

# DIGITAL MOVIE BOARDS, LLC

## DEALER AGREEMENT

Dealer (Company) Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Territory: \_\_\_\_\_

Tier Pricing: \_\_\_\_\_

Estimated Min. Sales : \_\_\_\_\_

Federal Tax ID Number: \_\_\_\_\_

Resale Certificate #: \_\_\_\_\_

(Please attach a copy of certificate)

Sales / Dealer Rep: \_\_\_\_\_

Please list your sales or dealer representative

Agreement Effective Date: \_\_\_\_\_

### Summary of Business Terms and Conditions

DEALER wishes to purchase and resell Digital Movie Boards, LLC (Also referred to as, "DIGITAL MOVIE BOARDS" or "DMB" herein) products as an Authorized DIGITAL MOVIE BOARDS DEALER ("DEALER").

***Credit Terms may be established at a future date by providing a completed credit application: otherwise orders are processed only after payment has been received by credit card, check, or wire transfer and are NON-REFUNDABLE.***

DEALER understands and agrees to purchase a minimum of goods to effectively demonstrate DMB technology. Goods purchased for demo purposes shall be priced according to the most current DMB authorized demo program.

Purchases are non-refundable. Non-defective returns for account credit are subject to a 25% restocking fee upon written acceptance by DMB.

Advanced replacements are provided within one-year of product purchase, subject to good standing of credit terms and dealer account.

Products sold by DMB to DEALER under this Agreement are warranted to the first end user of the Products under DMB's standard limited warranty in effect from time to time, a copy of which is attached hereto. All returns for repairs, replacement or account credit are governed by DMB's Product Warranty Clause.

**Now, therefore, in consideration of the mutual promises and conditions contained herein, the parties agree as follows:**

**1. Authorized Dealer:** DEALER will represent itself as a DMB Authorized dealer and will only use DMB trademarks, logos and marketing materials that are approved and supplied by DMB.

**2. Resale to end users only:** Unless authorized in writing by DMB, DEALER agrees that products may be resold exclusively to end users, and agrees not to sell PRODUCTS to any other business, dealer, or individual who intends to resell the products.

DEALER acknowledges that it is impossible to measure the economic damages sustained by DMB if DEALER was to violate this AGREEMENT. Therefore, DEALER expressly agrees that DMB shall be entitled to obtain appropriate equitable remedies including temporary, preliminary and/or permanent injunctive relief against DEALER for any violation of the above statement 2. DEALER also agrees that DMB shall recover from DEALER all costs and reasonable attorney fees that DMB incurs in any litigation against DEALER or others arising from DEALER's violation of statement 2.

This Agreement, and all transactions contemplated hereby, shall be governed by, construed and enforced in accordance with the laws of the State of Texas. The Parties herein submit to a court of competent jurisdiction located in San Antonio in the State of Texas. In the event that litigation results from or arises out of this Agreement or the performance thereof, the Parties agree to reimburse the prevailing party's reasonable attorney fees, court costs and all other expenses taxable by the court as costs, in addition to any other relief to which the prevailing party may be entitled. In such event, no action shall be entertained by said court or any court of competent jurisdiction if filed more than one year subsequent to the date the cause(s) of action actually accrued regardless of whether damages were otherwise as of said time calculable.

**3. Ordering and Shipping:** Dealers in good standing may place orders for PRODUCTS via company purchase order sent to the following email address; [jd@digitalmovieboards.com](mailto:jd@digitalmovieboards.com) or the appropriate contact information as supplied by DMB. All orders are subject to DMB approval at DMB's sole discretion.

If there are any discrepancies between product pricing on DEALER's Purchase Order and the invoice provided by DMB, the invoice shall prevail. DMB will make reasonable efforts to inform DEALER of the discrepancies prior to shipping products.

Shipping and incidental charges such as customs, insurance and taxes are the sole responsibility of the DEALER, and said charges incurred by DMB on DEALER's behalf will be added to the final invoice.

