



MANUFACTURING SUPPLY AGREEMENT

TERRYBERRY COMPANY, LLC AND/OR ITS AFFILIATES SET FORTH IN AN APPLICABLE ORDER (“TERRYBERRY”) IS WILLING TO MANUFACTURE CERTAIN GOODS FOR YOU AS THE COMPANY OR THE LEGAL ENTITY THAT WILL BE UTILIZING THE GOODS (REFERENCED BELOW AS “CUSTOMER”) ON THE CONDITION THAT YOU ACCEPT ALL OF THE TERMS OF THIS AGREEMENT (AS DEFINED BELOW). BY ENTERING INTO THIS AGREEMENT ON BEHALF OF THE CUSTOMER, YOU REPRESENT THAT YOU HAVE THE LEGAL AUTHORITY TO BIND THE CUSTOMER TO THIS AGREEMENT. CUSTOMER AND TERRYBERRY MAY EACH ALSO BE REFERRED TO AS A “PARTY” AND TOGETHER, THE “PARTIES”.

PLEASE READ THIS AGREEMENT CAREFULLY BEFORE ORDERING THE GOODS. THIS MANUFACTURING SUPPLY AGREEMENT (“AGREEMENT”) CONSTITUTES A LEGAL AND ENFORCEABLE CONTRACT BETWEEN CUSTOMER AND TERRYBERRY. BY INDICATING CONSENT ELECTRONICALLY, OR ORDERING OR OTHERWISE USING THE GOODS, CUSTOMER AGREES TO THE TERMS AND CONDITIONS OF THIS AGREEMENT. THIS MANUFACTURING AND SUPPLY AGREEMENT SETS FORTH THE TERMS AND CONDITIONS UNDER WHICH TERRYBERRY WILL PROVIDE THE GOODS TO CUSTOMER, EACH PARTY’S RESPONSIBILITIES HEREUNDER, AND THE FEES RELATED THERETO.

The Parties hereby agree as follows:

1. PURCHASE AND SALE OF GOODS

- 1.1. Purchase and Sale.** Subject to the terms and conditions of this Manufacturing Agreement, during the Term, Customer shall purchase from Terryberry, and Terryberry shall manufacture and sell to Customer, Customer's requirements of the Goods. Each Order shall contain: (a) a description of the Goods to be manufactured and sold hereunder; (b) the purchase price for each of the Goods; and (c) the quantity of the Goods. The Parties shall, from time to time, amend an Order, or issue a new Order, to reflect any agreed revisions to any of the terms described in the foregoing clauses (a)-(c) in accordance with the amendment provisions set forth in this Manufacturing Agreement.
- 1.2. Terms of Manufacturing Agreement Prevail Over Customer's Purchase Order.** The Parties intend for the express terms and conditions contained in this Manufacturing Agreement (including any applicable Orders or Exhibits hereto) to exclusively govern and control each of the Parties' respective rights and obligations regarding the subject matter of this Manufacturing Agreement, and this Manufacturing Agreement is expressly limited to such terms and conditions. Without limitation of the foregoing, any additional, contrary, or different terms contained in any Purchase Order or other request or communication by Customer pertaining to the sale of Goods by Terryberry, and any attempt to modify, supersede, supplement or otherwise alter this Manufacturing Agreement, will not modify this Manufacturing Agreement or be binding on the Parties unless such terms have been executed in accordance with the amendment provisions of this Manufacturing Agreement.
- 1.3. Right to Manufacture and Sell Competitive Goods.** This Manufacturing Agreement does not limit Terryberry's right to manufacture or sell, or preclude Terryberry from manufacturing or selling, to any Person, or entering into any agreement with any other Person related to the manufacture or sale of, the Goods and other goods or products that are similar to or competitive with the Goods.

2. ORDERING PROCEDURE

- 2.1. Non-binding Forecasts of Customer's Requirements.** From time to time, Customer may, but shall not be required to, provide Terryberry with Forecasts. Forecasts are for informational purposes only and do not create any binding obligations on behalf of either Party; provided, however, that Terryberry shall not be required to manufacture and sell to Customer any quantity of Goods that is unreasonably disproportionate to any Forecast for the period covered by such Forecast.
- 2.2. Purchase Orders.** Customer shall issue to Terryberry Purchase Orders (containing applicable Basic Purchase Order Terms that are consistent with the terms of this Manufacturing Agreement), in written form via e-mail. By issuing a Purchase Order to Terryberry, Customer makes an offer to purchase Goods pursuant to the terms and conditions of this Manufacturing Agreement and the Basic Purchase Order Terms contained in such Purchase Order, and on no other terms. For the avoidance of doubt, any variations made to the terms and conditions of this Manufacturing Agreement by Customer in any Purchase Order are void and have no effect.
- 2.3. Acceptance, Rejection, and Cancellation of Purchase Orders.** Terryberry may accept a Purchase Order by confirming the order in writing or by delivering the applicable Goods to Customer, whichever occurs first. Terryberry may reject a Purchase Order or cancel a previously accepted Purchase Order, which it may do without liability or penalty, and without constituting a waiver of any of Terryberry's rights or remedies under this Manufacturing Agreement or any Purchase Order, by providing written notice to Customer specifying the applicable date of rejection or cancellation: (i) if Terryberry has terminated the Manufacturing Agreement for cause; or (ii) pursuant to Terryberry's rights under the last sentence of Section 4.4.
- 2.4. Gold Market Price.** Custom manufactured items are quoted based upon the daily market cost of gold. If custom manufactured items are selected, the Parties shall reference the pricing table provided to Customer in the Order. Customer acknowledges that fluctuations in the gold market may cause this pricing component to fluctuate. The gold price shall be locked in when the order associated with the Order is submitted and processed.

3. SHIPMENT, DELIVERY, ACCEPTANCE, AND INSPECTION

- 3.1. Shipment.** Unless otherwise expressly agreed by the Parties in writing, Terryberry shall select the method of shipment of and the carrier for the Goods. Terryberry may, in its sole discretion, without liability or penalty, make partial shipments of Goods to Customer. Each shipment will constitute a separate sale and Customer shall pay for the Goods shipped, in accordance with the payment terms specified in **Error! Bookmark not defined.**4.1, whether such shipment is in whole or partial fulfillment of a Purchase Order.

