not disclose any of Digi-Key’s Proprietary Information other than as authorized by this Agreement.
- (iii) Digi-Key’s Proprietary Information may be delivered to Supplier in the form of POS Reports. These POS Reports are included in the term Digi-Key’s Proprietary Information and shall be subject to this Agreement. All POS Reports and other tangible embodiments of Digi-Key’s Proprietary Information (whether preserved in hard copy, magnetic media, or otherwise) and each and every copy, abstract, summary, or reproduction of same made by or for Supplier or acquired by Supplier will be delivered by Supplier to the Digi-Key whenever Digi-Key requests and, in any event, upon the expiration or termination of this Agreement, for any reason whatsoever.

(b) **Supplier’s Proprietary Information.** In connection, with this Agreement, Supplier may from time to time furnish Digi-Key certain information concerning Supplier’s business, including by way of example, the Supplier’s trade secrets, processes, or techniques (“Supplier’s Proprietary Information”.) Supplier’s Proprietary Information is furnished to Digi-Key for its internal use only. Accordingly, Digi-Key agrees to the following:

- (i) Supplier’s Proprietary Information shall be and remain the property of Supplier and Digi-Key acknowledges that Supplier’s Proprietary Information constitutes confidential trade secrets of Supplier. Digi-Key will not, during the term of this Agreement, or thereafter, directly or

indirectly, disclose to others or use the benefit of any person, corporation, or other entity, or itself, any of Supplier's Proprietary Information, without the prior written consent of Supplier.

- (ii) Digi-Key agrees that it shall keep and maintain Supplier's Proprietary Information in a manner to prevent disclosure to any third party and to limit access to Supplier's Proprietary Information to such of its employees as are absolutely required to have such access for the purposes described above. Digi-Key agrees to protect the confidentiality of Supplier's Proprietary Information and agrees to assume responsibility for ensuring that none of Digi-Key's employees or agents shall disclose any of Supplier's Proprietary Information other than as authorized by this Agreement.
- (iii) All tangible embodiments of Supplier's Proprietary Information (whether preserved in hard copy, magnetic media or otherwise) and each and every copy, abstract, summary, or reproduction of same made by or for Digi-Key or acquired by Digi-Key will be delivered by Digi-Key to Supplier whenever Supplier requests and, in any event, upon the expiration or termination of this Agreement, for any reason whatsoever.

(c) **Exceptions.** The obligations of non-disclosure set out above shall not apply to a receiving party in respect of information that:

- (i) enters the public domain other than through a breach of this Agreement;
- (ii) is subsequently lawfully obtained by the receiving party from a third party or parties without restriction on disclosure and without a breach of this Agreement;
- (iii) was known to the receiving party without restriction on disclosure prior to its initial disclosure by the other;
- (iv) is independently developed by the receiving party; or
- (v) is required to be disclosed pursuant to an order of a court, administrative tribunal or other body having the power to compel the production of such information; provided that such disclosure shall be made only to the extent so ordered and that the party receiving such an order promptly notifies the disclosing party so that it may intervene in response to such order, or if timely notice cannot be given, seeks to obtain a protective order from the court, tribunal or other body for such Company Proprietary Information.

The party claiming the benefit of an exception shall have the burden of proof.

## 11. Termination, Suspension, and Survival

(a) **Term.** This Agreement shall commence on the Effective Date and shall continue on a month-to-month basis until either Digi-Key or Supplier terminates this Agreement (the “Term”).

(b) **Termination and Suspension.** Either party may terminate this Agreement any time in its sole discretion by providing notice to the other party through the Portal and such termination shall be effective 30 days from the date notice of termination is provided through the Portal. Digi-Key also may immediately terminate or suspend Supplier’s participation in the Program or remove Supplier’s listings, at any time in its sole discretion if Supplier violates the terms of this Agreement. Upon termination of this Agreement, Supplier is responsible for removing all Supplier Products from the Program and Sites using the Portal. Notwithstanding any other term or condition of this Agreement, at all times Digi-Key reserves the right to remove Products from the Site in its sole discretion.

