Exhibit 10.14  
 DISTRIBUTION AGREEMENT  
 THIS AGREEMENT, dated as of the 29th day of September, 1997, is between TECH DATA PRODUCT MANAGEMENT, INC., a Florida corporation (“Tech Data”), with its principal corporate address at 0000 Xxxx Xxxx Xxxxx, Xxxxxxxxxx, Xxxxxxx 00000 and CASTELLE, INC., a California corporation (“Castelle” or “Vendor”), with its principal corporate address at: 0000-0 Xxxxx Xxxxxxxxx, Xxxxx Xxxxx, Xxxxxxxxxx 00000.  
 RECITALS  
 A. Tech Data desires to purchase certain Products from Castelle from time to time and Castelle desires to sell certain Products to Tech Data in accordance with the terms and conditions set forth in this Agreement.  
 X. Xxxxxxxx desires to appoint Tech Data as its non-exclusive distributor to market Products within the Territory (as hereinafter defined) and Tech Data accepts such appointment on the terms set forth in this Agreement.  
 NOW, THEREFORE, in consideration of the Recitals, the mutual covenants contained in this Agreement and other good and valuable consideration, Tech Data and Castelle hereby agree as follows:  
 ARTICLE 1.  
DEFINITIONS. APPOINTMENT AND TERM OF AGREEMENT  
 1.1 Definitions. The following definitions shall apply to this Agreement.  
 (a) “Customers” of Tech Data shall include dealers, resellers, value added resellers, mail order resellers and other entities that acquire the Products from Tech Data.  
 (b) “DOA” shall mean Product, or any portion thereof, which fails to operate properly on initial “burn in”, boot, or use, as applicable.  
 (c) “Documentation” shall mean user manuals, training materials, Product descriptions and specifications, brochures, technical manuals, license agreements, supporting materials and other printed information relating to the Products, whether distributed in print, electronic, or video format.  
 (d) “Effective Date” shall mean the date on which this Agreement is signed and dated by a duly authorized representative of Tech Data.  
  
  
Exhibit 10.14  
 (e) “End Users” shall mean the final retail purchasers or licensees who have acquired Products for their own use and not for resale, remarketing or redistribution.  
 (f) “Non-Saleable Products” shall mean any Product that has been returned to Tech Data by its Customers that has had the outside shrink wrapping or other packaging seal broken; any components of the original package are missing, damaged or modified; or is otherwise not fit for resale.  
 (g) “Products” shall mean, individually or collectively as appropriate, hardware, licensed software, Documentation, supplies, accessories, and other commodities related to any of the foregoing produced by Castelle, as more particularly described in Schedule 1.1(g) attached hereto.  
 (h) “Return Credit” shall mean a credit to Tech Data in an amount equal to the price paid by Tech Data for Products less any price protection credits but not including any early payment or prepayment discounts.  
 (i) “Services” means any warranty, maintenance, advertising, marketing or technical support and any other services performed or to be performed by Castelle.  
 (j) “Territory” shall mean worldwide.  
 1.2  
Term of Agreement. The term of this Agreement shall commence on the Effective Date and, unless terminated by either party as set forth in this Agreement, shall remain in full force and effect for a term of one (1) year, and will be automatically renewed for successive one (1) year terms unless prior written notification of termination is delivered by one of the parties in accordance with the notice provision of this Agreement.  
 1.3  
Appointment as Distributor. Castelle hereby grants to Tech Data the non-exclusive right to distribute Products within the Territory during the term of this Agreement This Agreement does not xxxxx Xxxxxxxx or Tech Data an exclusive right to purchase or sell Products and shall not prevent either party from developing or acquiring other vendors or customers or competing Products. Tech Data will use commercially reasonable efforts to promote sales of the Products. Castelle agrees that Tech Data may obtain Products in accordance with this Agreement for the benefit of its parent, affiliates and subsidiaries of Tech Data. Said parent, affiliates and subsidiaries of Tech Data shall be entitled to order Products directly from Castelle pursuant to this Agreement.  
  