- 3.2. Packaging and Labeling.** Terryberry shall properly pack, mark, and ship Goods and provide Customer with shipment documentation showing the Purchase Order number, Terryberry's identification number for the subject Goods, the quantity of pieces in shipment, the number of cartons or containers in shipment, Terryberry's name, the bill of lading number and the country of origin.
- 3.3. Delivery.** Unless otherwise expressly agreed by the Parties in writing, Terryberry shall deliver the Goods to the delivery location specified by Customer, using Terryberry's standard methods for packaging and shipping such Goods.
- 3.4. Late Delivery.** Any time quoted for delivery is an estimate only; provided, however, that Terryberry shall use commercially reasonable efforts to deliver all Goods on or before the requested delivery date. If Terryberry has delayed shipment of all or any Goods for more than thirty (30) days after the requested delivery date and if such delay is not due to any action or inaction of Customer or otherwise excused in accordance with the terms and conditions of this Manufacturing Agreement, Customer may, as its sole remedy therefor, cancel the portion of the related Purchase Order covering the delayed Goods by giving Terryberry written notice within forty-five (45) days of the requested delivery date. Subject to Customer's rights under this Section 3.4, no delay in the shipment or delivery of any Good relieves Customer of its obligations under this Manufacturing Agreement, including accepting delivery of any remaining installment or other orders of Goods.
- 3.5. Transfer of Title and Risk of Loss.**
- 3.5.1.** Title to Goods shipped under any Purchase Order passes to Customer upon Terryberry's tender of the Goods to the carrier.
- 3.5.2.** Risk of loss to Goods shipped under any Purchase Order passes to Customer upon Terryberry's tender of such units to the carrier.
- 3.6. Inspection.** Customer shall inspect Goods received under this Manufacturing Agreement upon receipt of such Goods ("**Inspection Period**") and either accept or, only if any such Goods are Nonconforming Goods, reject such Goods. Customer will be deemed to have accepted Goods unless it provides Terryberry with written notice of any Nonconforming Goods within five (5) days following the Inspection Period, stating with specificity all defects and nonconformities, and furnishing such other written evidence or other documentation as may be reasonably required by Terryberry (including the subject Goods, or a representative sample thereof, which Customer contends are Nonconforming Goods). All defects and nonconformities that are not so specified will be deemed waived by Customer, such Goods shall be deemed to have been accepted by Customer, and no attempted revocation of acceptance will be effective. If Customer timely notifies Terryberry of any Nonconforming Goods, Terryberry shall determine, in its reasonable discretion, whether the Goods are Nonconforming Goods. If Terryberry determines that such Goods are Nonconforming Goods, Terryberry shall, in its sole discretion, either:
- 3.6.1.** replace such Nonconforming Goods with conforming Goods; or
- 3.6.2.** refund to Customer such amount paid by Customer to Terryberry for such Nonconforming Goods returned by Customer to Terryberry.
- 3.7.** Customer shall ship, at Customer's expense and risk of loss, all Nonconforming Goods to Terryberry's facility located at 2033 Oak Industrial Drive NE, Grand Rapids, Michigan 49505 or to such other location as Terryberry may instruct Customer in writing. If Terryberry exercises its option to replace Nonconforming Goods, Terryberry shall ship to the delivery location specified by Customer, at Terryberry's expense and risk of loss, the replacement Goods.
- 3.8. REMEDIES.** THE REMEDIES SET FORTH IN THIS SECTION 3.8 ARE CUSTOMER'S EXCLUSIVE REMEDY FOR THE DELIVERY OF NONCONFORMING GOODS, SUBJECT TO CUSTOMER'S RIGHTS UNDER SECTION 9.5 WITH RESPECT TO ANY SUCH GOODS FOR WHICH CUSTOMER HAS ACCEPTED DELIVERY UNDER THIS SECTION 3.8.
- 3.9. Limited Right of Return.** Except as provided under Section 3.6, Section 9.5, and Section 9.7, Customer has no right to return Goods shipped to Customer pursuant to this Manufacturing Agreement.

4. PAYMENT

- 4.1. Fees.** Customer shall pay all invoices as set forth in any applicable Order without deduction or set-off (except for any amount disputed promptly and in writing by Customer in good faith), and payment will be sent to the address specified by Terryberry. If the Order does not set forth payment terms, Customer shall pay Terryberry all invoices within thirty (30) days of the invoice date. Without prejudice to Customer's rights set out elsewhere in the Manufacturing Agreement, all fees are non-refundable and payable in advance. Terryberry may invoice for purchases of Subscription Goods upon delivery.
- 4.2. Expenses.** Customer shall reimburse Terryberry for the actual, necessary, and reasonable costs incurred by Terryberry in rendering the Goods, which may include, but is not limited to, travel, lodging, and food ("**Terryberry Expenses**"). All travel required to achieve completion of any Goods shall be subject to Terryberry's then-current policies. For the avoidance of doubt, Customer shall also reimburse Terryberry for all Goods fees and related costs and expenses incurred by Terryberry as a result of Customer's failure to perform any work or service, provide any material, facility, or other item, or fulfill any other obligation of the Customer as set forth in this Manufacturing Agreement or an applicable SOW. Terryberry Expenses shall be payable monthly in arrears for Terryberry Expenses incurred in the applicable billing period.
- 4.3. Shipping Charges, Insurance, and Taxes.** Customer shall pay for all shipping charges and insurance costs. In addition, Customer is liable for any manufacturing tax, shipping tax, sales tax, use tax, service tax, value added tax, transfer tax, excise tax, tariff, duty or any other similar tax imposed by any governmental authority arising from the fees or charges invoiced to Customer under this Manufacturing Agreement. Such taxes may be invoiced by Terryberry to Customer for all taxing jurisdictions where Terryberry is permitted or required by Applicable Law to collect such taxes unless Customer provides a valid resale certificate or other documentation required under Applicable Law to evidence tax exemption.
- 4.4. Late Payment.** Any amounts arising in relation to this Manufacturing Agreement not paid when due will be subject to a late charge of one and one-half percent (1 ½ %) per month on the unpaid balance or the maximum rate allowed by law, whichever is less. Customer shall also reimburse Terryberry for all reasonable costs incurred by Terryberry in collecting any late payments, including attorneys' fees and court costs. In addition to all other remedies available under this Manufacturing Agreement or at Law (which

Terryberry does not waive by the exercise of any rights under this Manufacturing Agreement), if Customer fails to pay any undisputed amounts when due under this Manufacturing Agreement, Terryberry may (a) suspend the delivery of any Goods, (b) reject Customer's Purchase Orders or cancel accepted Purchase Orders pursuant to the terms of Section 2.3 or (c) terminate this Manufacturing Agreement pursuant to the terms of Section 5.3.

4.5. Security Interest. To secure Customer's prompt and complete payment and performance of any and all present and future indebtedness, obligations and liabilities of Customer to Terryberry, Customer hereby grants Terryberry a first-priority security interest, with priority over all other liens, claims, and encumbrances, in all inventory of goods purchased under this Manufacturing Agreement (including Goods and Nonconforming Goods)/by Customer from Terryberry, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. Customer acknowledges that the security interest granted under this Section 4.5 is a purchase-money security interest under Michigan law. Terryberry may file a financing statement for such security interest and Customer shall execute such statements or other documentation necessary to perfect Terryberry's security interest in such Goods. Customer also authorizes Terryberry to execute, on Customer's behalf, such statements or other documentation necessary to perfect Terryberry's security interest in such Goods. Terryberry shall be entitled to all applicable rights and remedies of a secured party under Applicable Law.