(c) **Post-Termination Obligations.** Supplier will continue to have obligations under this Agreement after termination of the Agreement, including without limitation, the obligation to (i) provide customer service to Customers who purchased Products on a Site, (ii) pay any invoices delivered by Digi-Key in connection with the Agreement, (iii) notify Digi-Key and Customers of any recalls of its Products, and (iv) immediately notify Digi-Key of any Security Incident (as defined in the Policy) that allows a third party to view or access or otherwise compromise any Transaction Information (to the extent Supplier maintains Transaction Information in violation of its confidentiality obligations under Section 10(a)(iii)).

(d) **Survival.** The provisions of this Agreement which by their nature are intended to survive termination of the Agreement shall survive its termination. Without limiting the foregoing, Sections 2, 3, 5-16 shall survive termination of this Agreement for any reason.

**12. Additional Representations and Warranties.** In addition to the representations and warranties made by Supplier elsewhere in this Agreement, Supplier represents and warrants the following:

(a) **Authority.** Supplier is a corporation or other legal entity duly organized, validly existing and in good standing under the laws of the state where Supplier was incorporated or formed. Supplier has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder without any further ratification or approval. This Agreement constitutes the legal, valid, and binding obligations of Supplier. Supplier has the right, power and authority to grant the rights and licenses hereunder free and clear of any claims, liens and encumbrances.

(b) **No Conflicts.** Neither the execution and delivery of this Agreement, nor the consummation of the transaction contemplated hereby, will violate or conflict with any other obligation of Supplier or contract or license to which Supplier is a party.

## 13. Indemnification

(a) **Indemnity.** Supplier will defend (at Digi-Key’s option), indemnify and hold Digi-Key and its affiliates (and their respective employees, shareholders, officers, directors, agents and

representatives) harmless from and against any and all claims, costs, losses, damages (including any indirect, special incidental, or consequential damages), judgments, fines, penalties, interest, costs, fees, and expenses (including reasonable attorneys' fees and costs of any investigation, defense, and settlement) (collectively, "Losses") arising out of any Claim (as defined below) that arises out of or relates to: (i) any breach (or alleged acts or omissions that if true would be a breach) of any of Supplier's representations, warranties, or obligations set forth in this Agreement (including, without limitation, the Policy); (ii) Supplier's own website or other sales channels, Supplier's Products, Supplier information, the advertisement, offer, sale or return of any Supplier's Products; (iii) an allegation that a Supplier Product, or the sale or use thereof, infringes or misappropriates any Intellectual Property Rights or that any Supplier information (including, without limitation, Product Information and Supplier Marks) infringes or misappropriates any Intellectual Property Rights; (iv) any taxes owed by Supplier, or the collection, payment or failure to collect or pay such taxes; (v) Supplier's violation of any Law; (vi) Supplier accessing the Portal, the Sites, or Digi-Key's networks or systems; (vii) any Product recall; or (viii) a Security Incident caused by Supplier or due to Supplier's negligence or reckless or intentional misconduct, or failure to comply with commercially reasonable security requirements including, without limitation, the security requirement set forth in the Policy. Supplier will provide all cooperation, documentation, and information reasonably requested by Digi-Key in connection with any Claim. Supplier shall not, except with the prior written consent of Digi-Key, consent to entry of any judgment or enter into any settlement that does not include as an unconditional term the giving by the claimant or plaintiff to Digi-Key a release from all liability with respect to the Claim. Digi-Key shall have the right at all times to accept or reject any offer to settle any Claim against it.

(b) **Procedure for Indemnification.** Upon receipt of notice, from whatever source, of Claims against Digi-Key for which Supplier is obligated to indemnify Digi-Key, Supplier shall immediately take necessary and appropriate action to protect Digi-Key's interests with regard to the Claims. Digi-Key shall notify Supplier of the assertion, filing, or service of any Claims subject to Supplier's indemnification obligation of which Digi-Key has knowledge, as soon as is reasonably practicable, provided that any failure to provide such notice shall not negate or diminish Supplier's indemnification obligations hereunder, except to the extent such delay in notice has prejudiced the rights of the Supplier.

(c) **Claim.** "Claim" means any action, allegation, claim, demand, lawsuit, legal proceeding, administrative or other proceedings or litigation, inquiry, audit, or investigation.