  
Exhibit 10.14  
ARTICLE II. PURCHASE ORDERS  
 2.1 Issuance and Acceptance of Purchase Order.  
 (a) This Agreement shall not obligate Tech Data to purchase any Products or Services except as specifically set forth in a written purchase order.  
 (b) Tech Data may issue to Castelle one or more purchase orders identifying the Products Tech Data desires to purchase from Castelle. Notwithstanding any preprinted terms or conditions on Tech Date’s purchase orders, the terms and conditions of this Agreement shall apply to and govern all purchase orders accepted or shipped by Castelle hereunder, except that purchase orders may include other terms and conditions which are consistent with the terms and conditions of this Agreement, or which are mutually agreed to in writing by Tech Data and Castelle. Purchase orders will be placed by Tech Data by fax or electronically transferred.  
 (c) A purchase order shall be deemed accepted by Castelle unless Castelle notifies Tech Data in writing within five (5) days of the date of the purchase order that Castelle does not accept the purchase order.  
 2.2  
Purchase Order Alterations or Cancellations. Prior to shipment of Products, Castelle shall accept alterations or cancellation to a purchase order in order to: (i) change a location for delivery, (ii) modify the quantity or type of Products to be delivered or (iii) correct typographical or clerical errors. Customized products are not included.  
 2.3  
Evaluation or Demonstration Purchase Orders. Castelle shall provide to Tech Data a reasonable number of demonstration or evaluation Products as mutually agreed.  
 2.4  
Product Shortages. If for any reason Castelle’s production is not on schedule, Castelle may allocate available inventory to Tech Data and make shipments based upon a fair and reasonable percentage allocation among Castelle’s customers. Such allocations shall not impact the calculation of performance rebates.  
  
  
Exhibit 10.14  
 ARTICLE III. DELIVERY AND  
ACCEPTANCE OF PRODUCTS  
 3.1  
Acceptance of Products. Tech Data shall, after a reasonable time to inspect each shipment, accept Product (the “Acceptance Date”) if the Products and all necessary documentation delivered to Tech Data are in accordance with the purchase order. Any Products not ordered or not otherwise in accordance with the purchase order (e.g. mis-shipments, overshipments) may be returned to Castelle at Castelle’s expense (including without limitation costs of shipment or storage). Castelle shall refund to Tech Data within ten (10) business days following notice thereof, all monies paid in respect to such rejected Products. Tech Data shall not be required to accept partial shipment unless Tech Data agrees prior to shipment.  
 3.2  
Title and Risk of Loss. FOB Castelle’s manufacturing plant (Santa Xxxxx. CA). Title and risk of loss or damage to Products shall pass to Tech Data at the time the Products are delivered to the common carrier.  
 3.3  
Transportation of Products. Castelle shall deliver the Products clearly marked on the Product package with serial number, Product description and machine readable bar code (employing UPC or other industry standard bar code) to Tech Data at the location shown and on the delivery date set forth in the applicable purchase order or as otherwise agreed upon by the parties. Charges for transportation of the Products shall be paid by Castelle. Castelle shall use only those common carriers preapproved by Tech Data or listed in Tech Data’s published routing instructions, unless prior written approval of Tech Data is received.  
 ARTICLE IV. RETURNS  
 4.1  
Inventory Adjustment. At the beginning of each calendar quarter during the term of this Agreement Distributor may return Products to Castelle, freight prepaid, for Return Credit against future orders provided Tech Data meets the following criteria: (i) the total value of the returned products shall not exceed twenty five percent (25%) of the net Product purchased by Tech Data during the immediate prior calendar quarter; (ii) all returned product must be in their unopened, original packaging, be in new condition; be on Castelle’s currently available Product Price List and not have been abused or damaged; (iii) Tech Data shall not return any Products for the same identical product model; (iv) at the time of the return, Tech Data must place an irrevocable Purchase Order with Castelle having a net value of not less than the value of the returned product; (v) any products that have been customized cannot be returned to Castelle: (vi) Product not normally offered to distribution which is purchased by the Distributor under special conditions cannot be returned to Castelle.  
 The request for rotation, when granted, is valid for sixty (60) days from the date of grant. All Product must be received at Castelle dock within this time frame to be accepted, otherwise Castelle reserves the right to cancel the request.  
  
