



EXFO's Standard Distribution Terms and Conditions (v. 2019-07)

These Standard Distribution Terms and Conditions apply to Distributor's purchases of EXFO products ("Products"). Any specific Terms and Conditions, that are incorporated hereto by reference, constitute the entire contract between the Distributor and EXFO ("Agreement"). "EXFO" means the direct or indirect affiliate or subsidiary of EXFO Inc. named on an EXFO quotation, order confirmation, invoice or other sales documents. "Distributor" means the entity that places an order for Products with EXFO with the intention to distribute to a third-party. The Agreement may not be altered, supplemented, or amended by the use of any other document(s) unless otherwise agreed to in a duly signed writing by both Distributor and EXFO. Distributor's acceptance of this Agreement in its entirety is expressed by signing the Compliance Statement, ordering, accepting delivery, keeping, distributing, reselling or using the Products or any other act or expression of acceptance by Distributor.

1. DEFINITIONS – The following terms, when used throughout the Agreement and its attachments and appendices, shall have the following meanings:

"Affiliate" of a party shall mean an entity (i) which is directly or indirectly controlling such party; (ii) which is under the same direct or indirect ownership or control as such party; or (iii) which is directly or indirectly owned or controlled by such party. For these purposes, an entity shall be treated as being controlled by another if that other entity has fifty percent (50%) or more of the votes in such entity, is able to direct its affairs and/or to control the composition of its board of directors or equivalent body.

"Commercial Terms" shall mean all the additional commercial terms and conditions confirmed in writing to Distributor by an EXFO authorized representative. The Commercial Terms will remain the same for the Term of this Agreement or until new ones are communicated to the Distributor by an EXFO authorized representative.

"Compliance Statement" shall mean the distributor compliance statement provided to Distributor and attached to this Agreement as Appendix 1.2.

"Confidential Information" shall mean all data and information, notwithstanding the method of communication, relating to the EXFO Group's business and products, including without limitation, Intellectual Property Rights, components, services, research and development, techniques, manufacturing processes, marketing and financial data, computer software, sales policies, identity of suppliers, know-how and any other data or information, with the exception of information and data that: (i) was rightfully in Distributor's possession before receipt from EXFO or from any entity of EXFO Group; (ii) is or becomes a matter of public knowledge through no fault of Distributor; (iii) is rightfully received by Distributor from a third party who has no duty of confidentiality; (iv) is independently developed by Distributor without use of the Confidential Information; (v) is disclosed under operation of law; or (vi) is approved for release by written authorization of EXFO.

"End-User" means an existing or prospective customer of Distributor to whom Distributor distributes the Products for use in the regular course of such customer's business, but specifically not for the purpose of sublicensing or for the use of a private person as a consumer.

"EXFO Group" shall mean collectively EXFO Inc. and its Affiliates.



“**EXFO’s Partners website**” shall mean the website on which Distributor shall stay informed on updates, pricelists, communications, sales terms and conditions and instructions on how to use EXFO’s Products, available at: <http://partners.exfo.com>.

“**Indemnified Party**” shall have the meaning attributed to it in Section 14.

“**Intellectual Property Rights**” shall have the meaning attributed to it in Section 11.

“**Products**” means the EXFO products, which consist of one or more software combined with one or more piece of hardware, card or adapter product(s) as expressly listed in the Commercial Terms as may be expressly updated periodically by EXFO in writing, as well as the associated EXFO created documentation for use with the said products such as user manuals. Products shall also include all EXFO maintenance releases, patches, updates, and upgrades and other Product modifications as well as future products that are made available to Distributor.

“**Territory**” means the region(s) defined in the Commercial Terms in which the Distributor has been granted the non-exclusive right by EXFO to distribute the Products to End-Users pursuant to the terms of this Agreement.

“**Term**” means any period of one (1) year from September 1st to August 31st at which time it will automatically terminate. A new duly signed Compliance Statement shall be required for each subsequent one (1) year terms.

2. **APPOINTMENT AND ACCEPTANCE** – EXFO, upon reception of a signed Compliance Statement, grants to Distributor the non-exclusive right as to distribute the Products detailed in the Commercial Terms, solely within the Territory set forth in the Commercial Terms. Distributor accepts the appointment and agrees to sell and promote the sale of the Products in the Territory. However, it may occur that Products are indirectly resold in Distributor's Territory by third parties without EXFO's participation and in such cases, no compensation whatsoever will be paid by EXFO to Distributor. In addition, this Agreement does not entitle Distributor to a commission or discount in the event of Products sold to original equipment manufacturers (“**OEMs**”) and shipped into the Territory under the mark or label of a company other than the EXFO Group. Notwithstanding the foregoing, EXFO does retain the right to sell the Products directly within the Territory and in such cases no compensation will be paid by EXFO to the Distributor.
3. **DISTRIBUTOR DISCOUNT** – EXFO shall grant to Distributor a discount as set out in the Commercial Terms for the purchase of Products by the Distributor. Unless otherwise agreed in the Commercial Terms, this discount applies to Products only and may be revised by EXFO during the Term of this Agreement. For clarity purposes, unless otherwise agreed in the Commercial Terms, no discount shall apply to services, if any, purchased by the Distributor and Distributor shall pay the full price indicated on price list for such services. Furthermore, Distributor’s discount does not apply to orders for compliance testing, repair and reworks, research and development, engineering, special tooling and non-recurring start-up costs.
4. **INITIAL ORDER** – As the case may be, Distributor shall place a minimum initial order for Products in an amount as agreed with EXFO's authorized representative and as indicated, in the Commercial Terms. This initial order is intended to provide Distributor with demonstrator equipment to promptly begin selling Products. Non-fulfillment of this obligation by Distributor shall entitle EXFO to cancel this Agreement without prior notice.