DMB may at its sole discretion offer shipping discounts based on quantity purchases.

**4. Payment and Credit Terms:** All first orders will be pre-paid by DEALER via company credit card, check or wire prior to shipping. Payment terms will be extended to qualifying dealers at DEALER's request and at DMB's sole discretion.

On a project per project basis, DMB reserves the right to request special payment terms such as but not limited to deposit amounts, partial and full upfront payments before shipping product.

Credit limits and payment terms are subject to change without prior notice at DMB's sole discretion. DEALER agrees to promptly pay DMB for products when due.

DEALERS with an approved credit account agree to the following credit terms; 1.5% / 15, net 30 days. DEALER agrees to pay DMB a monthly finance charge 1.5% per month for any invoice amounts received by DMB more than 30 days after the due date on the invoice. Any amounts due on credit and paid by credit card will incur an additional charge of 3%. Payments paid in-full at time of shipping via credit card will not incur the additional 3% fee.

DEALERS with a credit account agree to make payment in full to DMB within thirty (30) days of the invoice date or applicant's account may be placed on credit hold. No further orders will be shipped until total outstanding balances are paid in full. In addition, DMB reserves the right to release balance owed to a collection agency and/or attorney for collection.

DEALERS with a credit account agree to pay all costs and reasonable collections and/or attorney fees incurred because of nonpayment of any amount within sixty (60) days of invoice date, whether or not any legal actions are filed.

DEALER with a credit account acknowledge that failure to make full payment within ninety (90) days will result in cancellation of applicant's credit account. All future orders will be shipped on a C.O.D. credit card or other pre-paid basis.

All credit accounts are required to keep a valid and current credit card on file as security against debts owed to DMB by DEALER for products purchased. DEALER hereby authorizes DMB to charge the credit card on file for all past due debts owed to DMB by DEALER, or upon DEALER's verbal or written request.

DEALER agrees not to reverse or dispute any valid credit card charges made on DEALER's credit card account on file with respect to these terms and conditions.

DEALER hereby acknowledges that these restrictions are a material and necessary condition of this agreement.

DEALER acknowledges that violation of this paragraph constitutes a material breach of this agreement, and can result in the termination of this agreement without prior notice. DEALER agrees that DMB shall be entitled to recover all costs and reasonable attorneys' fees that may be incurred in collection efforts or in any litigation against DEALER arising from DEALER's violation of this paragraph.

**5. Repairs:** Repairs will be governed by DMB's Product Warranty Policy attached hereto.

**6. Advance Replacements:** DEALERS with established credit accounts in good standing with no past due invoices are entitled to advance replacement of defective products within one (1) year of the purchase of the defective product. After one (1) year, defective products will be governed by DMB's Product Warranty Policy attached hereto.

**7. Product Returns:** DEALER acknowledges that orders are not refundable and returned products will be subject to a restocking fee of 25% if product is received in good condition or may be rejected at DMB's sole discretion if product is not in good working order and condition or is missing parts or accessories.

As described in DMB's Product Warranty Policy, all returned products must be accompanied by a valid RMA issued by DMB within thirty (30) days of DMB's receipt of the PRODUCT.

DEALER will be issued a credit memo on account for all product accepted by DMB for returns which will be applied to any outstanding invoices or may be used against future purchases by DEALER. DMB does not issue refunds for ordered products.

**8. Technical Support:** Authorized DEALERS are provided with access to our technical support team from Monday to Friday 9am to 5pm EST. Extended support hours may be arranged to help DEALER in special circumstances with 48-hour prior notice. Support is provided via email at (jd@digitalmovieboards.com), and telephone at 210-663-3146. DMB technical support is available to authorized DMB dealers only. End users will be directed to their respective dealer.