  
Exhibit 10.14  
 4.2  
Defective Products/Dead on Arrival (DOA). Tech Data shall have the right to return to Castelle for Return Credit any DOA Product that is returned to Tech Data within ninety (90) days after the initial delivery date to the End User and any Product that fails to perform in accordance with Castelle’s Product warranty. Castelle shall bear all costs of shipping and risk of loss of DOA and in-warranty Products to Castelle’s location and back to Tech Data. Tech Data is required to request a Return Material Authorization from Castelle, within sixty (60) days of receipt of product. The Authorization is valid for sixty (60) days from the date of issue and all Products must be received at Castelle’s dock within this time frame to be accepted, otherwise Castelle reserves the right to cancel the request.  
 4.3  
Obsolete or Outdated Product. Tech Data shall have the right to return for Return Credit, without limitation as to the dollar amount, all Products that become obsolete or Castelle discontinues or are removed from Castelle’s current price list; provided Tech Data returns such Products within sixty (60) days after Tech Data receives written notice from Castelle that such Products are obsolete, superseded by a newer version, discontinued or are removed from Castelle’s price list.  
 4.4 Miscellaneous Returns.  
 (a) Bad Box . Tech Data shall have the right to return to Castelle for Return Credit Products which have boxes that are or become damaged.  
 (b) Non-Saleable. Tech Data shall have the right to return to Castelle for Return Credit Non-Saleable Products.  
 4.5  
Condition Precedent to Returns. As a condition precedent to returning Products, Tech Data shall request and Castelle shall issue a Return Material Authorization Number (RMA) in accordance with and subject to Section 8.9 of this Agreement.  
 ARTICLE V. PAYMENT TO VENDOR  
 5.1  
Charges. Prices and Fees for Products. Charges, prices, quantities and discounts, if any, for Products shall be determined as set forth in Schedule 1.1 (g), or as otherwise mutually agreed upon by the parties in writing, and may be confirmed at the time of order. In no event shall charges exceed Castelle’s then-current established charges. Tech Data shall not be bound by any of Castelle’s suggested prices.  
  
  
Exhibit 10.14  
 5.2  
Payment. Except as otherwise set forth in this Agreement, any undisputed sum due to Castelle pursuant to this Agreement shall be payable as follows: 2%-15, net thirty (30) days after the invoice receipt. Castelle shall invoice Tech Data no earlier than the applicable shipping date for the Products covered by such invoice. Products which are shipped from outside the United States, shall not be invoiced to Tech Data prior to the Products being placed on a common carrier within the United States for final delivery to Tech Data. The due date for payment shall be extended during any time the parties have a bona fide dispute concerning such payment.  
 5.3  
Invoices. A “correct” invoice shall contain (i) Castelle’s name and invoice date, (ii) a reference to the purchase order or other authorizing document, (iii) separate descriptions, unit prices and quantities of the Products actually delivered, (iv) credits (if applicable), (v) shipping charges (if applicable) (vi) name (where applicable), title, phone number and complete mailing address as to where payment is to be sent, and (vii) other substantiating documentation or information as may reasonably be required by Tech Data from time to time. Notwithstanding any pre-printed terms or conditions on Castelle’s invoices, the terms and conditions of this Agreement shall apply to and govern all invoices issued by Castelle hereunder, except that invoices may include other terms and conditions which are consistent with the terms and conditions of this Agreement, or which are mutually agreed to in writing by Tech Data and Castelle.  
 5.4  
Taxes. Tech Data shall be responsible for franchise taxes, sales or use taxes or shall provide Castelle with an appropriate exemption certificate. Castelle shall be responsible for all other taxes, assessments, permits and fees, however designated which are levied upon this Agreement or the Products, except for taxes based upon Tech Data’s income. No taxes of any type shall be added to invoices without the prior written approval of Tech Data.  
 5.5  
Fair Pricing end Terms. Castelle represents that the prices charged and the terms offered to Tech Data are and will be at least as beneficial to Tech Data as those charged or offered by Castelle to any of its other distributors or customers. If Castelle offers price discounts, payment discounts, promotional discounts or other special prices to its other distributors or customers, Tech Data shall also be entitled to participate and receive notice of the same no later than other distributors or customers.  
  