(d) **Losses.** Losses for purposes of indemnification under Section 13(a)(viii) shall additionally include indemnity for any and all costs and fees (including but not limited to attorney and vendor fees) associated with identifying the root cause of a Security Incident, remediating the Security Incident, identifying lost data or data that was accessed without authority, identifying victims, notifying victims, public relations efforts to mitigate damage to Digi-Key's goodwill, all fines, all amounts paid in ransom, and victim credit monitoring and other commercially standard and reasonable courses of action.

#### **14. No Warranties**

THE PROGRAM, THE SITES, THE PORTAL, AND THE SERVICES, TOOLS, SOFTWARE, CONTENT, DATA, AND INFORMATION PROVIDED BY DIGI-KEY ARE

PROVIDED ON AN "AS IS" BASIS. NEITHER DIGI-KEY NOR ITS AFFILIATES MAKE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION: (a) THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT; (b) THAT THE PROGRAM, THE PORTAL, OR THE SITES WILL MEET SUPPLIER'S REQUIREMENTS, WILL ALWAYS BE AVAILABLE, ACCESSIBLE, UNINTERRUPTED, TIMELY, SECURE, OR OPERATE WITHOUT ERROR; AND (c) ANY IMPLIED WARRANTY ARISING FROM COURSE OF DEALING OR USAGE OF TRADE. TO THE FULL EXTENT PERMISSIBLE UNDER APPLICABLE LAW, DIGI-KEY AND ITS AFFILIATES DISCLAIM ANY AND ALL SUCH WARRANTIES. SUPPLIER AGREES THAT ITS USE OF THE SITES, THE PROGRAM, AND THE PORTAL ARE ENTIRELY AT SUPPLIER'S OWN RISK.

## **15. Limitation of Liability**

(a) **No Consequential Damages.** IN NO EVENT SHALL DIGI-KEY OR ITS AFFILIATES BE LIABLE TO SUPPLIER OR ANY THIRD PARTY UNDER ANY THEORY OF TORT, CONTRACT, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR (A) LOST PROFITS, LOST REVENUE, LOSS OF BUSINESS OR LOSS OF DATA, (B) EXEMPLARY, PUNITIVE, SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES OR THE LIKE, OR (C) FOR COST OF COVER, RECOVERY, OR RECOUPMENT OF ANY INVESTMENT, EACH OF WHICH IS HEREBY EXCLUDED BY AGREEMENT OF THE PARTIES REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE OR WHETHER DIGI-KEY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

(b) **Monetary Cap.** IN NO EVENT SHALL DIGI-KEY OR ITS AFFILIATES' AGGREGATE LIABILITY TO SUPPLIER OR ANY THIRD PARTY FOR ANY AND ALL CLAIMS, COSTS, LOSSES, DAMAGES (INCLUDING ANY INDIRECT, SPECIAL INCIDENTAL, OR CONSEQUENTIAL DAMAGES), JUDGMENTS, FINES, PENALTIES, INTEREST, COSTS, AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES AND COSTS OF ANY INVESTIGATION, DEFENSE, AND SETTLEMENT) FOR ANY REASON WHATSOEVER, AND REGARDLESS OF THE FORM OF ACTION OR LEGAL THEORY, EXCEED THE TOTAL AMOUNT OF DIGI-KEY MARGIN RETAINED BY DIGI-KEY FOR SUPPLIER PRODUCTS DURING THE THREE MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO SUCH LIABILITY. THE LIMITATIONS OF LIABILITY REFLECT THE ALLOCATION OF RISK BETWEEN THE PARTIES.

(c) **Survival of Limitations.** THE LIMITATIONS SPECIFIED IN THIS SECTION 15 WILL SURVIVE AND APPLY EVEN IF ANY LIMITED REMEDY SPECIFIED IN THIS AGREEMENT IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

## **16. General Provisions**

(a) **Integrated Agreement.** This Agreement, constitutes the complete integrated agreement between the parties concerning the subject matter of this Agreement. All prior and contemporaneous agreements, understandings, negotiations or representations, whether oral or in

writing, relating to the subject matter of this Agreement are superseded in their entirety by this Agreement.

(b) **Independent Contractors.** Supplier and Digi-Key are acting hereunder as independent contractors. No agency, partnership, joint venture, employee-employer or franchiser-franchisee relationship is intended or created by this Agreement.