**9. Software:** (1) Any third party, standard, off-the-shelf software included or installed in any Products is provided under the end user license agreement applicable to such software. (2) Neither DEALER nor any subsequent purchaser of Products will acquire any ownership interest in any software or firmware installed in any Products as of the time of sale of such Products to DEALER, or in any software or firmware update or upgrade made available by DMB for any Products after the time of sale of such Products to DEALER. Any owner or user of Products will be entitled to use such software or firmware, or any such software or firmware updates or upgrades, solely for purposes of, and in connection with, use of the Products.

**10. Intellectual Property Rights:** DMB hereby expressly reserves all of its right, title and interest in, to and under all patents, trademarks, copyrights, trade secrets, design rights and other intellectual property rights, and DEALER acknowledges and agrees that DEALER does not acquire, and will have no interest in, any such intellectual property rights. DEALER acknowledges that "DIGITAL MOVIE BOARDS, LLC" and the DMB logo, together with all other trademarks of DMB, are valuable trademarks of DMB, and agrees that any use of such trademarks inures to the sole benefit of DMB, DEALER will at all times respect all intellectual property rights of DMB.

**11. Confidentiality:** "Confidential Information" means all non-public technical, financial or business information, including without limitation technology, inventions, data, software, price lists, customer lists, marketing plans and financial statements, disclosed by either party ("Disclosing Party") to the other party ("Receiving Party") in connection with this Agreement, in whatever form disclosed, whether by written material, oral disclosure or visual demonstration, or by observation by the Receiving Party. Each party agrees to hold the other party's Confidential Information in strict confidence and not to disclose such Confidential Information to any third party without the prior written consent of the Disclosing Party. The Receiving Party agrees to use Confidential Information of the Disclosing Party only in connection with the Receiving Party's performance under this Agreement and for no other purpose. The Receiving Party will use the same degree of care, but no less than a reasonable degree of care, as it uses with respect to its own Confidential Information to prevent unauthorized disclosure of the Disclosing Party's Confidential Information to third parties. The restrictions of this Section 6 do not apply to information that is (a) known to the Receiving Party at the time of receipt, (b) independently developed by the Receiving Party without any use of the Disclosing Party's Confidential Information, (c)

lawfully obtained by the Receiving Party from a third party not bound by any obligation of confidentiality to the Disclosing Party, (d) in the public domain when received or thereafter enters the public domain through no fault of the Receiving Party; (e) provided by the Disclosing Party to third parties without restriction;

**12. Disclaimer:** EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, DMB MAKES NO OTHER WARRANTIES WHATSOEVER TO DEALER OR DEALER'S CUSTOMERS, AND SPECIFICALLY DISCLAIMS ALL OTHER WARRANTIES, WHETHER WRITTEN OR ORAL, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR USE OR PURPOSE OR NON- INFRINGEMENT.

**13. Limitation of Liability:** UNDER NO CIRCUMSTANCES WILL DMB BE LIABLE TO DEALER OR DEALER'S CUSTOMERS FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL OR PUNITIVE DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOST PROFITS, LOST REVENUES, LOST BUSINESS OR LOSS OF USE OF PRODUCTS, WHETHER OR NOT DMB IS ADVISED THAT SUCH DAMAGES WILL OR MAY OCCUR, AND WHETHER SUCH DAMAGES ARE CLAIMED BASED ON BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY IN TORT, OR ANY OTHER LEGAL OR EQUITABLE THEORY. NO ACTION, REGARDLESS OF FORM, ARISING OUT OF THIS AGREEMENT OR THE SALE OF PRODUCTS TO DEALER HEREUNDER MAY BE BROUGHT AGAINST DMB MORE THAN ONE YEAR AFTER THE DATE OF ACCRUAL OF THE CAUSE OF ACTION.

**14. Indemnification:** DEALER will indemnify DMB, its affiliates, and their respective officers, directors, shareholders, employees, agents, legal representatives, successors and assigns from and against any claim, damage, liability, loss, cost, expense, obligation, action or cause of action arising out of any breach by DEALER of its obligations under this Agreement or any negligent or willful misconduct of DEALER.