5. TERM, TERMINATION, AND SUSPENSION

5.1. Term and Renewal.

5.1.1. Initial Term. This Manufacturing Agreement shall be in effect from the Effective Date and shall continue until the end of the term set forth in the Order (the "**Initial Term**"), until terminated in accordance with the provisions set forth herein. If no term is set forth in the Order, the Initial Term shall be twelve (12) months.

5.1.2. Renewal. At the end of the Initial Term and each Renewal Term (as defined herein), this Manufacturing Agreement will automatically renew for a successive twelve (12) month period (each a "**Renewal Term**", together with the Initial Term, the "**Term**") unless either party gives 90 days written notice of its intent not to renew.

5.2. Termination by Either Party. Either Party may immediately terminate this Manufacturing Agreement by giving written notice to the other Party, if the other Party (i) materially breaches any obligations under this Manufacturing Agreement and fails to cure such breach within thirty (30) days after the non-breaching Party demands such cure; (ii) becomes insolvent or assigns all, or substantially all, of its assets or business for the benefit of creditors; (iii) commences bankruptcy or dissolution proceedings, has a receiver appointed for a substantial part of its assets, or ceases to operate in the ordinary course of business; or (iv) suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business (v) resolves to wind up business, dissolve, or liquidate. In addition, a Party may terminate this Manufacturing Agreement, in whole or in part, or cease provision of maintenance and support services and Professional Goods or Customer's access to the applicable Goods if required to comply with Applicable Law or regulation, and such termination will not constitute a breach of this Manufacturing Agreement by the terminating Party.

5.3. Termination by Terryberry. Terryberry may immediately terminate this Manufacturing Agreement by giving written notice to Customer if Customer assigns its rights or obligations in violation of the terms of this Manufacturing Agreement or if Customer fails to pay any amount due under this Manufacturing Agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment.

5.4. Termination for Breach of Law. A Party may terminate this Manufacturing Agreement, in whole or in part, or cease provision of Goods or terminate Customer's access to the applicable Goods if required to comply with Applicable Law or regulation, and such termination will not constitute a breach of this Manufacturing Agreement by the terminating Party.

5.5. Effect of Termination.

5.5.1. Amounts Payable. Upon termination or expiration of this Manufacturing Agreement (i) all indebtedness of Customer to Terryberry under this Manufacturing Agreement any other agreement or otherwise, of any kind, shall become immediately due and payable to Terryberry, without further notice to Customer; (ii) each Party shall destroy all copies of the Confidential Information of the other Party on tangible media in such Party's possession or control or return such copies to the other Party; and (iii) upon request, each Party shall certify in writing to the other Party that it has returned or destroyed such Confidential Information.

5.5.2. Continuing Rights and Obligations. Expiration or termination of the Term will not affect any rights or obligations of the Parties that:

- a. come into effect upon or after termination or expiration of this Manufacturing Agreement; or
- b. otherwise survive the expiration or earlier termination of this Manufacturing Agreement and were incurred by the Parties prior to such expiration or earlier termination.

5.5.3. Effect of Notice. Any notice of termination under this Manufacturing Agreement automatically operates as a cancellation of any deliveries of Goods to Customer that are scheduled to be made subsequent to the effective date of termination, whether or not any orders for such Goods had been accepted by Terryberry. With respect to any Goods that are still in transit upon termination of this Manufacturing Agreement, Terryberry may require, in its sole discretion, that all sales and deliveries of such Goods be made on either a cash-only or certified-check basis.

5.5.4. No Waiver. Subject to Section 5.5, the Party terminating this Manufacturing Agreement, or in the case of the expiration of this Manufacturing Agreement, each Party, shall not be liable to the other Party for any damage of any kind (whether direct or indirect) incurred by the other Party by reason of the expiration or earlier termination of this Manufacturing Agreement. Termination of this Manufacturing Agreement will not constitute a waiver of either Party's rights, remedies or defenses under this Manufacturing Agreement, at law, in equity or otherwise.

6. CERTAIN OBLIGATIONS OF CUSTOMER

6.1. Certain Prohibited Acts. Notwithstanding anything to the contrary in this Manufacturing Agreement, neither Customer nor any Customer Personnel shall:

6.1.1. make any representations, warranties, guarantees, indemnities, similar claims, or other commitments:

- a. actually, apparently or ostensibly on behalf of Terryberry, or
- b. to any customer or other Person with respect to the Goods, which are additional to or inconsistent with any then-existing representations, warranties, guarantees, indemnities, similar claims, or other commitments in this Manufacturing Agreement or any written documentation provided by Terryberry to Customer.

6.1.2. engage in any unfair, competitive, misleading, or deceptive practices respecting Terryberry, Terryberry's trademarks or the Goods, including any product disparagement.

6.2. Government Contracts. Customer shall not resell Goods to any Governmental Authority or its respective agencies without Terryberry's prior written approval. Unless otherwise separately agreed in writing between Terryberry and Customer, no provisions required in any United States government contract or subcontract related thereto shall be a part of this Manufacturing Agreement or imposed upon or binding upon Terryberry, and this Manufacturing Agreement shall not be deemed an acceptance of any government provisions that may be included or referenced in Customer's request for quotation, Purchase Order or any other document.

7. CONFIDENTIALITY

7.1. Disclosure of Confidential Information. The Parties acknowledge that each Party (the "**Disclosing Party**") may disclose Confidential Information to the other Party ("**Receiving Party**").

7.2. Exclusions. Notwithstanding anything to the contrary in this Section 7, Confidential Information shall not include information which: (i) was already known to Receiving Party at the time of disclosure by Disclosing Party, and Receiving Party was under no obligation of confidentiality with respect to such information; (ii) is becomes known (independently of disclosure by the Disclosing Party) to Receiving Party by a third party who had the right to make such disclosure without any confidentiality restrictions; (iii) is, or through no fault of Receiving Party has become, generally available to the public; or (iv) is independently developed by the Receiving Party without use of, access to, or reliance upon the Disclosing Party's Confidential Information, and the Receiving Party can provide evidence to that effect.

7.3. Obligations. The Receiving Party will not disclose the Disclosing Party's Confidential Information to any third party, except as permitted in Section 7.4. The Receiving Party will protect and keep confidential the Disclosing Party's Confidential Information using the same degree of care that the Receiving Party uses to protect its own nonpublic or proprietary business, technical or financial information of similar importance, but in no event less than a reasonable degree of care. The Receiving Party will not use the Disclosing Party's Confidential Information for any purpose other than to perform its obligations or exercise its rights under this Manufacturing Agreement. The disclosure of Confidential Information pursuant to this Manufacturing Agreement is not intended in any way to transfer or grant any right, title or interest in or to such Confidential Information to the Receiving Party unless otherwise expressly indicated in this Manufacturing Agreement or by the Disclosing Party in writing.