(c) **Governing Law; Venue; Limitation on Actions.** This Agreement is governed by and will be construed in accordance with the laws of the State of Minnesota without regard to its principles of conflicts of law. Supplier agrees to exclusive jurisdiction of the federal and state courts located in Hennepin County, Minnesota, and waive any jurisdictional, venue or inconvenient forum objections to such courts. **To the fullest extent permitted by applicable law, no lawsuit under this Agreement will be joined to a lawsuit involving any other party that has entered into this Digi-Key Supplier Direct Ship Program Agreement, whether through a class action proceeding or otherwise.**

(d) **Assignment.** Supplier may not assign this Agreement or any of its rights or obligations hereunder without Digi-Key's prior written consent.

(e) **Severability.** In the event that any provision of this Agreement is determined by a court of competent jurisdiction to be illegal, invalid or otherwise unenforceable, such provision (or part thereof) shall be enforced to the extent possible consistent with the stated intention of the parties, or, if incapable of such enforcement, shall be deemed to be deleted from this Agreement, while the remainder of this Agreement shall continue in full force and remain in effect according to its stated terms and conditions.

(f) **Waiver.** The waiver by either party of a breach of or a default under any provision of this Agreement shall not be effective unless in writing and shall not be construed as a waiver of any subsequent breach of or default under the same or any other provision of this Agreement, nor shall any delay or omission on the part of either party to exercise or avail itself of any right or remedy that it has or may have hereunder operate as a waiver of any right or remedy.

#### **Supplier's Acknowledgment of Its Agreement to this Agreement**

By clicking the AGREED TO BY SUPPLIER button below you accept the terms and conditions of this Agreement, including, without limitation, the terms and conditions of the Policy and the Addendum

I HAVE READ THE ABOVE AGREEMENT, INCLUDING THE POLICY, AND BY CLICKING "AGREED TO BY SUPPLIER" BELOW SUPPLIER AGREES TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, INCLUDING THE POLICY. I REPRESENT THAT THE PERSON AGREEING TO THIS AGREEMENT ON BEHALF OF SUPPLIER HAS THE REQUISITE RIGHT, POWER, AND AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF SUPPLIER.

{REQUIRED INPUT FIELD} Supplier Name\*: \_\_\_\_\_

{REQUIRED INPUT FIELD} Name of Person Representing Supplier\* : \_\_\_\_\_

{REQUIRED INPUT FIELD} Title of Person Representing Supplier\*: \_\_\_\_\_

{BUTTON} AGREED TO BY SUPPLIER

[Following clicking AGREED TO BY SUPPLIER, the Parts List should appear which Supplier can populate with proposed Products]

## **ADDENDUM A**

### **DIGI-KEY SUPPLIER DIRECT SHIP PROGRAM POLICY**

This Digi-Key Supplier Direct Ship Program Policy (the “Policy”) is made effective upon Supplier’s acceptance of, and is incorporated into, the Digi-Key Supplier Direct Ship Program Agreement (the “Agreement”). Capitalized terms have the meaning set forth in the Agreement. Digi-Key reserves the right to change any of the terms and conditions of this Policy at any time in its sole discretion. Material changes to the Policy will be communicated to the Supplier through the Portal. Supplier’s continued use of the Program following receiving notice of a change to the Policy (or any other part of the Agreement) constitutes Supplier’s acceptance of the changes to the Policy and Agreement.

#### **1. The Portal**

The Portal is the primary web-based interface used by Digi-Key and Supplier in connection with the Program, to enable Supplier to sell its Products, through a Digi-Key Site. The Portal is used by Supplier to upload new Product offerings, update existing Product offerings and communicate the status of orders and transactions, as further set forth in this Policy and other parts of the Agreement.

#### **2. Product Approval and Product Removal**

Digi-Key must approve proposed Products before they will be offered for sale on a Site as part of the Program. Supplier must upload the required Product Information and the Suggested Product Price using the Portal and thereafter request approval of the proposed Product. After Digi-Key reviews the request, Digi-Key will inform Supplier, through the Portal, whether a Product has been approved for sale through the Program. Digi-Key has absolute discretion whether to accept a Product for sale through the Program. Once a Product has been approved for sale through the Program, Digi-Key and Supplier shall agree upon the Digi-Key Margin for the Product and failure to agree upon a Digi-Key Margin for a Product will result in the Product not being available through the Program. Digi-Key, in its sole discretion, shall set prices for the Products on the Sites.