**15. Force Majeure:** If the performance of this Agreement or of any obligation hereunder by either party is prevented by reason of war, civil disturbance, terrorism, fire, flood, earthquake, typhoon or other natural disaster, strikes, labor disputes, governmental action, or any other act or condition whatsoever beyond the reasonable control of such party, such party will, except for payment obligations, be excused from performance for so long as such cause continues.

**16. Entire Agreement:** This Agreement and the exhibits and schedules attached hereto, which are incorporated herein by this reference, constitute the complete and entire agreement between parties as to the subject matter hereof, and supersede any prior and contemporaneous understandings, agreements and contracts, written or oral, related to such subject matter. No change or addition to or amendment or modification of any of the terms, provisions, or conditions hereof will be binding on the parties unless set forth in writing dated subsequent hereto, referencing this Agreement, and signed by the authorized representatives of the parties hereto.

**17. Severability:** Any provision of this Agreement which in any way contravenes the law of any jurisdiction in which this Agreement is effective will, in such jurisdiction, to the extent of such contravention of law, be deemed severable and will not affect any other provision hereof or the validity hereof.

**18. Restriction on Assignment:** DEALER will not assign or transfer this Agreement, or any of its rights hereunder, or delegate any of its duties or obligations, under this Agreement, without the prior written consent of DMB. Any attempted assignment in violation of this Section 18 will be null and void.

**19. Headings:** The headings set forth in this Agreement are for reference purposes only and will not be considered in the interpretation of the provisions of this Agreement.

**20. Acknowledgment:** DEALER hereby acknowledges receipt of a duly executed copy of this Agreement which DEALER has fully read and understands.

**21. Term and Termination:** This agreement will be valid until terminated by either party. Either party may terminate this agreement at any time, with or without cause. Where the termination is without cause the terminating party shall give thirty (30) day notice in writing to the terminated party, and termination shall be effective upon expiration of the thirty-day period. Where the termination is with cause, it shall be effective as of the date of the event which was the cause for termination.

Cause for termination of the DEALER by DMB shall include but not limited to:

- a. DEALER is in DMB’s sole judgment, being unacceptably delinquent in paying for products purchased from DMB.
- b. DEALER failing to truthfully and accurately represent DMB products or DMB claims and/or representations regarding their products.
- c. DEALER becoming insolvent, files or has filed against it a petition of bankruptcy or insolvency or makes a general assignment for the benefit of its creditors or has a receiver appointed for its business or properties.
- d. DEALER selling, transferring or relinquishing any substantial interest in the direct or indirect ownership control of the DEALER's dealership.
- e. DEALER failing to meet minimum sales objectives.
- f. DEALER trans-shipping DMB product to a non-DMB authorized dealer for resale.
- g. DEALER in violation of this Agreement.

Upon termination of this agreement all rights and obligations of both parties shall cease, except that the provisions of paragraph 4 shall remain in force and effect until fully satisfied. Further, the due dates on all unpaid invoices shall accelerate to the date of termination and will immediately become due.

**22. Amendments and Modifications to this Agreement:** DEALER understands that these policies may be amended by DMB at any time and that DMB may send DEALER periodic updates of these Business Terms.

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IN WITNESS WHEREOF the parties have executed this Agreement as of the effective date written above.

**DEALER:**

Name of authorized representative \_\_\_\_\_

Title \_\_\_\_\_

Company (DEALER) \_\_\_\_\_

Email \_\_\_\_\_

Phone Number \_\_\_\_\_

Signature \_\_\_\_\_

Name of Authorized Representative \_\_\_\_\_

Title \_\_\_\_\_

Company (DEALER) \_\_\_\_\_

Email \_\_\_\_\_

Phone Number \_\_\_\_\_

Signature \_\_\_\_\_

**Digital Movie Boards, LLC**

Name of Authorized Representative \_\_\_\_\_

Title \_\_\_\_\_

Signature \_\_\_\_\_