5. ORDERS, DELIVERY AND PAYMENT

- 5.1. EXFO shall sell to Distributor at the discount set forth in the Commercial Terms, based on the official price list for the Territory effective at the date of the order. Copies of this official price list shall be available to Distributor on EXFO's Partners website. All sales shall be upon terms established by EXFO, and it shall have the right, at its sole discretion, from time to time, to establish, change, alter or amend prices and other sales terms and conditions. In circumstances of a price increase, EXFO shall honour prices for outstanding orders acknowledged by EXFO and valid quotations issued by EXFO.
- 5.2. All orders placed by the Distributor shall comply with the terms included within the EXFO Ordering Guide found on EXFO's website: <http://www.exfo.com/how-to-buy/ordering-guide-and-contact-details>. A purchase order can be validly issued by electronic mail, fax, or in paper form to the EXFO Group entity identified in the above EXFO Ordering Guide for the Distributor's Territory. An authorized representative of EXFO Group shall send an acknowledgement of receipt within one (1) week from the date of reception of the order. Any purchase order must include as a minimum: (i) the name and address of the End-User; (ii) the name, quantity and order code of each Product; (iii) details identifying the existing products relating to the order (if any); (iv) any other additional information that EXFO may reasonably request from time to time; and (v) if the Order is for extended warranty or maintenance, the name, address, telephone number, e-mail address and fax number of the End-User. Only purchase orders payable by credit card shall be accepted by telephone.
- 5.3. Products will be shipped to Distributor FCA (Incoterms 2020) at the EXFO Group shipping facility stated in EXFO's order acknowledgment. Freight, insurance, taxes, duties and any allowance are at Distributor's charge.
- 5.4. All purchase orders are payable in the currency provided in the Commercial Terms by Distributor unless otherwise specified in writing by any entity of the EXFO Group. Unless otherwise specified, payments shall be made by prepaid wire transfer or by letter of credit. It is at the sole discretion of EXFO, following a proper credit check, to offer any credit terms. EXFO may apply a 1.5% monthly interest charge on late payments.
- 5.5. The purchase price payable by the Distributor is subject to the various applicable taxes and any other tax which may become applicable in the future. In addition to any payments due to EXFO under this Agreement, Distributor shall pay amounts equal to any taxes, shipping, insurance, duties or other amounts, including without limitation applicable sales taxes, which are levied or based on such payments or arise under this Agreement, provided, however, that Distributor shall not be liable for taxes based on EXFO's net income. In the event that Distributor is required by applicable law to make a withholding from payments to EXFO, such amount to be withheld shall be deducted from the payment to be made to EXFO and shall be remitted by the Distributor to the appropriate authority, provided that Distributor shall issue a withholding tax certificate to EXFO explaining the withholding applied and the applicable law together with the payment.
- 5.6. Notwithstanding anything else in this Agreement, EXFO shall use reasonable efforts to make deliveries promptly of orders accepted but shall not be liable for failure to meet delivery dates, whether quoted or acknowledged.



6. SALES SUPPORT PROVIDED BY EXFO

6.1. EXFO shall offer to Distributor such technical assistance and training as required to ensure adequate ability to demonstrate and sell all Products outlined in the Commercial Terms.

6.2. As the case may be, EXFO shall offer advertising support and supply Distributor with catalogues, literature and documentation as necessary for the proper promotion and sale of Products at no expense to Distributor except for shipping and applicable duties and taxes, etc. The Distributor shall be responsible to obtain the Products' specification sheets and any related documents through EXFO's web site. EXFO may, at the Distributor's request, also provide Products' specifications sheets at a minimal cost per copy, such costs may be determined from time to time by EXFO at its sole discretion (the Distributor shall also bear the shipping cost, the applicable duties and taxes etc. for such Products' specifications sheets). Unused catalogues literature and documentation shall remain the property of EXFO and shall be returned to EXFO at its request.

6.3. EXFO shall aid and assist Distributor by answering any reasonable inquiries addressed by Distributor and by keeping Distributor informed on the development of new and upcoming products that the Distributor will be authorized to sell.

7. SALES OBJECTIVE – The level of sales EXFO has targeted for the Territory is as indicated in the Commercial Terms. Should distributor not attain the sales objectives at the end of the Term, EXFO will be entitled to consider this as a material breach to this Agreement.

8. NON-COMPETITION – Unless prior written consent is obtained from a duly authorized representative of EXFO, Distributor shall not represent, distribute, manufacture or sell, in any form, during the Term of this Agreement and for six (6) months from the termination or expiration of this Agreement, any product that could be considered by EXFO as competitive with any of the Products. If EXFO terminates the Agreement without cause, as provided in Section 16.1 hereof, the non-competition period shall be reduced to three (3) months after the termination of the Agreement. Distributor shall be liable for all damages incurred by EXFO as a consequence of a breach of this obligation.

9. PRODUCT WARRANTY – Products have a standard End-User warranty as set forth in the Sales Terms and Conditions available on EXFO's Partners website. The warranty period for each Product is available on the price list in Distributor's Partner account on EXFO's Partners website. Unless otherwise agreed by EXFO in writing, the warranty period shall start from the date the Products leave EXFO's shipping facilities.

EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH UNDER THIS AGREEMENT, EXFO MAKES NO OTHER WARRANTIES RELATING TO THE PRODUCTS, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ANY WARRANTY OF NON-INFRINGEMENT. IN NO EVENT SHALL EXFO BE LIABLE FOR SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES. NO PERSON IS AUTHORIZED TO MAKE ANY OTHER WARRANTY OR REPRESENTATION CONCERNING THE PERFORMANCE OF THE PRODUCTS OTHER THAN AS PROVIDED IN THIS SECTION. DISTRIBUTOR SHALL MAKE NO WARRANTY, EXPRESS OR IMPLIED, ON BEHALF OF EXFO.