  
Exhibit 10.14  
 5.6 Price Adjustments.  
 (a) Price Increase. Castelle shall have the right to increase prices from time to time, upon written notice to Tech Data not less than thirty (30) days prior to the effective date of such increase. All orders placed prior to the effective date of the increase, for shipment within thirty (30) days after the effective date, shall be invoiced by Castelle at the lower price.  
 (b) Price Decreases. Castelle shall have the right to decrease prices from time to time, upon written notice to Tech Data not less than thirty (30) days prior to the effective date of such decrease. Castelle shall grant to Tech Data Product Management, Inc., its parent, affiliates and subsidiaries and Tech Data’s Customers a price credit for the full amount of any Castelle price decrease on all Products on order, in transit and in their inventory on the effective date of such price decrease. Tech Data and its Customers shall, within sixty (60) days after receiving written notice of the effective date of the price decrease, provide a list of all Products for which they claim a credit. Castelle shall have the right to a reasonable audit at Castelle’s expense.  
 5.7 Advertising  
 (a) Cooperative Advertising. Castelle offers a two percent (2%) co-op program and may offer additional advertising credits, or other promotional programs or incentives to Tech Data as it offers to its other distributors or customers. Tech Data shall have the right, at Tech Data’s option, to participate in such programs. Attached as Schedule 5.7 is a copy of Castelle’s co-op policy.  
 (b) Advertising Support. Castelle shall provide at no charge to Tech Data and the Customers of Tech Data, marketing support, and advertising materials in connection with the resale of Products as are currently offered or that may be offered by Castelle. Tech Data reserves the right to charge Castelle for preapproved advertising, marketing and training services which has been approved in writing by Castelle.  
 ARTICLE VI. WARRANTIES.  
INDEMNITIES AND OTHER OBLIGATIONS OF VENDOR  
 6.1  
Warranty. Castelle hereby represents and warrants that Castelle has all right, title, ownership interest and marketing rights necessary to provide the Products to Tech Data. Castelle further represents and warrants that it has not entered into any agreements or commitments which are inconsistent with or in conflict with the rights granted to Tech Data in this Agreement; the Products are new and shall be free and clear of all liens and encumbrances; Tech Data and its Customers and End Users shall be entitled to use the Products without disturbance; the Products have been listed with Underwriters’ Laboratories or other nationally recognized testing laboratory whenever such listing is required; the Products meet all FCC  
  
  
Exhibit 10.14  
 requirements; the Products do and will conform to all codes, laws or regulations; and the Products conform in all respects to the Product warranties. Castelle agrees that Tech Data shall be entitled to pass through to Customers of Tech Data and End Users of the Products all Product warranties granted by Castelle. Tech Data shall have no authority to alter or extend any of the warranties of Castelle expressly contained or referred to in this Agreement without prior approval of Castelle. Castelle has made express warranties in this Agreement and in Documentation, promotional and advertising materials. EXCEPT AS SET FORTH HEREIN OR THEREIN, VENDOR DISCLAIMS ALL WARRANTIES WITH REGARD TO THE PRODUCTS, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THIS SECTION SHALL SURVIVE TERMINATION OR EXPIRATION OF THIS AGREEMENT.  
 6.2  
Proprietary Rights Indemnification. Castelle hereby represents and warrants that the Products and the sale and use of the Products do not infringe upon any copyright, patent, trademark, trade secret or other proprietary or intellectual property right of any third party, and that there are no suits or proceedings, pending or threatened, alleging any such infringement. Castelle shall indemnify and hold Tech Data, Tech Data’s parent, affiliates and subsidiaries and their respective, officers, directors, employees and agents harmless from and against any and all actions, claims, losses, damages, liabilities, awards, costs and expenses, which they or any of them incur or become obligated to pay resulting from or arising out of any breach or claimed breach of the foregoing warranty. Tech Data shall Inform Castelle of any such suit or proceeding filed against Tech Data and shall have the right, but not the obligation, to participate in the defense of any such suit or proceeding at Tech Data’s expense. Castelle shall, at its option and expense, either (i) procure for Tech Data, its Customers and End Users the right to continue to use the Product as set forth in this Agreement, or (ii) replace, to the extent Products are available, or modify the Product to make its use non-infringing while being capable of performing the same function without degradation of performance. If neither of the foregoing alternatives (i) or (ii) is reasonably available, Castelle shall accept a return of the Products from Tech Data, at Castelle’s sole cost and expense, and shall refund to Tech Data the full amount of the price paid by Tech Data for said returned Products, less any price protection credits, but not including any early payment or prepayment discounts. Castelle shall have no liability under this Section 6.2 for any infringement based on the use of any Product, if the Product is used in a manner or with equipment for which it was not reasonably intended. Castelle’s obligations under this Section 6.2 shall survive termination or expiration of this Agreement.  
  