Digi-Key may require Supplier to remove Products or Product Information from a Site, and in that event Supplier will remove the Products or Product Information immediately following receiving notice from Digi-Key to remove such Products or Product Information so the Products and Product Information no longer appear on the Sites. Digi-Key reserves the right to remove Products and Product Information from the Sites in its sole discretion.

### 3. Update of Product Information

(a) **Supplier Must Provide Updated Product Information.** Supplier shall routinely review Product Information and the Suggested Product Price and provide Digi-Key with updated Product Information and Suggested Product Price information, as needed, or as requested by Digi-Key, including, without limitation, when Supplier's Product mix, inventory, or suggested prices changes.

(b) **Product Change Notification.** Supplier shall consistently provide to Digi-Key applicable product change notifications, including, without limitation, changes in assembly/origin, design/specification, manufacturer information, obsolescence/EOL, packaging, part number, part status, and other updated information as needed to accurately offer Products on the Sites.

(c) **Supplier Must Provide an Inventory Feed and Lead Time.** Supplier will use commercially reasonable efforts to provide Digi-Key with at least a daily inventory feed for all Products, which also shall include the lead time identifying when each Product is available for shipment. Such inventory feed and lead time information must be provided no less than once per week.

### 4. Order Processing and Shipping

(a) **Checkout Process.** A Customer's purchase of a Product will take place solely through the Site where the Product is offered for sale, and Customer will not be routed to Supplier's website, if any, to complete the purchase. As part of the checkout process on the Site, Digi-Key will calculate, display to Customer, and charge Customer, the following:

- (i) The sales price of the Product (as determined in Digi-Key's sole discretion), including any discounts or instant rebates Digi-Key may elect to offer;
- (ii) The applicable sales tax based on the Customer's location and shipping address;
- (iii) Any other fees required by law such as recycling fees or other applicable local fees and or taxes; and
- (iv) Any shipping and handling fees determined by Digi-Key.

(b) **Order Notification.** Upon the sale of a Product to a Customer, Digi-Key will issue an order to Supplier, which shall include the Transaction Information, via the Portal. No later than three working days of receiving the Transaction Information for an order from Digi-Key, Supplier must, using the Portal, notify Digi-Key whether Supplier can fulfill the entire quantity of an order and provide the expected shipment date for each Product ordered. If Supplier does not provide such notification to Digi-Key, or if Supplier cannot fulfill the entire quantity of the order, then Digi-Key may in its discretion notify the Customer that the order, or a portion thereof, is cancelled or that the order, or a portion thereof, is on backorder.

(c) **Supplier Is Responsible For Shipping.** Supplier will be responsible for shipping all Products purchased by Customers in accordance with the timeframe set forth in this Policy and in accordance applicable Law. Within one business day of shipment of Products to Customer, Supplier must provide notice of shipment to Digi-Key through the Portal. Digi-Key may notify



Customers that Products have shipped. Supplier may engage the services of a logistic company approved by Digi-Key.

## **5. Cancellations and Returns**

(a) **Orders May Be Cancelled and Returned.** Supplier must accept and process cancellations and returns of Products in accordance with Section 8 of this Policy, which allows for a thirty (30) day replacement or money-back guarantee, unless the product has been customized or otherwise qualifies and has been approved by Digi-Key as a No Cancellation / No Return product (“NC/NR”). The Customer will initiate the return merchandise authorization (“RMA”) process through the Site. Digi-Key will notify Supplier through the Portal of the initiation of the RMA process and title of a returned Product shall transfer from the Customer to Supplier upon such notification. The Supplier is required to promptly respond to the request and to adhere to the requirements defined in Section 9 of this Policy. Supplier will stop or cancel any order if requested by Digi-Key; provided that if Supplier has transferred Products to a shipper, Supplier will use commercially reasonable efforts to stop and or cancel delivery by the shipper. Within two business days of Supplier’s receipt of the returned Product, Supplier must notify Digi-Key through the Portal of Supplier’s receipt of the returned Product, and provide any additional information requested by Digi-Key, to enable Digi-Key to provide a cash refund to the Customer. Digi-Key reserves the right to issue a cash refund for Products it verifies have been returned even if Supplier fails to notify Digi-Key of Supplier’s receipt of a returned Product.