7.4. Permitted Disclosure. The Receiving Party may disclose the Confidential Information of the Disclosing Party only to those of its officers, directors, employees, agents, representatives and contractors ("**Representatives**") who have a legitimate need to know such Confidential Information consistent with the purposes of this Manufacturing Agreement and who have agreed, either as a condition of employment, representation or in a written agreement, to be bound by terms and conditions substantially as protective as the confidentiality terms and conditions applicable to the Receiving Party under this Section 7. The Receiving Party shall be responsible and liable for any breach by its Representatives of the obligations of the Receiving Party set forth in this Section 7. The Receiving Party shall be allowed to disclose Confidential Information of the Disclosing Party to the extent that such disclosure is: (i) approved in writing by the Disclosing Party; (ii) necessary for the Receiving Party to enforce its rights under this Manufacturing Agreement in connection with a legal proceeding; or (iii) required by Applicable Law or by the order of a court or similar judicial or administrative body, provided that, to the extent it is legally permitted to do so, the Receiving Party notifies the Disclosing Party of such required disclosure promptly and in writing and cooperates with the Disclosing Party at the Disclosing Party's reasonable request and expense in any lawful action to contest or limit the scope of such required disclosure. This Section 7 supersedes any and all prior or contemporaneous understandings and agreements, whether written or oral, between the Parties with respect to Confidential Information and is a complete and exclusive statement thereof.

8. INTELLECTUAL PROPERTY

8.1. Confidential Information. Each Party acknowledges that the Confidential Information of the other Party, and all other intellectual property rights of the other Party, are and shall remain the exclusive property of the other Party, whether or not protected under Applicable Laws, including intellectual or property laws.

8.2. Terryberry Intellectual Property. Except for the rights granted to Customer in this Manufacturing Agreement, all rights, title, and interest in and to the Terryberry Intellectual Property are hereby reserved by Terryberry, its Affiliates, or its licensors. To the extent that Customer gains any Intellectual Property rights in the Terryberry Intellectual Property by any means or mechanism, Customer hereby irrevocably assigns to Terryberry all of its right, title and interest in and to such Intellectual Property and Intellectual Property rights. To the extent Customer's rights are inalienable under Applicable Law, Customer hereby irrevocably waives such rights and, if such waiver is deemed invalid, grants to Terryberry the exclusive, irrevocable, perpetual, worldwide, royalty free right to use, market, modify and grant licenses to such items without identifying Customer or seeking Customer's consent. Customer agrees not to take any action that interferes with intellectual proprietary rights of Terryberry. Nothing in this Manufacturing Agreement shall transfer ownership of any Intellectual Property rights from Terryberry to the Customer.

8.3. Customer Intellectual Property. Except as provided for herein, all rights, title, and interest in and to Customer Intellectual Property are hereby reserved by Customer, its Affiliates or licensors. Nothing in this Manufacturing Agreement shall transfer ownership of any Intellectual Property rights from Customer to Terryberry. Title for the Goods (exclusive of title to any Terryberry Intellectual Property contained in the Goods) shall pass to Customer upon payment in full for such Goods.

- 8.4. Feedback.** If Customer or any of its employees or contractors sends or transmits any communications or materials to Terryberry by mail, email, telephone, or otherwise, suggesting or recommending changes to Goods, including new features or functionality relating thereto, or any comments, questions, suggestions, or the like (collectively, "**Feedback**"), Terryberry is free to use such Feedback irrespective of any other obligation or limitation between the Parties governing such Feedback. Customer hereby assigns to Terryberry on Customer's behalf, and on behalf of its employees, contractors and/or agents, all right, title, and interest in, and Terryberry is free to use, without any attribution or compensation to any party, any ideas, know-how, concepts, techniques, or other intellectual property rights contained in the Feedback, for any purpose whatsoever, although Terryberry is not required to use any Feedback.
- 8.5. Trademark.** Customer will furnish Terryberry with all Customer Marks it desires to include in any Goods. Customer grants to Terryberry a non-exclusive, non-transferable right and license to use the Customer Marks in association with all purposes contemplated under this Manufacturing Agreement.

9. WARRANTIES

- 9.1. Mutual Warranties.** Each Party hereby represents and warrants to the other Party as follows: (i) such Party is an entity duly formed, organized and existing in good standing in such Party's state of formation; (ii) such Party has full power and all requisite legal and entity authority to enter into this Manufacturing Agreement; and (iii) such Party's execution, delivery, and performance of this Manufacturing Agreement shall not constitute (a) a violation of any judgment, order, or decree; (b) a material default under any material contract by which such Party or any of its material assets are bound; or (c) an event that would, with notice or lapse of time, or both, constitute such a default.
- 9.2. Customer's Representations and Warranties.** Customer represents and warrants to Terryberry that:
- 9.2.1.** the execution of this Manufacturing Agreement by its Representative whose signature is set forth at the end of this Manufacturing Agreement, and the delivery of this Manufacturing Agreement by Customer, have been duly authorized by all necessary action on the part of Customer;
 - 9.2.2.** the execution, delivery, and performance of this Manufacturing Agreement by Customer will not violate, conflict with, require consent under or result in any breach or default under (i) any of Customer's organizational documents (including its bylaws or articles of incorporation, (ii) any Applicable Law or (iii) with or without notice or lapse of time or both, the provisions of any Customer Contract;
 - 9.2.3.** this Manufacturing Agreement has been executed and delivered by Customer and (assuming due authorization, execution, and delivery by Terryberry) constitutes the legal, valid, and binding obligation of Customer, enforceable against Customer in accordance with its terms;
 - 9.2.4.** it is in compliance with all Applicable Laws and Customer Contracts relating to this Manufacturing Agreement, the Goods and the operation of its business;
 - 9.2.5.** it has obtained all licenses, authorizations, approvals, consents, or permits required by applicable Laws to conduct its business generally and to perform its obligations under this Manufacturing Agreement;
 - 9.2.6.** it is not insolvent and is paying all of its debts as they become due; and
 - 9.2.7.** all financial information that it has provided to Terryberry is true and accurate and fairly represents Customer's financial condition.
 - 9.2.8.** it owns and will at all times own, or otherwise has and will at all times have, all necessary rights, licenses, permissions and consents in and relating to the data provided or made available by or on behalf of Customer so that, as used, disclosed, hosted, stored and processed by Terryberry in accordance with the terms of this Manufacturing Agreement, they do not and will not infringe, misappropriate, or otherwise violate any right of any third party or violate any Applicable Law;
 - 9.2.9.** the receipt and use by Terryberry of the Customer Marks and any other material provided by the Customer to Terryberry in the performance of this Manufacturing Agreement, its agents, subcontractors or consultants shall not infringe the rights, including any Intellectual Property Rights, of any third party.
- 9.3. Limited Product Warranty.** Subject to the provisions of Sections 9.4 through 9.8, Terryberry warrants to Customer (the "**Product Warranty**") that:
- 9.3.1.** for a period of three (3) months from the date of shipment of a Good (the "**Warranty Period**"), each Good will substantially conform to good industry standard and will be free from significant and material defects in material and workmanship; and
 - 9.3.2.** Customer will receive good and valid title to all Goods, free and clear of all encumbrances and liens of any kind.
- 9.4. Product Warranty Limitations.** The Product Warranty does not apply to any Good that:
- 9.4.1.** has been subjected to abuse, misuse, neglect, negligence, accident, improper testing, improper installation, improper storage, improper handling, abnormal physical stress, abnormal environmental conditions or use contrary to any instructions issued by Terryberry;
 - 9.4.2.** has been reconstructed, repaired, or altered by Persons other than Terryberry or its authorized Representative; or
 - 9.4.3.** has been used with any Third-Party Products, hardware, or product that has not been previously approved in writing by Terryberry.
- 9.5. Customer's Exclusive Remedy for Defective Goods.** Notwithstanding any other provision of this Manufacturing Agreement (except for Section 9.7), this Section 9.5 contains Customer's exclusive remedy for Defective Goods. Customer's remedy under this Section 9.5 is conditioned upon Customer's compliance with its obligations under Section 9.5(a) and Section 9.5(b) below. During the Warranty Period, with respect to any allegedly Defective Goods:

- 9.5.1. Customer shall notify Terryberry, in writing, of any alleged claim or defect within five (5) business days from the date Customer discovers, or upon reasonable inspection should have discovered, such alleged claim or defect (but in any event before the expiration of the applicable Warranty Period);
 - 9.5.2. Customer shall ship, at its expense and risk of loss, such allegedly Defective Goods to Terryberry's facility located at 2033 Oak Industrial Drive NE, Grand Rapids, Michigan 49505 for inspection and testing by Terryberry;
 - 9.5.3. if Terryberry's inspection and testing reveal, to Terryberry's reasonable satisfaction, that such Goods are Defective and any such defect has not been caused or contributed to by any of the factors described under Section 9.4 above, subject to Section 9.5.1 and Section 9.5.2. Terryberry shall in its sole discretion and at its expense, repair or replace such Defective Goods; and
 - 9.5.4. Terryberry shall ship to Customer, at Terryberry's expense and risk of loss, the repaired or replaced Goods to the location reasonably designated by Customer.
 - 9.5.5. Customer has no right to return for repair, replacement, credit, or refund any Good except as set forth in this Section 9.5 (or if otherwise applicable, Section 3.6 or Section 9.7). In no event shall Customer reconstruct, repair, alter or replace any Good, in whole or in part, either itself or by or through any third party.
 - 9.5.6. SUBJECT TO SECTION 9.7, THIS SECTION 9.5 SETS FORTH BUYER'S SOLE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED PRODUCT WARRANTY SET FORTH IN SECTION 9.3.
- 9.6. **Third-Party Products.** Customer acknowledges that the Goods purchased by Customer under this Manufacturing Agreement may contain, be contained in, incorporated into, attached to, or packaged together with products manufactured by a third party ("**Third-Party Products**"). Third-Party Products are not covered by the warranty in Section 9.3. For the avoidance of doubt, Terryberry makes no representations or warranties with respect to any Third-Party Products.
- 9.7. **Withdrawal of Goods.** If Terryberry determines that any Goods sold to Customer may be Defective, at Terryberry's request, Customer shall withdraw all similar Goods from sale and, at Terryberry's option, either return such Goods to Terryberry (pursuant to the terms of Section 9.5.2) or destroy the Goods and provide Terryberry with written certification of such destruction. Notwithstanding the limitations of Section 9.5, if Customer returns all withdrawn Goods or destroys all withdrawn Goods and provides Terryberry with written certification of such destruction within ten (10) days following Terryberry's withdrawal request, in either case, consistent with Terryberry's instructions, unless any such defect has not been caused or contributed to by any of the factors described under Section 9.4, Terryberry shall (a) repair or replace all such returned Goods or (b) replace such destroyed Goods, in either case, pursuant to the terms of Section 9.5.4. THIS SECTION 9.7 SETS FORTH BUYER'S SOLE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY GOODS THAT ARE WITHDRAWN PURSUANT TO THIS SECTION 9.7.
- 9.8. **Compliance with Law.** Each Party shall comply with all Applicable Laws and regulations in connection with the performance of its obligations and the exercise of its rights under the Manufacturing Agreement.
- 9.9. **DISCLAIMER OF OTHER REPRESENTATIONS AND WARRANTIES; NON-RELIANCE.** EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES SET FORTH IN SECTION 9.2 AND THE PRODUCT WARRANTY SET FORTH IN SECTION 9.3, (A) NEITHER SELLER NOR ANY PERSON ON SELLER'S BEHALF HAS MADE OR MAKES ANY EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY WHATSOEVER, EITHER ORAL OR WRITTEN, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, OR PERFORMANCE OF GOODS OR PRODUCTS TO STANDARDS SPECIFIC TO THE COUNTRY OF IMPORT, WHETHER ARISING BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED, AND (B) BUYER ACKNOWLEDGES THAT IT HAS NOT RELIED UPON ANY REPRESENTATION OR WARRANTY MADE BY SELLER, OR ANY OTHER PERSON ON SELLER'S BEHALF, EXCEPT AS SPECIFICALLY PROVIDED IN SECTIONS 9.2 AND 9.3 OF THIS AGREEMENT.

10. INDEMNIFICATION

- 10.1. **Terryberry Indemnification.** Terryberry will indemnify and defend Customer, its Affiliates, and its and their respective directors, officers, employees, agents, successors and permitted assigns from and against all third-party claims, suits and proceedings resulting from the violation, misappropriation, or infringement of such third party's patent, copyright, trademark or trade secret caused by Customer's use of the Goods in accordance with this Manufacturing Agreement and all directly related losses, liabilities, damages, costs and expenses (including reasonable attorneys' fees).
- 10.2. **Customer Indemnification.** Subject to the terms and conditions of this Manufacturing Agreement, including those set forth in **Error! Bookmark not defined.**10.3, Customer shall indemnify, defend and hold harmless Terryberry and its representatives/officers, directors, employees, agents, affiliates, successors and permitted assigns (each an "**Indemnitee**") against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees, fees and the costs of enforcing any right to indemnification under this Manufacturing Agreement and the cost of pursuing any insurance providers, incurred by awarded against Indemnitee (collectively, "**Losses**"), relating to any third-party Claim or any direct Claim against Customer alleging:
- 10.2.1. a breach or non-fulfillment of any representation, warranty or covenant under this Manufacturing Agreement by Indemnifying Party or Indemnifying Party's Personnel;
 - 10.2.2. any negligent or more culpable act or omission of Customer or its Personnel (including any recklessness or willful misconduct) in connection with the performance of this Manufacturing Agreement; or
 - 10.2.3. any bodily injury, death of any Person or damage to real or tangible personal property caused by the acts or omissions of Customer or its Personnel; or
 - 10.2.4. any failure by Customer or its Personnel to comply with any Applicable Laws.