  
Exhibit 10.14  
 6.3 Indemnification.  
 (a) Vendor. Castelle shall be solely responsible for the design, development, supply, production and performance of the Products. Castelle agrees to indemnify and hold Tech Data, its parent, affiliates and subsidiaries and their officers, directors and employees harmless from and against any and all claims, damages, costs, expenses (including, but not limited to, reasonable attorneys’ fees and costs) or liabilities that may result, in whole or in part, from any warranty or Product liability claim, or any claim for infringement, or for claims for violation of any of the warranties contained in this Agreement.  
 (b) Tech Data. Tech Data agrees to indemnify and hold Castelle, its officers, directors and employees harmless from and against any and all claims, damages, costs, expenses (including, but not limited to, reasonable attorneys’ fees and costs) or liabilities that may result, in whole or in part, from Tech Data’s gross negligence or willful misconduct in the distribution of the Products pursuant to this Agreement, or for representations or warranties made by Tech Data related to the Products in excess of the warranties of Castelle.  
 6.4 Insurance.  
 (a) The parties shall be responsible for providing Workers’ Compensation insurance in the statutory amounts required by the applicable state laws.  
 (b) Without in any way limiting Castelle’s indemnification obligation as set forth in this Agreement, Castelle shall maintain Commercial General Liability or Comprehensive General Liability Insurance in such amounts as is reasonable and standard for the industry. Either policy form should contain the following coverages: Personal and Advertising Injury, Broad Form Property Damage, Products and Completed Operations, Contractual Liability, employees as Insured and Fire Legal Liability.  
 (c) Castelle will provide evidence of the existence of insurance coverages referred to in this Section 6.4 by certificates of insurance which should also provide for at least thirty (30) days notice of cancellation, non-renewal or material change of coverage to Tech Data. The certificates of insurance shall name Tech Data Product Management, Inc., its parent, affiliates and subsidiaries as additional insured for the limited purpose of claims arising pursuant to this Agreement.  
 6.5  
Limitation of Liability. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PURSUANT TO THIS AGREEMENT FOR AMOUNTS REPRESENTING INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE  
  
  
Exhibit 10.14  
 DAMAGES OF THE OTHER PARTY ARISING FROM THE PERFORMANCE OR BREACH OF ANY TERMS OF THIS AGREEMENT.  
 6.6  
ECCN/Export. Castelle agrees to provide Tech Data, upon signing this Agreement and at any time thereafter that Castelle modifies or adds Products distributed or to be distributed by Tech Data, with the Export Control Classification Number (ECCN) for each of Castelle’s Products, and information as to whether or not any of such Products are classified under the U.S. Munitions List.  
 6.7   
Financial Statements. Castelle agrees that for the term of this Agreement, Castelle shall, upon Tech Data’s request, provide financial statements annually and semi annually as follows:  
 (a) Within one hundred and twenty (120) days after the end of Castelle’s fiscal year audited financial statements for the fiscal year prepared by an independent certified public accountant.  
 (b) Within sixty (60) days after the end of Castelle’s second fiscal quarter, semiannual unaudited financial statements, prepared by Castelle’s authorized representative.  
 Such financial statements shall include profit and loss statement, balance sheets and such other accounting data as may be requested by Tech Data and be acknowledged by Castelle’s authorized representative in writing as true and correct. In addition, Castelle shall provide other financial information upon reasonable request by Tech Data.  
 6.8  
Vendor Reports. Castelle shall, if requested, render monthly reports to Tech Data setting forth the separate Products, dollars invoiced for each Product, and total dollars Invoiced to Tech Data for the month, and such other information as Tech Data may reasonably request.  
 6.9  
Tech Data Reports. Tech Data shall, if requested, render monthly sales out reports on Tech Data’s BBS system. Information provided will include: month and year sales activity occurred, internal product number (assigned by Tech Data), written description, state and zip-code of Customer’s location, unit cost (distributors cost at quantity 1), quantity and extended cost (cost times quantity). A monthly inventory report will be provided on a paper format once a month. Castelle agrees that any such information provided by Tech Data shall be received and held by Castelle in strict confidence and shall be used solely for sell through or compensation reporting information and shall not be used for purposes related to Castelle’s direct sales activities.  
  