(b) **How Refunds Are Processed.** If a Customer is due a cash refund, following Supplier’s receipt of the returned Product (and notification to Digi-Key of such receipt), Digi-Key will provide the refund to the Customer via the Customer’s original payment method (e.g., credit or debit card) if possible. Supplier will not provide any refunds, cash or non-cash, to Customers. Digi-Key shall have the right to invoice Supplier for amounts Digi-Key refunds to Customers. Digi-Key shall have the right to offset and settle amounts due under such invoices against any other amounts owing from Digi-Key to Supplier.

**6. Customer Service.** Supplier will not initiate communications or contact with Customers, but may respond to Customer inquiries and requests for customer service. Any customer service Supplier provides to a Customer must be for new Products Supplier has actually sold to Customers, not any other Products or products. In performing such customer service, Supplier will always represent itself as a separate entity from Digi-Key. Supplier will not disparage Digi-Key, its affiliates, or suppliers, or the products or services available through the Site when performing customer service obligations or any other obligation under this Agreement. If Supplier monitors or records customer service calls, Supplier must give notice of such monitoring or recording to all Customers during each such call prior to providing any customer service. Digi-Key may, in its discretion, provide Customers with specification data and other published technical documentation about Products.

## **7. The Program is for the United States Only**

The Program is only for the sales of Products from the United States to Customers located in the United States. Supplier may only sell Products as part of the Program that are shipped from a location within the United States to a destination within the United States. Products originating

from outside the United States must first be imported into the United States before such Products can be sold as part of the Program.

## **8. Service Level Performance Requirements**

### **(a) Shipping Service Level**

Supplier must provide an expected lead time to ship for every Product listed on the Sites. Every order confirmation must include an estimated shipping date. Supplier must either process the order and ship the Product within the stated time frame, as stated in the order confirmation form, or notify Digi-Key about any expected delays before the stated time period elapses.

### **(b) Cancellation Service Level**

Supplier must accept a Customer's cancellation of an order, and process such cancellations, any time before a Product in the order is shipped to the Customer. However, if an order is for a Product that requires customization for the Customer, or the product qualifies and has been approved by Digi-Key as a NC/NR product, Supplier is not required to accept cancellation of the order unless Supplier has not started the process of production or customizing the Product for the Customer.

### **(c) Return Service Level**

Digi-Key's Return Policy for Customers is set forth in Digi-Key's Website Terms of Use and Conditions of order [[See Here](#)]. Supplier must accept returns when the Customer has complied with Digi-Key's Return Policy.

### **(d) Additional Service Level Requirements**

Digi-Key expects the Supplier to adhere to the following additional service levels:

- (i) 98% of orders must be accepted within one working day and an order confirmation, including an expected shipping date, is sent to Digi-Key within that time frame.
- (ii) 98% of orders must be shipped by or before the date stated as the "expected shipping date" on the order confirmation.
- (iii) The incident rate should be less than 5%.

In addition, Supplier will work towards maintaining a customer satisfaction rating of 3.8 out of 5 or higher.

## **9. Information Security Requirements**

### **(a) Definitions**

For the purposes of the Agreement (including this Policy), the terms below have the following meanings whenever capitalized:

**“Costs”** means expenses of any kind, including attorneys’ fees, vendor fees, litigation costs, investigatory costs, costs associated with identifying the root cause of Security Incident, remediating a Security Incident, identifying lost data or data that was accessed without authority, and identifying victims, costs of providing notice to any person or organization in the event of a Security Incident, all amounts paid in ransom, and costs of providing consumer protection services to any person in the event of a Security Incident, including credit monitoring or identity restoration services.

**“Security Incident”** means any reasonably suspected or actual unauthorized access to or acquisition, disclosure, use, or loss of Digi-Key Information (including hard copy records) or breach or compromise of Supplier’s security program that presents a potential threat to any Digi-Key Information or Digi-Key system.