10. DISTRIBUTOR RELATIONSHIP AND CONDUCT OF BUSINESS

- 10.1. Distributor shall maintain a sales office in the Territory and shall devote such time, manpower and effort as reasonably necessary to maximize and expand the sales of Products within the Territory and to attain the targeted level of sales. EXFO will expect Distributor to participate in certain key events and trade shows.
- 10.2. Under no circumstances shall Distributor be allowed to sublicense the Products or the services or use agents, sub-distributors, or resellers unless expressly and separately agreed in writing between the parties.
- 10.3. To allow better support by EXFO to the Distributor and to shorten Product delivery times, the Distributor shall provide to EXFO a monthly report of activities during each first week of each calendar month and quarterly forecast of projected sales for the upcoming twelve (12) months or longer, which forecasts will not constitute a commitment by either party.
- 10.4. Distributor shall conduct all of its business in its own name and in such a manner as it may see fit. Distributor shall be responsible for and pay for all expenses which Distributor incurs including, but not limited to rentals, salaries, taxes, license, permits, tender documentation, advertising, telephone expenses and other Distributor incurred business expenses.
- 10.5. Neither the Distributor, nor its owners, directors, employees, agents or other representatives have or will directly or indirectly, offer or pay anything of value (including gifts, travel, entertainment expenses and charitable donations) to (i) any official or employee of any government, government agency, political party, or public international organization; (ii) any candidate of political office; or (iii) any employee of a commercial customer or supplier, for the purpose of obtaining or retaining business or securing any improper advantage. The Distributor agrees to accurately document all transactions related to this Agreement, in the Distributor's financial books, records, statements, and in reports or other documents provided to EXFO. The Distributor agrees to comply with the terms of the EXFO Agent Code of Conduct, which is available at <http://investors.exfo.com/>. The Distributor agrees that the handling and disbursement of funds related to an EXFO transaction must be pursuant to a duly authorized EXFO written contract or purchase order with clearly defined procedures. No undisclosed or unrecorded fund or asset related to any EXFO transaction may be established or maintained for any purpose. EXFO reserves the right to audit the Distributor's compliance with the terms of this section 10.5 on an annual basis or upon reasonable suspicion of non-compliance either through a questionnaire or through EXFO's own investigative processes, which may require site visits by EXFO. Upon EXFO's reasonable request, the Distributor shall permit EXFO or a third party designated by EXFO, to audit any records that the Distributor has related to such audit of compliance or non-compliance. EXFO shall disclose the result of the audit to the Distributor and the Distributor shall implement any required improvements to bring the Distributor in compliance, if applicable. The Distributor agrees that any violation of this section constitutes just cause for the immediate termination by EXFO of this Agreement without any liability incurred by EXFO to the Distributor, The Distributor will also indemnify and hold EXFO, and subsidiaries, parents and affiliates harmless from any claims, losses and liabilities resulting from (i) any breach of any of the Distributor's obligations under this section; and (ii) any violation to EXFO's Agent Code of Conduct. The obligations under this section shall survive the termination or expiration of this Agreement.



- 10.6. Distributor shall procure that no employee within its business is assigned exclusively to the performance of this Agreement. Upon expiration or in the event EXFO elect to terminate this Agreement, Distributor shall be responsible to redeploy any of its employees within Distributor's business. The termination or the expiration of this Agreement shall not affect the employment relationship between Distributor and its employees and EXFO shall not be held responsible in any ways if termination or expiration of this Agreement directly or indirectly results in the dismissal of any of Distributor's employee. If Distributor breaches any of the aforementioned covenants resulting in unwanted application of any employment laws or regulations, Distributor shall be liable to fully indemnify EXFO against any loss, cost, expense, attorney's fees or liability arising out of such failure.
- 10.7. Nothing in this Agreement shall be construed so as to constitute Distributor as partner, employee or agent of EXFO nor shall either party have any authority to bind the other in any respect, it being intended that each shall remain an independent contractor responsible only for its own actions.
- 10.8. Distributor shall not, without EXFO's prior written approval, make representations concerning Products other than representations already contained in the EXFO Group documentation.
- 10.9. Distributor is not authorized to accept the return of Products or to provide credits. **Furthermore, Distributor shall be solely responsible for the return of Products by End-Users or credits provided to End-Users if done without obtaining the prior written authorisation of EXFO.**

11. TRADEMARKS AND INTELLECTUAL PROPERTY

- 11.1. Distributor shall not use the names "EXFO Inc.", "EXFO Service Assurance Inc.", "EXFO America Inc." or any other name of the EXFO Group or the trademarks "EXFO", "Brix" or "NQMS", or any other trademark or trade name owned by the EXFO Group as part of its firm, corporate, or business name and shall not use these trademarks or trade names, in any way except to designate the Products in its distribution, advertising and promotion of the Products, provided that such trademarks are used solely in accordance with EXFO's instruction and specifications as to style, color and typeface, as such specifications may be modified by EXFO from time to time. Upon termination of this Agreement, Distributor shall immediately take all appropriate steps to remove and cancel listings in telephone books and other directories, in public records, domain name registrars or elsewhere, which designate Distributor as representing Products. If Distributor fails to obtain such removals or cancellations, any entity of the EXFO Group shall be entitled to carry out such removals or cancellations on behalf of Distributor and in Distributor's name at Distributor's cost and expense including reasonable attorney fees. Additional restrictions on the use of trademarks may be included in the Commercial Terms.
- 11.2. All trademarks, trade names, patents, inventions (including discoveries, improvements and ideas, regardless of whether or not patentable), know-how, industrial designs, copyrights, all right, title and interest in and to the Products and all other proprietary information ("**Intellectual Property Rights**") regarding the EXFO Group business activities or Products are the sole property of the EXFO Group, whether or not Distributor may have been involved in any way, solely or jointly with others, in the making or conception of such. Distributor agrees to assign to any entity of the EXFO Group as indicated by EXFO all rights or alleged rights it may have in Intellectual Property Rights and to assist, as necessary, in all applications for registration of Intellectual Property Rights and to execute, acknowledge and deliver to EXFO or any entity of EXFO Group any written authorization or other legal document as EXFO or any entity of EXFO Group may request in order to obtain or maintain EXFO Group's sole rights in the Intellectual Property Rights.



- 11.3. Distributor shall not, and shall ensure that its agents, representatives and employees shall not remanufacture or reverse engineer the Intellectual Property Rights owned by EXFO or any of the products provided, sold or loaned to the Distributor by or on behalf of EXFO, neither for any personal, commercial, experimental or technical purpose, nor for the purpose of determining its method of operation, use, design, method of manufacture or construction.
- 11.4. Distributor agrees to promptly and fully inform EXFO of any infringement or alleged infringement of the Intellectual Property Rights that it becomes aware of and to collaborate and assist any entity of the EXFO Group, if requested by EXFO, in the defence of the Intellectual Property Rights.