  
Exhibit 10.14  
 6.10   
Trademark Usage. Tech Data is hereby authorized to use trademarks and tradenames of Castelle and third parties licensing Castelle, if any, used in connection with advertising, promoting or distributing the Products. Tech Data recognizes Castelle or other third parties may have rights or ownership of certain trademarks, trade names and patents associated with the Products. Tech Data will act consistent with such rights, and Tech Data shall comply with any reasonable written guidelines when provided by Castelle or third parties licensing Castelle related to such trademark or trade name usage. Tech Data will notify Castelle of any infringement of which Tech Data has actual knowledge. Tech Data shall discontinue use of Castelle’s trademarks or trade names upon termination of this Agreement, except as may be necessary to sell or liquidate any Product remaining in Tech Data’s inventory.  
 ARTICLE VII. TERMINATION: EXPIRATION  
 7.1 Termination.  
 (a) Termination With or Without Cause. Either party may terminate this Agreement, without cause, upon giving the other party thirty (30) days prior written notice. In the event that either party materially or repeatedly defaults in the performance of any of its duties or obligations set forth in this Agreement, and such default is not substantially cured within thirty (30) days after written notice is given to the defaulting party specifying the default, then the party not in default may, by giving written notice thereof to the defaulting party, terminate this Agreement or the applicable purchase order relating to such default as of the date specified in such notice of termination.  
 (b) Termination for Insolvency or Bankruptcy. Either party may immediately terminate this Agreement and any purchase orders by giving written notice to the other party in the event of (i) the liquidation or insolvency of the other party, (ii) the appointment of a receiver or similar officer for the other party, (iii) an assignment by the other party for the benefit of all or substantially all of its creditors, (iv) entry by the other party into an agreement for the composition, extension, or readjustment of all or substantially all of its obligations, or (v) the filing of a petition in bankruptcy by or against a party under any bankruptcy or debtors’ law for its relief or reorganization which is not dismissed within ninety (90) days.  
 7.2 Rights Upon Termination or Expiration.  
 (a) Termination or expiration of this Agreement shall not affect Castelle’s right to be paid for undisputed invoices for Products already shipped and accepted by Tech Data or Tech Data’s rights to any credits or payments owed or accrued to the date of termination or expiration. Tech Data’s rights to credits upon termination or  
  
  
Exhibit 10.14  
 expiration shall include credits against which Tech Data would, but for termination or expiration, be required under this Agreement to apply to future purchases.  
 (b) Castelle shall accept purchase orders from Tech Data for additional Products which Tech Data is contractually obligated to furnish to its Customers and does not have in it’s inventory upon the termination or expiration of this Agreement; provided Tech Data notifies Castelle of any and all such transactions in writing within sixty (60) days following the termination or expiration date.  
 (c) Upon termination or expiration of this Agreement, Tech Data shall discontinue holding itself out as a distributor of the Products.  
 7.3  
Repurchase of Products Upon Termination or Expiration. Upon the effective date of termination or expiration of this Agreement for any reason, Castelle agrees to repurchase all Products in Tech Data’s inventory and Products which are returned to Tech Data by its Customers within one hundred and twenty (120) days following the effective date of termination or expiration. Castelle will repurchase such Products at the original purchase price, less any deductions for price protection. The repurchase price shall not be reduced by any deductions or offsets for early pay or prepay discounts. Such returns shall not reduce or offset any co-op payments or obligations owed to Tech Data. Within sixty (60) days following the effective date of termination or expiration, Tech Data shall return to Castelle for repurchase all Product held in Tech Data’s inventory as of the effective date of termination or expiration. Additional returns shall be sent at reasonable intervals thereafter, provided all returns of Product by Tech Data under this Section 7.3 shall be shipped within one hundred and twenty-five (125) days following the effective date of termination or expiration. Castelle will issue an RMA to Tech Data for all such Products; provided, however, that Castelle shall accept returned Products in accordance with this Section absent an RMA if Castelle fails to issue said RMA within five (5) business days of Tech Data’s request. Castelle shall credit any outstanding balances owed to Tech Data. If such credit exceeds amounts due from Tech Data, Castelle shall remit in the form of a check to Tech Data the excess within ten (10) business days of receipt of the Product. Customized Products shall not be eligible for repurchase pursuant to this Section.  
 7.4  
Survival of Terms. Termination or expiration of this Agreement for any reason shall not release either party from any liabilities or obligations set forth in this Agreement which (i) the parties have expressly agreed shall survive any such termination or expiration, or (ii) remain to be performed or by their nature would be intended to be applicable following any such termination or expiration. The termination or expiration of this Agreement shall not affect any of Castelle’s warranties, indemnification obligations or obligations relating to returns, co-op advertising payments, credits or any other matters set forth in this Agreement that  
  