**“Digi-Key Information”** means Digi-Key’s Proprietary Information as defined in the Agreement, including, without limitation, Transaction Information and the personally identifiable information or personal data included in the Transaction Information.

**“Privacy and Security Requirements”** means all of the following: (i) all legal requirements (federal, state, local, and international laws, rules and regulations, and governmental requirements) currently in effect and as they become effective, relating in any way to the privacy, confidentiality, integrity, availability, or security of Digi-Key Information including Regulation 2016/679 (the General Data Protection Regulation (“GDPR”)); (ii) all industry standards concerning privacy, data protection, confidentiality, integrity, availability, or security of information, including without limitation, the Payment Card Industry Data Security Standard, and any other similar standards; and (iii) all policies, statements, or notices that are provided to Supplier in writing.

(b) **Acknowledgement.** Supplier acknowledges that it is solely responsible for the confidentiality and security of Digi-Key Information, including without limitation the Transaction Information, in its possession, custody, or control. Supplier will be provided with Transaction Information via the Portal. Supplier may only use Transaction Information to further the transaction for which the Transaction Information was provided and in accordance with applicable Privacy and Security Requirements.

(c) **Security Program**

Supplier must have implemented and maintain an appropriate security program that incorporate industry best practices and that at least meets the requirements of this Section 9 of the Policy. Supplier’s security program must include appropriate administrative, technical, and physical safeguards to prevent the compromise of its information systems, computer networks, and data files by unauthorized users, viruses, or malicious computer programs which in turn could be transmitted to Digi-Key or compromise the security of the Sites or Digi-Key Information, including without limitation Transaction Information; assure the confidentiality, integrity, and

security of Digi-Key Information and Digi-Key systems; and include at least the following safeguards:

- (i) Appropriate user authentication controls, including secure methods of assigning, selecting, and storing access credentials, restricting access to active users, and blocking access after a reasonable number of failed authentication attempts. Without limiting the foregoing, Supplier is responsible for maintaining the security of its user name and password used to access the Portal (“Credentials”). Supplier’s Credentials are for Supplier’s use only and Supplier may not disclose Credentials to any third party. Supplier is responsible for any use or action taken under Supplier’s Credentials. If Supplier’s Credentials are compromised, Supplier must change them immediately and notify Digi-Key.
- (ii) Secure access controls, including controls that limit access to Digi-Key Information to individuals who have a demonstrable genuine business need-to-know, supported by appropriate policies, protocols, and controls to facilitate access authorization, establishment, modification, and termination.
- (iii) Appropriate and timely adjustments to Suppliers’ security program based on: periodic risk assessments; regular comprehensive evaluations (such as third-party assessments) of Supplier’s security program; monitoring and regular testing of the effectiveness of safeguards; and a review of safeguards at least annually or whenever there is a material change in Supplier’s technical environment or business practices that may implicate the confidentiality, availability, integrity, or security of Supplier’s information systems.
- (iv) Appropriate, ongoing training and awareness programs designed to ensure workforce members and others acting on Supplier’s behalf are aware of and adhere to Security Program policies, procedures, and protocols.
- (v) Monitoring of systems designed to ensure data integrity and prevent loss or unauthorized access to, or acquisition, use, or disclosure of, Digi-Key Information.
- (vi) Technical security measures, including firewall protection, antivirus protection, security patch management, logging of access to or use or disclosure of Digi-Key Information, intrusion detection, and encryption of data in transit and at rest.
- (vii) Physical facility security measures, including access controls, designed to restrict access to Digi-Key Information to individuals who have a demonstrable genuine business need-to-know.
- (viii) Logical segmentation of Digi-Key Information from data of others, but especially any Digi-Key competitor.

**(d) Supervision**

Supplier shall exercise necessary and appropriate supervision over its relevant employees and others acting on its behalf to maintain confidentiality, integrity, availability, and security of Digi-Key Information.