- 10.3. Procedure.** Each Party's defense and indemnification obligations herein will become effective upon, and are subject to: (a) the Party entitled to indemnification under this Manufacturing Agreement ("**Indemnified Party**") giving prompt notification to the Party that is obligated to provide indemnification ("**Indemnifying Party**") of any claims in writing; and (b) the Indemnified Party providing the Indemnifying Party with full and complete control, authority and information for the defense of the claim, provided that the Indemnifying Party will have no authority to enter into any settlement or admission of the Indemnified Party's wrongdoing on behalf of the Indemnified Party without the Indemnified Party's prior written consent (not to be unreasonably withheld). The Indemnifying Party will promptly, and in no event less than ten (10) days before the date on which a response to such claim is due, assume and diligently pursue the defense and settlement of such claim, engaging attorneys with appropriate expertise to handle and defend the same, at the Indemnifying Party's sole cost and expense. At the Indemnifying Party's request and sole expense, the Indemnified Party shall reasonably cooperate with the Indemnifying Party in defending or settling any claim. If the Indemnifying Party fails to timely assume, or ceases to diligently pursue, such defense, the Indemnified Party may defend or settle the claim in such manner as it may deem appropriate at the cost of the Indemnifying Party.
- 10.4. Remedies.** If Customer's use of the Goods is prevented by injunction or court order because of any claim subject to indemnification under Section 10.1, or, in Terryberry's opinion, if the Goods are likely to become the subject of any such claim, then Terryberry, at its sole discretion and at no additional expense to Customer, shall either: (i) procure the right for Customer to continue using the Goods in accordance with the terms of this Manufacturing Agreement; or (ii) replace or modify the Goods so that such Goods become non-infringing. If Terryberry determines that neither (i) nor (ii) is available in a timely manner on commercially reasonable terms, then Terryberry may terminate Customer's right to use the infringing Service, in which event Customer shall receive a pro-rata refund of all unused, pre-paid fees for the Goods for the period following termination as calculated on a monthly basis for the affected Goods. This Section 10.4 states the sole liability of Terryberry and the exclusive remedy of Customer with respect to any indemnification claims arising out of or related to this Manufacturing Agreement.
- 10.5. Exclusions.** The above Terryberry obligations to defend and indemnify will not apply in the event that a claim arises from or relates to: (i) Customer's marketing, advertising, promotion, or sale of any product containing the Goods; (ii) a modification of the Goods made by, or at the request or direction of, Customer; (iii) the combination of the Goods with an item, technology, software, data or intellectual property not supplied by or approved in writing by Terryberry; (iii) the use of the Goods in a manner not intended or allowed by this Manufacturing Agreement; (iv) any portion of the Goods based upon specifications provided by or on behalf of Customer; (v) Third-Party Products; or (vi) data provided or made available by or on behalf of Customer.

11. LIMITATION OF LIABILITY

- 11.1. Liability Cap.** Except for liability caused by Terryberry's intellectual property infringement indemnification obligations in Section 10.1, Customer's indemnity in Section 10.2, and Customer's payment obligations herein, in no event will either Party's maximum aggregate liability arising out of or related to this Manufacturing Agreement, regardless of the cause of action and whether in contract, tort (including negligence), warranty, indemnity or any other legal theory, exceed the total amount paid or payable to Terryberry under this Manufacturing Agreement during the twelve (12) month period preceding the date of initial claim. The exclusions and limitations set forth in this Section 11.1 shall apply even if an exclusive remedy of Customer under this Manufacturing Agreement has failed of its essential purpose.
- 11.2. Consequential Damages.** Neither Party or its Affiliates will have any liability to the other Party, its Affiliates, or any third party for any loss of profits or revenues, loss of goodwill, or for any indirect, special, incidental, consequential or punitive damages arising out of, or in connection with the supply, use, or performance of, or inability to use, the Goods or arising out of or in connection with this Manufacturing Agreement, however caused, whether in contract, tort (including negligence), indemnity, breach or failure of express or implied warranty, breach of contract, misrepresentation, negligence, strict liability in tort or otherwise, or any other legal theory, and whether or not the Party has been advised of the possibility of such damages.
- 11.3. ASSUMPTION OF RISK.** WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, CUSTOMER ASSUMES ALL RISK AND LIABILITY FOR THE RESULTS OBTAINED BY THE USE OF ANY GOODS IN THE PRACTICE OF ANY PROCESS, WHETHER IN TERMS OF OPERATING COSTS, GENERAL EFFECTIVENESS, SUCCESS OR FAILURE, AND REGARDLESS OF ANY ORAL OR WRITTEN STATEMENTS MADE BY TERRYBERRY, BY WAY OF TECHNICAL ADVICE OR OTHERWISE, RELATED TO THE USE OF THE GOODS.
- 11.4. Construction.** This Manufacturing Agreement is not intended to and will not be construed as excluding or limiting any liability which cannot be limited or excluded by Applicable Law, including liability for (a) death or bodily injury caused by a Party's negligence; or (b) gross negligence, willful misconduct, or fraud.

12. GENERAL PROVISIONS

- 12.1. Tooling.** All Tooling used to manufacture the Goods is owned by Terryberry ("**Terryberry Tooling**"). Customer has no right, title, or interest in or to any of the Terryberry Tooling.
- 12.2. Structure.** Each fully-executed Order shall be deemed to incorporate by reference all of the terms and conditions of this Manufacturing Agreement and shall constitute a separate and binding contract between Terryberry or its Affiliate that is the signatory to the Order and Customer. An Affiliate of Terryberry may contract for Goods by executing a Order. In such case, a Terryberry Affiliate shall be deemed to be "Terryberry" and a "Party" for purposes of this Manufacturing Agreement. In the event there are any conflicts or any inconsistencies between the terms and conditions of the Order and the terms and conditions of this Manufacturing Agreement, the terms and conditions of this Manufacturing Agreement shall govern, unless the Order specifically references the conflicting or inconsistent term of this Manufacturing Agreement and specifically states that the conflicting or inconsistent term of the Order shall govern, then only with respect to such Order, the terms and conditions of the Order shall govern.
- 12.3. Construction.** All references to and mentions of the word "including" or the phrase "e.g." means "including, without limitation." "Or" is not exclusive. The terms and conditions of this Manufacturing Agreement shall not be construed in favor of or against either Party by reason of the extent to which either Party or its professional advisors participated in the preparation or drafting of this Manufacturing Agreement.