12. CONFIDENTIALITY

- 12.1. Distributor covenants to EXFO that it shall keep confidential the Confidential Information of the EXFO Group to which Distributor obtains access to as a consequence of entering into this Agreement and that it will take all reasonable precautions to protect such Confidential Information from any use, disclosure or copying except as expressly authorized by this Agreement. Distributor shall implement such procedures as EXFO may require from time to time to improve the security of the Confidential Information in its possession. Distributor expressly undertakes to keep Confidential Information confidential from the EXFO Group competitors. Distributor shall also comply with all applicable data privacy laws and regulations, and EXFO's privacy practices.
- 12.2. If the Distributor becomes legally compelled to disclose any of the Confidential Information, Distributor will provide EXFO with prompt notice in order that it may seek a protective order or other appropriate remedy or waive compliance with the provisions of this Agreement. In the event that such protective order or other remedy is not obtained, or that compliance herewith is waived, only that portion of the Confidential Information that is legally required (as determined by written opinion of counsel addressed to both parties) will be furnished and the Distributor shall exercise its best efforts to obtain reliable assurance that confidential treatment will be accorded to the Confidential Information so furnished.

13. IRREPARABLE HARM – Distributor acknowledges that a breach of the covenants in Sections 11 and 12 herein shall result in immediate irreparable and irremediable damage to EXFO and/or to the EXFO Group. In the event of such failure, EXFO and/or any entity of EXFO Group shall be entitled to relief in the way of temporary or permanent injunctions and such other and further relief as any court or arbitrator with jurisdiction may deem just and proper.

14. INDEMNITY – The parties agree that they will indemnify and hold harmless the other party, its partners, employees, agents and EXFO Group controlling persons (each being an "**Indemnified Party**") from and against any and all losses, claims, damages, liabilities and expenses, joint or several (including all reasonable fees of counsel and other expenses incurred by any Indemnified Party in connection with the preparation for, or defence of, any claim, action or proceeding, whether or not resulting in any liability), to which such Indemnified Party may become subject, caused by or arising out of any breach by the other party of any warranty, representation or covenant contained in this Agreement. The Indemnified Party shall promptly advise the other party in the event of any claim that is lodged against it and, in such event, the other party may, but shall not be obliged to assume the defence on behalf of the Indemnified Party. The Indemnified Party agrees that it will not settle or compromise or consent to the entry of any judgement in any pending or threatened action in respect of which indemnification may be sought hereunder, without the prior written consent of the other party. The indemnity, contribution



and reimbursement provisions mentioned above shall remain operative and in full force and effect regardless of any termination of this Agreement.

- 15. LIMITED LIABILITY** – With the exception of any breach of any provision of Sections 11 and 12 herein, both parties agree that, notwithstanding anything to the contrary herein, each party shall only be liable to the other party for direct damages and not for any loss of profits or consequential, incidental, indirect or special damages, even if such party has been apprised of the likelihood of such damages occurring. Notwithstanding anything else in this Agreement and to the extent permitted by applicable law, EXFO's entire liability under this Agreement shall in no event exceed the price paid by the Distributor for the Product that is the subject matter of a claim.

Neither party shall have any liability for delay or non-performance of its obligations under this Agreement when attributable to acts of God, superior force, change of law, compliance in good faith with any applicable legislation or governmental regulation, or any other cause beyond reasonable control of such party.

The EXFO Group shall not be liable for damages resulting from the use of Products, nor shall they be responsible for any failure in the performance of other items to which the Product is connected or the operation of any system of which the Product may be a part.

The EXFO Group shall not be liable for damages resulting from improper usage or unauthorized modification of a Product, its accompanying accessories or software.

16. TERM AND TERMINATION

16.1. This Agreement shall have the Term set forth in Section 1 herein. Except as provided in Section 16.2, this Agreement may be terminated, with or without cause, by either party at any time upon thirty (30) days prior written notice to the other party provided in accordance with the terms of this Section 16.

16.2. If Distributor should become insolvent or bankrupt or admit in writing its inability to pay its debts as they come due, or make an assignment for the benefit of its creditors, cease to function as a going concern or to conduct its operations in the normal course of business, or is in breach of its obligations set forth in this Agreement, EXFO shall be entitled to immediately terminate this Agreement by providing written notice in accordance with the terms hereof.

- 17. RIGHTS AND OBLIGATIONS UPON TERMINATION** – The rights and obligations of EXFO and Distributor that by their nature are intended to survive the Term of this Agreement, including, without limitation, the parties' rights and obligations pursuant to Sections 10.5, 11, 12, 13, 14 and 15 herein shall survive any termination or expiration of this Agreement.

- 18. INSURANCE** – Distributor shall carry and maintain in force with a responsible and reputable insurer reasonably acceptable to EXFO a comprehensive general liability (including errors and omissions) insurance policy in a minimum amount of five million US dollars (USD\$5,000,000) per occurrence, with deductibles not exceeding fifty thousand dollars (USD\$50,000) per occurrence, that provides coverage for all liabilities that may arise from this Agreement. At a minimum, Distributor shall maintain the policy required hereunder for the entire Term of this Agreement and, if such policy shall provide coverage on a claim made basis, Distributor shall be required to maintain claims made policy providing such



coverage for an additional period of not less than five (5) years following the expiry or termination of this Agreement. The insurance limits required herein may be obtained through any combination of primary and excess or umbrella liability insurance. Distributor shall forward to EXFO certificate(s) of such insurance policy upon execution of this Agreement and upon any renewal of such insurance during the Term of this Agreement. The certificate(s) shall provide that (i) EXFO be indicated as an additional insured as their interest may appear with respect to this Agreement; (ii) thirty (30) days prior written notice of cancellation, material change or exclusions to the policy shall be given to EXFO; (iii) coverage is primary and not excess of, or contributory with, any other valid and collectible insurance purchased or maintained by Distributor.

19. EXPORT COMPLIANCE

19.1. The parties shall comply with all applicable United States and/or foreign laws and regulations, including without limitation (a) all applicable laws and regulations relating to the advertising, packaging, sale, and distribution of the Products, (b) all United States export laws and regulations governing the export or re-export of all Products and any products or services provided in connection with the Products, including without limitation the U.S. Export Administration Regulations, the International Traffic in Arms Regulations, and any regulations administered by the Department of the Treasury's Office of Foreign Assets Control, and (c) all applicable laws and regulations of countries other than the United States that govern the importation, use, or re-export of the Products. Specifically, Distributor agrees that neither it nor its Affiliates will directly or indirectly export, re-export, transfer, or release, or cause to be exported or re-exported, any such Products or any direct Product thereof to any destination or entity prohibited or restricted under EU, Finland and U.S. laws including but not limited to embargoed or sanctioned countries, entities, or nationals thereof, unless it shall obtain prior to export an authorization from the applicable government agency either in writing or as provided by applicable regulation. Distributor further agrees to comply with any conditions that EXFO notifies Distributor are contained in any applicable export licenses pertaining to the Products. Distributor shall comply with any reporting requirements that may apply to the export or re-export of the Products and shall provide to EXFO and the appropriate governmental authority any periodic reports containing such information as may be required under applicable law. Distributor further agrees to pay any taxes or tariffs that may apply to the export, or re-export of the Products.