  
Exhibit 10.14  
 should survive termination or expiration in order to carry out their intended purpose, all of which shall survive the termination or expiration of this Agreement.  
 ARTICLE VIII. MISCELLANEOUS  
 8.1  
Binding -Nature, Assignment, and Subcontracting. This Agreement shall be binding on the parties and their respective successors and assigns. Neither party shall have the power to assign this Agreement without the prior written consent of the other party.  
 8.2  
Counterparts. This Agreement may be executed in several counterparts, all of which taken together shall constitute one single agreement between the parties.  
 8.3 Headings. The Article and Section headings used in this Agreement are for reference and convenience only and shall not affect the interpretation of this Agreement.  
 8.4  
Relationship of Parties. Tech Data is performing pursuant to this Agreement only as an independent contractor. Nothing set forth in this Agreement shall be construed to create the relationship of principal and agent between Tech Data and Castelle. Neither party shall act or represent itself, directly or by implication, as an agent of the other party.  
 8.5  
Confidentiality. Each party acknowledges that in the course of performance of its obligations pursuant to this Agreement, it may obtain certain information specifically marked as confidential or proprietary. Each party hereby agrees that all such information communicated to it by the other party, its parent, affiliates, subsidiaries, or Customers, whether before or after the Effective Date, shall be and was received in strict confidence, shall be used only for purposes of this Agreement, and shall not be disclosed without the prior written consent of the other party, except as may be necessary by reason of legal, accounting or regulatory requirements beyond either party’s reasonable control. The provisions of this Section shall survive termination or expiration of this Agreement for any reason for a period of one (1) year after said termination or expiration.  
 8.6  
Arbitration. Any disputes arising under this Agreement shall be submitted to arbitration in accordance with such rules as the parties jointly agree. If the parties are unable to agree on arbitration procedures, arbitration shall be conducted in Pinellas County, Florida, in accordance with the Commercial Arbitration Rules of the American Arbitration Association. Any such award shall be final and binding upon both parties.  
  
  
Exhibit 10.14  
 8.7  
Notices. Wherever one party is required or permitted to give notice to the other party pursuant to this Agreement, such notice shall be deemed given when actually delivered by hand, by telecopier (if and when immediately confirmed in writing by any of the other means provided herein ensuring acknowledgment of receipt thereof for purposes of providing notice of default or termination), via overnight courier, or when mailed by registered or certified mail, return receipt requested, postage prepaid, and addressed as follows:  
 In the Case of Castelle:  
 In the Case of Tech Data:  
 Castelle Tech Data Product Management, Inc.  
 0000-0 Xxxxx Xxxxxxxxx 0000 Xxxx Xxxx Xxxxx  
 Xxxxx Xxxxx, XX 00000 Xxxxxxxxxx, XX 00000  
 Attn: Xxxxx Xxxxxxxxx Attn: Xxxxx Xxxx  
 C.F.O. Vice President-Marketing Operations  
 cc: Contracts Administration  
 Either party may from time to time change its address for notification purposes by giving the other party written notice of the new address and the date upon which it will become effective.  
 8.8  
Force Majeure. The term “Force Majeure” shall be defined to include fires or other casualties or accidents, acts of God, severe weather conditions, strikes or labor disputes, war or other violence, or any law, order, proclamation, regulation, ordinance, demand or requirement of any governmental agency.  
 (a) A party whose performance is prevented, restricted or interfered with by reason of a Force Majeure condition shall be excused from such performance to the extent of such Force Majeure condition so long as such party provides the other party with prompt written notice describing the Force Majeure condition and immediately continues performance until and to the extent such causes are removed.  
 (b) If, due to a Force Majeure condition, the scheduled time of delivery or performance is or will be delayed for more than ninety (90) days after the scheduled date, the party not relying upon the Force Majeure condition may terminate, without liability to the other party, any purchase order or portion thereof covering the delayed Products.  
 8.9  
Return Material Authorization Numbers. Castelle is required to issue a Return Material Authorization Number (“RMA”) to Tech Data within five (5) business days of Tech Data’s request; however, if the RMA is not received by Tech Data within five (5) business days, Castelle shall accept returned Products absent an RMA.  
  