- 12.4. Force Majeure.** Any delay in or failure of performance by either Party under this Manufacturing Agreement, other than a failure to pay amounts when due, shall not be considered a breach of this Manufacturing Agreement, and shall be excused to the extent caused by any occurrence beyond the reasonable control of such Party. Such acts shall include, but not be limited to, fortuitous events and acts of God; wars, riots, terrorism and insurrections; laws, decrees, ordinances and governmental regulations; change in Applicable Laws; strikes and lockouts; transportation stoppages or slowdowns; hurricanes, earthquakes, floods, fires and explosions; pandemics and epidemics; and shelter-in-place or similar orders. Notwithstanding the foregoing, if such act or condition beyond the reasonable control of such Party continues for a period of one hundred and eighty (180) days or more, the unaffected Party may, on notice to the Party affected, terminate this Manufacturing Agreement, and neither Party shall have any further obligation to the other save for those provisions hereunder which, by their terms, survive the termination or expiration of this Manufacturing Agreement.
- 12.5. Compliance with Export Controls.** Customer will not export, re-export, divert, transfer, or disclose, directly or indirectly, or allow the use of, any Good, or any direct product thereof in violation of applicable United States export control requirements. Without limiting the generality of the immediately preceding sentence, Customer will not (i) re-export the Goods, or allow the use of the Goods by, an unauthorized or prohibited destination; (ii) transfer the Goods to, or allow the use of the Goods by, any Prohibited Person; or (iii) transfer, use or permit or authorize the use of the Goods in any unauthorized end-use (i.e. activities related to the proliferation of weapons of mass destruction).
- 12.6. Commercial Computer Software.** If Customer is an agency or contractor of the United States Government, Customer acknowledges and agrees that: (i) the Goods (including any software forming a part thereof) were developed entirely at private expense; (ii) the Goods (including any software forming a part thereof) in all respects constitute proprietary data belonging solely to Terryberry; (iii) the Goods (including any software forming a part thereof) are not in the public domain; and (iv) the software forming a part of the Goods is "Commercial Computer Software" as defined in sub-paragraph (a)(1) of DFAR section 252.227-7014 or FAR Part 12.212. Customer shall provide no rights in the Software (including any software forming a part thereof) to any U.S. Government agency or any other party except as expressly provided in this Manufacturing Agreement.
- 12.7. No Third Party Beneficiaries.** Except for indemnified parties in Section 10, no person or entity other than the Parties hereto, and their respective successors and/or assigns, shall have any right, remedies, obligations or liabilities under the terms of this Manufacturing Agreement.
- 12.8. Notice.** Any and all notices, requests, demands and other communications required or otherwise contemplated to be made under this Manufacturing Agreement shall be in writing and in English to the address set forth below, provided by one or more of the following means and deemed to have been duly given (i) if delivered personally, when received; (ii) if delivered by certified or registered mail (postage prepaid and return receipt requested), when received; (iii) if transmitted by facsimile (to those for whom a facsimile number is set forth below), on the date of receipt of the transmission confirmed by receipt of a transmittal confirmation; or (iv) if delivered by courier service, on the third business day following the date of deposit with such courier service. Either Party may change its address by giving notice as provided herein of the new address to the other Party.
- | | |
|----------------|----------------------------------------------------------------------------------------------------------------------------------|
| To Terryberry: | Notices to Terryberry shall be sent to:
2033 Oak Industrial Drive NE
Grand Rapids, Michigan 49505
Attn: General Counsel |
| To Customer: | Notices to Customer shall be sent to the address provided on the Order. |
- 12.9. Successors and Assigns.** All provisions of this Manufacturing Agreement shall be binding upon, inure to the benefit of, and be enforceable by and against, the respective successors and permitted assigns of Terryberry and Customer.
- 12.10. Governing Law; Jurisdiction.**
- 12.10.1. Customers Located in Canada, the United States, or the Americas.** If Customer's billing address set forth on the Order is located in Canada, North America, Central America, or South America, each Party agrees to the governing law of the State of Michigan, United States, without regard to choice or conflict of law rules, and to the exclusive jurisdiction of the state and federal courts located in Kent County, Michigan, United States with respect to any dispute, claim, action, suit, or proceeding (including non-contractual disputes or claims) arising out of or in connection with this Manufacturing Agreement, or its subject matter formation.
- 12.10.2. Customers Located in the United Kingdom, EEA, or APAC.** If Customer's billing address set forth on the Order is located in United Kingdom, European Economic Area, or the Asia-Pacific Region, each Party agrees to the governing law of England and Wales without regard to choice or conflict of law rules, and to the exclusive jurisdiction of the state and federal courts located in England and Wales with respect to any dispute, claim, action, suit, or proceeding (including non-contractual disputes or claims) arising out of or in connection with this Manufacturing Agreement, or its subject matter formation.
- 12.10.3. Equitable Remedies.** Customer acknowledges and agrees that (a) a breach or threatened breach by Customer of any of its obligations under Section 7 would give rise to irreparable harm to Terryberry for which monetary damages would not be an adequate remedy and (b) in the event of a breach or a threatened breach by Customer of any such obligations, Terryberry shall, in addition to any and all other rights and remedies that may be available to Terryberry at law, at equity or otherwise in respect of such breach, be entitled to equitable relief, including a temporary restraining order, an injunction, specific performance and any other relief that may be available from a court of competent jurisdiction, without any requirement to post a bond or other security, and without any requirement to prove actual damages or that monetary damages will not afford an adequate remedy. Customer agrees that Customer will not oppose or otherwise challenge the

appropriateness of equitable relief or the entry by a court of competent jurisdiction of an order granting equitable relief, in either case, consistent with the terms of this Section 12.10.3.

12.10.4. Application of Legislation. Except to the extent expressly required by Applicable Law, neither the United Nations Convention on Contracts for the International Sale of Goods 1980, nor any international and domestic legislation implementing such Convention, applies to this Manufacturing Agreement. The Parties' rights and obligations under this Manufacturing Agreement are solely and exclusively as set forth in this Manufacturing Agreement and the Uniform Computer Information Transactions Act ("UCITA"), whether enacted in whole or in part by any state or applicable jurisdiction, regardless of how codified, does not apply to this Manufacturing Agreement and is hereby disclaimed. The Parties will amend this Manufacturing Agreement as may be necessary to comply with any mandatory disclaimer language required by UCITA in any applicable jurisdiction

12.11. Waiver of Jury Trial. To the extent not prohibited by Applicable Law, each of the Parties hereby irrevocably waives any and all right to trial by jury in any legal proceeding arising out of or related to this Manufacturing Agreement.

12.12. Assignment. Neither Party may assign any of its rights or obligations under this Manufacturing Agreement without the other Party's prior written consent, which will not be unreasonably withheld. Notwithstanding the foregoing, either Party may assign any and all of its rights and obligations under this Manufacturing Agreement to a successor in interest in the event of a merger or acquisition or to an Affiliate, upon written notice to the other Party. Any purported assignment, pledge, delegation or transfer in violation of this [Section 12.13](#) is null and void.

12.13. Waivers; Amendments.

12.13.1. All waivers must be in writing. Any waiver or failure to enforce any provision of this Manufacturing Agreement on one occasion shall not be deemed a waiver of any other provision or of such provision on any other occasion. Subject to [Section 12.14.2](#), this Manufacturing Agreement may be amended only by a written document signed by duly authorized representatives of each Party.

12.13.2. Notwithstanding anything to the contrary herein or elsewhere, Terryberry may amend this Manufacturing Agreement from time to time by posting an amended version at its website, available at www.terryberry.com/legal/terms-and-conditions/. Such amendment will be deemed accepted and become effective 30 days after such notice (the "**Proposed Amendment Date**") unless Customer first gives Terryberry written notice of rejection of the amendment. In case of such rejection, this Manufacturing Agreement will continue under its original provisions, and the amendment will become effective at the start of Customer's next renewal term following the Proposed Amendment Date (unless this Manufacturing Agreement is earlier terminated in accordance with its provisions). Customer's continued use of the Service following the effective date of an amendment will confirm Customer's consent thereto.