19.2. The parties undertakes not to export Products: (i) to countries that are included in the Area Control List; that are subject to Canadian economic sanctions (including those implemented under the United Nations Act or the Special Economic Measures Act); that are excluded from the application of General Export Permit No. 12; and that are subject to sanctions under the Export and Import Permits Act; (ii) for end-use that is directly or indirectly related to research, development or production of chemical, biological or nuclear weapons, or any missile programmes for such weapons; (iii) of technical information related to design, development or implementation of the crypto; and (iv) of source code or pseudo-code, in any form, of the crypto.

20. END-USER STATEMENT – All purchase orders must be accompanied by an End-User Statement, available on EXFO's Partners website.

21. PRIVACY NOTICE – EXFO is committed to protecting the privacy and security of Distributor's and End-User's personal information. Please refer to the Data Privacy Notice in Appendix 1.3, applicable when (i) Distributors orders Products for End-Users; and (ii) EXFO quotes, accepts purchase orders, send order acknowledgments, invoices, sells, licenses or delivers Products to Distributors and/or End-Users.



- 22. DEMONSTRATOR EQUIPMENT DISCOUNT AND LOANS** – Distributor shall purchase new equipment for demonstration purposes. EXFO shall give a promotional discount on the first item purchased of any new product series included in the Products to encourage Distributor to introduce new products. The demonstrator units purchased under such initial purchase shall not be resold within the year that such units have been purchased by the Distributor. The purchase by the Distributor of additional demonstrator units shall be authorized by EXFO on a case-by-case basis.

Exceptionally and only for low volume or high cost equipment, EXFO may agree to loan certain demonstrator equipment to Distributor. In such cases, EXFO shall pay freight charges, excluding applicable duties and taxes, between its shipping facilities and Distributor's site. Any other charges incurred when the demonstrator units are being shipped within the Territory for customer trials and/or for the return of the demonstrator units to EXFO's designated offices, shall be at Distributor's expense.

Distributor is responsible for loss of or damage to demonstrator units loaned in its possession or loaned by it to a customer. If a loaned demonstrator unit is lost and EXFO's records document that the unit was last in the possession of Distributor or loaned to a customer by Distributor, then Distributor shall be liable to EXFO for the current price list of such unit less the discount set forth in the Attachment A. EXFO shall have the option to immediately invoice for said cost or deduct such cost from any amounts owed to Distributor.

- 23. RESTOCKING AND CANCELLATION FEES** – All requests to reschedule, cancel and restock an order are subject to prior acceptance by EXFO. A minimum fee of 15% of the order amount is applicable for any rescheduling and cancellation requested less than thirty (30) days prior to a scheduled delivery date and a minimum fee of 20% of the order amount for return of products to EXFO for restocking that is requested less than thirty (30) days after receipt of the product by the Distributor. EXFO will not accept return of a product for restocking if requested more than thirty (30) days after receipt of the product by the Distributor. EXFO's cancellation and restocking policies do not apply to systems, RFTS, NQMS and non-standard equipment (all such sales are final).

- 24. WEEE EUROPEAN DIRECTIVES AND RECYCLING OF ELECTRONIC PRODUCTS (FOR CEE COUNTRIES AND TELECOM DIVISION ONLY)** – In respect to the requirements of the WEEE Directive (2012/19/EU) and each related national legislation adopted in the Territory, Distributor located within a member state of the European Union, shall be responsible as "the importer of record" for EXFO branded products placed on the market after August 13, 2005 (including all replacement units sold prior to this date). Distributor's responsibilities will include namely registration, all reporting and recycling of all EXFO products sold within the member state, including all associated recycling fees and costs therein pursuant to the applicable directives. Distributor shall provide EXFO with its proof of registration in the member state.

EXFO as the brand holder will be responsible for supplying product markings and user documentation as per WEEE requirements. Additionally, upon request, a listing of materials which require selective treatment and product dismantling instructions will be provided. Distributor will need to provide proof that the recycling responds adequately to the WEEE requirements in regard to the percentage of recycling requested by category.

Distributor acknowledges that among the obligations of confidentiality included in the Agreement, he shall take all necessary precautions to ensure that any Confidential Information concerning the Products that could be provided directly or indirectly to a third party by Distributor in the recycling



process shall be kept confidential. Accordingly, Distributor may transmit such Confidential Information to its recycling representatives who have a need to know the Confidential Information for the purpose of recycling the Products. The Distributor agrees to inform any third party to whom it transmits Confidential Information of the confidentiality obligations set out in the Agreement and agrees to be responsible for any breach of those obligations by any such third party.