  
Exhibit 10.14  
 8.10  
Credits to Tech Data. In the event any provision of this Agreement or any other agreement between Tech Data and Castelle requires that Castelle grant credits to Tech Data’s account, and such credits are not received within thirty (30) days, all such credits shall become effective immediately upon notice to Castelle. In such event, Tech Data shall be entitled to deduct any such credits from the next monies owed to Castelle. In the event credits exceed any balances owed by Tech Data to Castelle, Castelle shall, upon request from Tech Data, issue a check payable to Tech Data within ten (10) days of such notice. Credits owed to Tech Data shall not be reduced by early payment or prepayment discounts. Tech Data shall have the right to set off against any amounts due to Castelle under this Agreement or any invoices issued by Castelle related to this Agreement any and all amounts due to Tech Data from Castelle, whether or not arising under this Agreement.  
 8.11  
Severability. If, but only to the extent that, any provision of this Agreement is declared or found to be illegal, unenforceable or void, then both parties shall be relieved of all obligations arising under such provision, it being the intent and agreement of the parties that this Agreement shall be deemed amended by modifying such provision to the extent necessary to make it legal and enforceable while preserving its intent.  
 8.12  
Waiver. A waiver by either of the parties of any covenants, conditions or agreements to be performed by the other party or any breach thereof shall not be construed to be a waiver of any succeeding breach thereof or of any other covenant, condition or agreement herein contained.  
 8.13  
Remedies. All remedies set forth in this Agreement shall be cumulative and in addition to and not in lieu of any other remedies available to either party at law, in equity or otherwise, and may be enforced concurrently or from time to time.  
 8.14  
Entire Agreement. This Agreement, including any Exhibits and documents referred to In this Agreement or attached hereto, constitutes the entire and exclusive statement of Agreement between the parties with respect to its subject matter and there are no oral or written representations, understandings or agreements relating to this Agreement which are not fully expressed herein. The parties agree that unless otherwise agreed to in writing by the party intended to be bound, the terms and conditions of this Agreement shall prevail over any contrary terms in any purchase order, sales acknowledgment, confirmation or any other document issued by either party affecting the purchase or sale of Products hereunder.  
 8.15  
Governing Law. This Agreement shall have Florida as its situs and shall be governed by and construed in accordance with the laws of the State of Florida, without reference to choice of laws. The parties agree that this Agreement  
  
  
Exhibit 10.14  
 excludes the application of the 1980 United Nations Convention on Contracts for the International Sale of Goods, if otherwise applicable.  
 8.16  
Software Licenses. Whenever the Products described in this Agreement shall include software licenses, Castelle hereby grants to Tech Data a non-exclusive right to market, demonstrate and distribute the software to Customers of Tech Data. Tech Data acknowledges that no title or ownership of the proprietary rights to any software is transferred by virtue of this Agreement notwithstanding the use of terms such as purchase, sale or the like within this Agreement.  
 8.17  
Time of Performance. Time is hereby expressly made of the essence with respect to each and every term and condition of this Agreement.  
 IN WITNESS WHEREOF, the parties have each caused this Agreement to be signed and delivered by its duly authorized officer or representative as of the Effective Date.  
 CASTELLE, INC.,  
 TECH DATA PRODUCT MANAGEMENT, INC.,  
a California Corporation a Florida Corporation  
 By: /s / Xxxxxx X. Xxxxx By: /s / Xxxxx X. Xxxxxxxx  
 Printed Name: Xxxxxx X. Xxxxx Printed Name: Xxxxx X. Xxxxxxxx  
 Title: Executive Vice President Title: Senior Vice President, Marketing  
 Date: 6/20/97 Date: 9/29/97  
  
  
Exhibit 10.14  
 SCHEDULE 5.7  
 CO-OP GUIDELINES  
 To increase the effectiveness of advertising and sales promotions Tech Data has developed the following advertising requirements:  
 HOW CO-OP IS EARNED:  
 - Co-op dollars will be at least 2% of the purchases made by Tech Data, net of returns.  
 - Co-op dollars will be accrued on a monthly basis.  
 HOW CO-OP IS SPENT:  
 - Tech Data will obtain Vendor’s prior approval for all co-op expenditures.  
 - Tech Data will be reimbursed for 100% of the cost for ads or promotions that feature vendor products.  
 -Co-op dollars will be used within the 12 months immediately following the month in which they are earned.  
 HOW CO-OP IS CLAIMED:  
 - Claims for co-op will be submitted to vendor within 60 days of the event date.  
 - Claims for co-op will be submitted with a copy of vendor prior approval and proof of performance.  
 - Payment must be remitted within 30 days of the claim date, or Tech Data reserves the right to deduct from the next invoice.  
 CO-OP REPORTING:  
 - Vendor will submit a monthly co-op statement outlining (i) co-op earned, (ii) co-op used and (iii) co-op claims paid.  
 Accepted:  
 /s/ Xxxxxx X. Xxxxx  
 Name: Xxxxxx X. Xxxxx  
 Title: Executive Vice President  
 Date: 6/20/97