(e) **Security Incidents**

- (i) Supplier agrees to immediately notify Digi-Key of any Security Incident by contacting the assigned Digi-Key account manager. While the initial phone or email notice may be in summary form, a comprehensive written notice should be provided to Digi-Key within 48 hours. The notice shall summarize in reasonable detail the nature and scope of the Security Incident (including a description of all Digi-Key Information affected) and the corrective action already taken or to be taken by Supplier. The notice shall be timely supplemented to the level of detail reasonably requested by Digi-Key, inclusive of relevant investigative or forensic reports.
- (ii) Supplier shall promptly take all necessary and advisable corrective actions, and shall cooperate fully with Digi-Key and its designees in all reasonable efforts to investigate the Security Incident, mitigate adverse effects, and prevent recurrence. Such cooperation shall include responding to Digi-Key's inquiries about the Data Incident in a timely fashion.
- (iii) The parties shall collaborate on whether it is necessary or advisable to provide notice of the Security Incident to any person, governmental entity, regulatory body, the media, or other party. The parties shall collaborate on the content of the notice. Digi-Key will make the final determination as to whether notice will be provided and to whom, the content of the notice, and which party will be the signatory to the notice.

(f) **Notice of Process.** In the event Supplier receives a governmental or other regulatory request for, or legal process requesting, any Digi-Key Information, Supplier shall immediately notify Digi-Key to enable Digi-Key to defend such action. Supplier shall reasonably cooperate with Digi-Key in such defense.

(g) **Compliance.** Supplier shall comply with all applicable Privacy and Security Requirements. Digi-Key (the controller) appoints Supplier as a processor to process the personal data which is processed under this Agreement solely as necessary to perform its obligations under this Agreement and in accordance with the processing restrictions for Transaction Information. The subject matter, duration, nature and purpose of the processing and type of personal data and categories of data subjects are as provided in this Agreement. Digi-Key and Supplier agree that the provisions set out in paragraphs (a) to (h) of Article 28(3) of GDPR are incorporated into this Agreement (with Digi-Key as "controller" and Supplier as "processor").

(h) **Subcontractors.** Supplier shall not engage another processor (a "subprocessor") to process the personal data without the prior written consent of Digi-Key. Notwithstanding this, Digi-Key consents to Supplier engaging the subprocessors subject to approval from Digi-Key provided that (i) Supplier provides at least 30 days' prior notice of any addition or replacement; and (ii) the conditions set out in Article 28(4) are adhered to. If Digi-Key refuses to consent to any particular subprocessor then Digi-Key may terminate the Agreement.

(i) **Security Certification.** At Digi-Key's request, Supplier shall maintain a level of security certification or assessment consistent with best practices and conducted by a qualified third party reasonably acceptable to Digi-Key.

(j) **Indemnification.** Without limiting Supplier's indemnification obligation under Section 13 of the Agreement, Supplier shall defend, indemnify, and hold harmless Digi-Key and its affiliates (and their respective employees, shareholders, officers, directors, agents, and representatives) from, and against any claims, requests, accusations, allegations, assertions, complaints, petitions, demands, suits, actions, proceedings, causes of action, and judgments based on or resulting from (i) Supplier's access, acquisition, use, storage, or maintenance of Digi-Key's Proprietary Information (including without limitation a Supplier Security Incident) or (ii) Supplier's noncompliance with this Agreement (including without limitation Section 9 of this Policy), and reimburse Digi-Key for or bear any Losses (as defined in the Agreement) and Costs based on or resulting from (i) Supplier's access, acquisition, use, storage, or maintenance of Digi-Key's Proprietary Information (including without limitation a Supplier Security Incident) or (ii) Supplier's noncompliance with this Agreement (including without limitation Section 9 of this Policy), notwithstanding any allegation that Digi-Key was negligent or otherwise at fault.

**10. Insurance Requirements.** Supplier must ensure, at its own expense, appropriate insurance coverage, such as Worker's Compensation, General Liability, Employers' Liability, and Property Insurance, in such amounts, as shall be necessary to cover such contingencies.

Digi-Key shall be added as an additional insured to the general liability, professional liability, and any excess liability policies used to satisfy the requirements above.

Supplier shall deliver to Digi-Key a certificate of insurance evidencing valid coverage in effect as specified above within one month of signing this contract.

Supplier's policies shall be primary and any insurance maintained by Digi-Key or an affiliate is excess and noncontributory. Except where prohibited by law, Supplier shall require its insurer to waive all rights of subrogation against Digi-Key's insurers and Digi-Key.