- 25. ENTIRE AGREEMENT** – This Agreement, the Commercial Terms and the Compliance Statement contains the entire understanding of the parties as pertains to the subject matter hereof and supersedes and replaces any previous oral or written agreement, understanding, discussion or representation regarding the subject matter of this Agreement. No modification or amendment made to this Agreement shall be binding upon the parties unless the same is made in writing and signed by both parties.
- 26. ATTACHMENTS & URLs** – All attachments, schedules and appendices, and any reference to information contained in an URL or referenced policy, form an integral part of this Agreement. The terms and conditions set forth in this Agreement shall prevail over the terms and conditions set forth in any attachment and appendices hereto, unless otherwise specified and agreed by the parties in such duly executed attachment and appendices. Distributor hereby confirms that it has access to the Internet and confirms that prior to entering into this Agreement, Distributor has read the policies and the documents on the websites referenced herein and agrees to the terms and conditions set out in those policies and documents. Distributor undertakes to visit the websites herein on a regular basis so that Distributor is aware of any amendments made from time to time.
- 27. APPLICABLE LAW** – This Agreement shall be governed by and construed in accordance with the laws of the Province of Quebec and the federal laws of Canada applicable therein, except as to (i) its conflicts of laws provisions; and (ii) the reference to the Incoterm “FCA”, which incorporates into this Agreement all the current rules of the International Chamber of Commerce pertaining to the 2020 Incoterms. In addition, the parties expressly exclude the application of the United Nations Convention on Contracts for the International Sale of Goods. Each of the parties hereby unconditionally and irrevocably waives any claim to assert that the laws of any other jurisdiction governs this Agreement, and subject to the dispute and arbitration clause, submits to the exclusive jurisdiction and venue of any courts sitting to the judicial district of Quebec for the purpose of any suit, action or proceeding and related to the Agreement.
- 28. NON-WAIVER** – The waiver by either party of any breach or default hereunder by the other party shall not be construed as a waiver by the former party of any subsequent breach or default of the same or any other provision hereunder.
- 29. ASSIGNMENT** – Distributor may not assign any of its rights and obligations hereunder except with EXFO's prior written consent. This Agreement shall enure to the benefit of and be binding upon the parties and their respective successors and permitted assigns.
- 30. DISPUTES AND ARBITRATION** – With the exception of any dispute or question related to infringement of intellectual property or breach of confidentiality obligations namely where either party may seek injunctive relief, the parties agree that any disputes or questions arising hereunder, in particular concerning its formation, existence, validity, effects, interpretation, implementation, violation, resolution or annulment, shall be finally resolved by means of arbitration in accordance with the International Arbitration Rules of the Canadian Commercial Arbitration Centre by one (1) arbitrator appointed in accordance with the said Rules. Any such arbitration shall occur in Quebec City, Province of Quebec, in Canada, and the decision of the arbitrator shall be final and binding upon the parties both as to law and to fact, and shall



not be appealable to any court in any jurisdiction. The parties shall share the expenses of the arbitrator equally, unless the arbitrator determines that expenses shall be otherwise assessed.

- 31. SEVERABILITY** – If any part of this Agreement is held by a competent tribunal to be invalid, void, or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.
- 32. ARTICLE HEADINGS** – The headings of the sections of this Agreement have been inserted only to facilitate reference and shall have no bearing on the construction or interpretation of this Agreement.
- 33. APPENDICES AND ADDITIONAL TERMS** – The following appendices attached hereto and additional terms and conditions form an integral part of the Agreement:

EXFO’s Test and Measurement Products:

- All sales of Test and Measurement Products are subject to EXFO’s Standard Sales Terms and Conditions, Software License Agreement and, where applicable, the EXFO Care – Simulators, all available at <https://www.exfo.com/en/how-to-buy/sales-terms-conditions/>.

EXFO’s Systems and Service Assurance Products:

- All sales of SA Active, SA Passive and Analytics Products are subject to EXFO’s Standard Sales Terms and Conditions, the Specific Sales Terms and Conditions and Support, and Software License Agreement, all available at: <https://www.exfo.com/en/how-to-buy/sales-terms-conditions/> and the following Appendixes:
- Appendix 1.1 - SYSTEMS AND SERVICE ASSURANCE - SPECIFIC TERMS AND CONDITIONS

EXFO’s Distributor Compliance Statement:

- Appendix 1.2 – DISTRIBUTOR COMPLIANCE STATEMENT

EXFO’s Data Privacy Notice

- Appendix 1.3 – DATA PRIVACY NOTICE



APPENDIX 1.1 SYSTEMS AND SERVICE ASSURANCE - SPECIFIC TERMS AND CONDITIONS

- 1. DISTRIBUTOR SUPPORT** - Distributor shall be responsible to provide End Users with First Line and Second Line Support (as defined hereinafter in section 9) on all Products sold, unless otherwise expressly agreed to in writing on a case by case basis between the parties. Distributor shall identify and assign a sufficient number of Distributor employees to provide such support in an efficient manner. Distributor shall remain sole responsible and shall indemnify EXFO for any damages that could result to EXFO of any acts or omissions of Distributor during performance of such First Line and Second Line Support. Distributor shall provide End Users with assistance for any warranty claims.
- 2. EXCLUDED SUPPORT** - Distributor shall not provide installation, field maintenance, third line and fourth line services and perform any warranty services to the End-Users with regard to any Products sold hereunder, unless otherwise expressly agreed to between the parties under terms and conditions to be determined. In such event where EXFO expressly authorizes Distributor to perform such installation, field maintenance and warranty services to End Users, Distributor shall remain sole responsible and shall indemnify EXFO for any damages that could result to EXFO of any acts or omissions of Distributor during performance of such services.
- 3. DISTRIBUTOR PROHIBITIONS** - Distributor agrees not to distribute the Products (i) in bulk for redistribution, except as integrated in Distributor's systems which add substantial value and/or functionality to the Products (ii) to customers or other distributors located outside the Territory or (iii) with knowledge or reason to know that the Products will be transported outside the Territory. Distributor shall not: (a) modify the Products, (b) reproduce the Products, in whole or in part, (c) reverse engineer, decompile, or disassemble the Products regardless of the novelty of such Products, (d) without EXFO's prior written approval make representations concerning Products other than representations already contained in EXFO's documentation.
- 4. QUANTITY CHANGES** – Distributor may change the quantities to be delivered on any scheduled delivery date upon not less than sixty (60) days prior written notice; provided, however, that: (i) Distributor may not change quantities to be delivered more than one time per purchase order and only one time per month; (ii) Distributor shall determine a delivery date for the balance of Products (in the event of quantity reduction) that shall be within a period not to exceed ninety (90) days from original scheduled delivery date; and (iii) in the case of a requested increase in quantity, EXFO's only obligation will be to exert reasonable efforts to meet such request, and EXFO will not be liable for any failure to meet such request.
- 5. SHIPPING DATE CHANGES** - Distributor may modify a scheduled shipping date upon not less than (a) thirty (30) days prior written notice; provided, however, that Distributor may not modify more than one scheduled delivery date per purchase order for a period not to exceed thirty (30) days following the initial shipping date; and (b) any acceleration of a scheduled delivery date will be subject to acceptance by EXFO.
- 6. DISTRIBUTOR TRAINING** – Within the first ninety (90) days of the Agreement, Distributor shall attend and succeed a product certification training class at its own costs. The Distributor shall ensure that a sufficient number of its employees will assist and succeed to such training in order to perform its obligations hereunder. At a minimum, the Distributor shall have at least one (1) solution engineer assisting and succeeding to the certification level 1 “pre-sale technical training” and level 3 “Technical



support”. The price for such training is indicated under [*] and in addition to such price Distributor shall reimburse EXFO for any out-of-pocket expenses, including travel-related expenses incurred by EXFO to attend the training sessions.

7. **TRAINING** - EXFO will, during the first year of this Agreement, provide quarterly service training seminars relating to the Products in accordance with EXFO’s then standard published education program at prices in effect at the time such classes are scheduled. Distributor will be responsible for any travel, living, and other expenses of its personnel. Admission to the training programs will be subject to space available. Special classes, including on-site training seminars and/or videotape training programs, may be arranged at EXFO’s discretion and will be conducted in accordance with EXFO’s then standard published educational program at prices in effect at the time such classes are scheduled.
8. **RETURNS** - It is Distributor’s duty carefully to inspect all Products promptly upon receipt thereof at the shipping destination and to reject any Product that fails to conform to the published product specifications. Product not rejected by written notice, together with a request for a Return Material Authorization (“RMA”) number, within ten (10) business days of receipt shall be deemed accepted. Distributor’s rejection shall not be effective unless the rejected Product is returned freight prepaid to EXFO’s designated site in the original shipping cartons with EXFO’s RMA number displayed on each carton within ten (10) days of receipt of said RMA number. After receipt by EXFO of properly rejected Product, EXFO shall, at its option and expense, repair or replace such Product. If Product is determined by EXFO to have been properly rejected, EXFO will prepay transportation charges back to Distributor. If Product is determined by EXFO not to have been properly rejected, Distributor shall pay transportation charges in both directions and pay an evaluation fee at EXFO’s current standard rates.
9. **Definition of First Line and Second Line Support**

First Line. This is the initial support level responsible for basic customer issues. The first job of a Tier I specialist is to gather the customer’s information and to determine the customer’s issue by analyzing the symptoms and figuring out the underlying problem. When analyzing the symptoms, it is important for the technician to identify what the customer is trying to accomplish so that time is not wasted on “attempting to solve a symptom instead of a problem.” Once identification of the underlying problem is established, the specialist can begin sorting through the possible solutions available. Technical support specialists in this group typically handle straightforward and simple problems. This includes troubleshooting methods such as verifying physical layer issues, resolving username and password problems, uninstalling/reinstalling basic software applications, verification of proper hardware and software set up, and assistance with navigating around application menus. Personnel at this level have a basic to general understanding of the product being supported and may not always contain the competency required for solving complex issues. The goal of the Tier 1 group is to handle 70%-80% of the user problems before finding it necessary to escalate the issue to a higher level.

Second Line. This is a more in-depth technical support level than Tier I containing experienced and more knowledgeable personnel on a particular product. Technicians in this realm of knowledge are responsible for assisting Tier I personnel solve basic technical problems and for investigating elevated issues by confirming the validity of the problem and seeking for known solutions related to these more complex issues. However, prior to the troubleshooting process, it is important that the technician review the open customer ticket (typically part of CRM system) to see what has already been accomplished by the Tier I technician and how long the technician has been working with the particular customer. If



personnel from this group cannot determine a solution, they are responsible for raising this issue to the Tier III technical support group. This group is expected provide certain troubleshooting solutions which may include, but is not limited to onsite installations or replacements of various hardware components, software repair, diagnostic testing, and the utilization of remote control tools used to take over the user's machine for the sole purpose of troubleshooting and finding a solution to the problem.



Appendix 1.2

Distributor Compliance Statement (“Statement”)

The undersigned, authorized representative of the EXFO Distributor, hereby certifies that:

The Distributor agrees that neither the Distributor, nor its owners, directors, employees, agents or other representatives have or will directly or indirectly, offer or pay anything of value (including gifts, travel, entertainment expenses and charitable donations) to (i) any official or employee of any government, government agency, political party, or public international organization; (ii) any candidate of political office; or (iii) any employee of a commercial customer or supplier, for the purpose of obtaining or retaining business or securing any improper advantage.

The Distributor agrees to accurately document all transactions related to EXFO, in the Distributor’s financial books, records, statements, and in reports or other documents provided to EXFO.

The Distributor has read, understood and agrees to comply with the terms of the EXFO Agent Code of Conduct, which is available at: <http://investors.exfo.com/>.

The Distributor has read, understood and agrees to comply with the terms of the Standard Distribution Terms and Conditions, which is available at: <http://www.exfo.com/how-to-buy/sales-terms-conditions>.

The Distributor understands that the commercial terms and conditions will be confirmed in writing by an authorized EXFO representative in due time.

The Distributor agrees that the handling and disbursement of funds related to an EXFO transaction must be pursuant to a duly authorized EXFO written contract or purchase order with clearly defined procedures. No undisclosed or unrecorded fund or asset related to any EXFO transaction may be established or maintained for any purpose.

EXFO reserves the right to audit the Distributor’s compliance with the terms of this Statement on an annual basis or upon reasonable suspicion of non-compliance either through a questionnaire or through EXFO’s own investigative processes, which may require site visits by EXFO. Upon EXFO’s reasonable request, the Distributor shall permit EXFO or a third party designated by EXFO, to audit any records that the Distributor has related to such audit of compliance or non-compliance. EXFO shall disclose the result of the audit to the Distributor and the Distributor shall implement any required improvements to bring the Distributor in compliance, if applicable.

The Distributor agrees that any violation of this Statement constitutes just cause for the immediate termination by EXFO of its relationship with the Distributor without any liability incurred by EXFO to the Distributor. The Distributor will also indemnify and hold EXFO, and subsidiaries, parents and affiliates harmless from any

claims, losses and liabilities resulting from (i) any breach of any of the Distributor’s obligations under this Statement; and (ii) any violation to EXFO’s Distributor Code of Conduct.

The Distributor has not been debarred from bidding on government contracts in any country in which they do business.

The Distributor is financially stable and maintains its books and records in accordance with internationally accepted accounting standards.

The Distributor is not owned, wholly or partially, or controlled, directly or indirectly by any government, government official or political party.

As of the date of this certification, the Distributor has not nor, does it have any reason to believe that the Distributor or any of its directors, employees and representatives involved in the Distributor’s business relationship with EXFO have committed any breach to the Code.

The Distributor agrees that if it becomes aware of any breach of the EXFO Agent Code of Conduct by the Distributor, its directors, employees or representatives, it shall duly report such breach to EXFO.

This Statement shall be valid for a period of one (1) year from **September 1st, 2019 or the Signature Date**, whichever is later, to **August 31st, 2020** at which time it will automatically terminate. A new signed Statement shall be required for each subsequent one (1) year terms.

The Distributor understands that failure to sign this Statement or a similar document provided by EXFO before September 1st of each calendar year will result in the Distributor’s orders being put on hold by EXFO until such signature is obtained to EXFO’s entire satisfaction.

The obligations under this Statement shall survive the termination or expiration of the relationship between EXFO and the Distributor.

Full Company Name: _____

Contact Name: _____

Title: _____

Email address: _____

Signature: _____

Date:



Appendix 1.3

Data Privacy Notice

EXFO is committed to protecting the privacy and security of Distributor's and End-User's personal information. This Data Privacy Notice ("Privacy Notice") describes how and why EXFO collects and uses information about identified or identifiable individuals who interact with EXFO for the Distributor or the End-User ("Data Subjects") when ordering or inquiring about or otherwise using the EXFO products, solutions and services, in accordance with applicable data protection and privacy laws.

This Privacy Notice forms part of the Distributor Compliance Statement and EXFO's Standard Distribution Terms and Conditions ("Distribution Agreement") between EXFO and Distributor.

1. Processing of Personal Data

This Privacy Notice applies to the collection and use of information, including personal data, by EXFO, when EXFO quotes, accepts purchase orders, send order acknowledgments, invoices, sells, licenses or delivers products, solutions or services to Distributor or an End-User.

2. Types and Categories of Personal Data

The personal data EXFO may collect, process and use include Distributor's and End-User's name, title, company name, mailing address, e-mail address, telephone number. EXFO will also keep the details of transactions and orders, the history of correspondence, quote requests or inquiries or when Distributor or End-User contact EXFO's customer service or technical support.

3. Nature and Purpose of the Processing

EXFO needs to keep and process information about Distributor and End-User for normal business relationship purposes. EXFO will keep and use it to operate the business and manage relationship effectively, lawfully and appropriately, this includes using information to enable EXFO to (i) perform contractual obligations of the Distribution Agreement or a purchase order; (ii) comply with any legal requirements; and (iii) pursue the legitimate business interests of EXFO. EXFO will never process Distributor's and End-User's personal data where EXFO's interests are overridden by the Data Subject's interests and fundamental rights. Some of the above listed grounds for processing will overlap and there may be several grounds which justify EXFO's use of Data Subject's personal data. Specifically, the information, including personal data, EXFO collect from and about Distributor and End-User is needed to:

- Fulfil EXFO's contractual obligations with Distributor or the End-User, process e-commerce transactions and generally provide Distributor or the End-User with EXFO's products, solutions and services in compliance with export laws and regulations and the terms and conditions of the Distribution Agreement; and
- Carry out any other activity which is compatible with the purpose for which the information was collected, as permitted by applicable law.



4. Information Protection And Disclosure

EXFO neither loan nor sell personal data to anyone. As a global organization, EXFO may provide information about Distributor our End-User to EXFO's affiliates and to carefully screened third-party providers. All EXFO's third-party service providers and other entities in the EXFO group are required to take appropriate security measures to protect personal data in line with EXFO personal data practices. EXFO do not allow third-party service providers to use Data Subject's personal data for their own purposes. They may only process Data Subject's personal data on EXFO's instructions for specified business purposes and they are subject to confidentiality obligations.

We may be forced to disclose or share Data Subject's personal data in the following situations:

- To comply with legal or regulatory obligations or to respond to public and government authorities;
- To enforce or apply the Distribution Agreement or other terms and conditions pertaining to the supply of products, services and/or information and other agreements;
- To protect the rights, property or safety of EXFO's employees, customers or third-party providers;
- When selling one or more of EXFO's businesses or to anyone to whom EXFO may transfer its rights under any agreement with Data Subjects.

5. Data Retention

EXFO will only retain Data Subject's personal data for as long as necessary to fulfil the purposes EXFO collected it for, including for the purposes of satisfying any legal, accounting, or reporting requirements. To determine the appropriate retention period for personal data, EXFO consider the amount, nature, and sensitivity of the personal data, the potential risk of harm from unauthorized use or disclosure of the personal data, the purposes for which EXFO process the personal data and whether EXFO can achieve those purposes through other means, and the applicable legal requirements. In some circumstances EXFO may anonymize Data Subject's personal data so that it can no longer be associated with the Data Subject, in which case EXFO may use such information without further notice to the Data Subject. Once the Distributor is no longer an authorized Distributor, EXFO will retain and securely destroy Distributor's personal data in accordance with applicable laws and regulations. EXFO has a Data Retention Policy and Distributors are invited to contact EXFO at data.privacy@exfo.com for further details on data retention.

6. Location and Transfer of Personal Data

The files containing Distributor's and End-User's personal data will be stored at EXFO's offices or on our servers and those of our third-party service providers acting on EXFO's behalf, which may be located in Canada, the European Union, the U.S. or other countries which may not have a level of data protection and privacy laws equivalent to that of Data Subject's country. The Distributor consent to the processing and transfer of such personal data in and to Canada, the European Union, the U.S. and other countries in the manner and for the purposes described in this Privacy Notice.



7. Data Subjects Rights

Data Subjects have the right, exercisable at any time, to information regarding the processing and use of their personal data as well as the right to have this data updated, corrected or deleted. These rights are exercisable by contacting data.privacy@exfo.com. EXFO may retain certain information as required by law or as necessary for EXFO's legitimate business purposes.

8. Contact

For any questions about this Privacy Notice or for a complaint, please contact EXFO's Data Protection Committee at data.privacy@exfo.com. EXFO corporate headquarters are located at 400 Godin Avenue, Quebec City, Quebec, G1M 2K2, Canada. If a legal representative is required in the European Union, the representative is EXFO Solutions S.A.S, ZAC Airlande, 2, rue Jacqueline Auriol, CS 69123 Saint-Jacques-de-la-Lande, 35091 Rennes Cedex 9, France.