12.13.3. Severability. If a court of competent jurisdiction holds any provision, or part of any provision, of this Manufacturing Agreement to be illegal or invalid, the provision, or the affected part of such provision, shall be null and void and deemed automatically severed from this Manufacturing Agreement. Any such holding shall not affect the legality or validity of the remaining provisions or remaining parts or unaffected provisions of this Manufacturing Agreement.

12.14. Relationship of The Parties. The relationship between the Parties is that of independent contractors only, and nothing in this Manufacturing Agreement shall be interpreted or construed to create a partnership, joint venture, employer-employee, or agency relationship, or any other relationship between the Parties, other than that of independent contractors. Neither Party shall have the power to obligate the other Party in any manner whatsoever unless expressly provided in this Manufacturing Agreement.

12.15. Counterparts. The Order may be executed in counterparts, each of which shall be considered an original, but all of which together shall constitute one and the same instrument. The exchange of a fully executed Manufacturing Agreement or Order (in counterparts or otherwise) by fax, .pdf, .pic, .tif, .jpg, other legible image file or by widely accepted electronic signature services (ex. DocuSign) shall be sufficient to bind the Parties to the terms and conditions of this Manufacturing Agreement.

12.16. Remedies. Each Party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Manufacturing Agreement. Each Party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Manufacturing Agreement.

12.17. Entire Manufacturing Agreement. This Manufacturing Agreement constitutes the entire Manufacturing Agreement between the Parties regarding this matter, and they supersede all prior discussions or Manufacturing Agreements related to the same. Should Customer utilize a purchase order (or other form which includes additional terms and conditions), any additional terms and conditions in such document shall not bind Terryberry, unless such additional terms and conditions have been expressly acknowledged in writing by Terryberry in an amendment as overriding this Manufacturing Agreement. Fulfillment of Customer's order by Terryberry does not constitute acceptance of any of Customer's terms and conditions and does not serve to modify or amend this Manufacturing Agreement.

13. DEFINITIONS AND INTERPRETATION.

13.1. Headings. The section and subsection headings used herein are for reference and convenience only and shall not enter into the interpretation thereof.

13.2. English Version. This Manufacturing Agreement shall be executed in its English language version. In the event such documents are also executed in a different language version other than English, the English-language version shall prevail in the event of any discrepancies, inconsistencies, or conflicts between such versions.

13.3. Definitions. Capitalized terms shall have the meaning set forth below. Defined terms stated in the singular may be used in the plural, and vice versa.

- 13.3.1. "Action"** means any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena or investigation of any nature, civil, criminal, administrative, regulatory, or other, whether at law, in equity or otherwise.
- 13.3.2. "Affiliate"** means, with respect to a Party, any entity or individual that directly or indirectly controls, is controlled by, or is under common control with such Party. For purposes of the Affiliate definition, an entity or individual "controls" an entity if it has the power to direct the management and policies of the entity, through ownership of more than 50% of the voting securities of an entity, representation on its board of directors or other governing body, or by contract.
- 13.3.3. "Applicable Law(s)"** means all laws, statutes, codes, rules, regulations, and other pronouncement having the effect of law of the United States, any foreign country or any domestic or foreign state, county, city or other political subdivision, including those promulgated, interpreted or enforced by any governmental or regulatory authority, and any order of a court or governmental agency of competent jurisdiction in effect as of the Effective Date and as they may be amended, changed or modified from time to time.
- 13.3.4. "Basic Purchase Order Terms"** means, collectively, any one or more of the following terms specified by Customer in a Purchase Order: (a) a list of the Goods to be purchased; (b) the quantity of each of the Goods ordered; (c) the unit Price for each of the Goods to be purchased; (d) the billing address; and (f) the delivery location. For the avoidance of doubt, the term "Basic Purchase Order Terms" does not include any general terms or conditions of any Purchase Order.
- 13.3.5. "Claim"** means any Action brought against a Person entitled to indemnification under this Manufacturing Agreement.
- 13.3.6. "Confidential Information"** means the nonpublic or proprietary business, technical or financial information disclosed to the Receiving Party by or on behalf of the Disclosing Party pursuant to this Manufacturing Agreement and includes all information marked by the Disclosing Party as confidential or proprietary and any other information, whether written or oral, that the Receiving Party should reasonably understand is confidential or proprietary to the Disclosing Party.
- 13.3.7. "Customer Contracts"** means all contracts or agreements to which Customer is a party or to which any of its material assets are bound.
- 13.3.8. "Customer Marks"** means all registered or common law Customer trademarks, trade names, Goods marks, slogans, and logos and such other Customer trademarks or logos as Customer identifies from time to time to Terryberry for branding or other use in connection with the Goods.
- 13.3.9. "Defective"** means not conforming to the Product Warranty under Section 9.3.
- 13.3.10. "Defective Goods"** means goods shipped by Terryberry to Customer pursuant to this Manufacturing Agreement that are Defective.
- 13.3.11. "Documentation"** means the user guides, installation documents, and specifications for the Subscription Goods that are made available from time to time by Terryberry in electronic or tangible form, but excluding any sales or marketing materials.
- 13.3.12. "Forecast"** means, with respect to any six (6) month period, a good faith projection or estimate of Customer's requirements for Goods during each month during the period, which approximates, as nearly as possible, based on information available at the time to Customer, the quantity of Goods that Customer may order for each such month.
- 13.3.13. "Goods"** means the goods identified in the Order.
- 13.3.14. "Governmental Authority"** means any federal, state, local or foreign government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations or orders of such organization or authority have the force of Applicable Law), or any arbitrator, court or tribunal of competent jurisdiction.
- 13.3.15. "Intellectual Property"** means a Party's proprietary material, technology, or processes, including, but not limited to: services, software tools, proprietary framework and methodology, hardware designs, algorithms, works of authorship, inventions, deliverables, work product, trade secrets and developments objects and Documentation (both printed and electronic), network designs, know-how, trade secrets and any related intellectual property rights throughout the world (whether owned or licensed by a third party), and any derivatives, improvements, enhancements or extensions of such Intellectual Property conceived, reduced to practice, or developed. For avoidance of doubt, Intellectual Property of Terryberry shall also include Intellectual Property created, developed, conceived, acquired, authored or reduced to practice by or on behalf of a Terryberry, whether alone or jointly with others.
- 13.3.16. "Nonconforming Goods"** means any goods received by Customer from Terryberry pursuant to a Purchase Order that: (a) do not conform to the applicable Purchase Order; (b) do not fully conform to the Order; or (c) materially exceed the quantity of Goods ordered by Customer pursuant to this Manufacturing Agreement or any Purchase Order. Where the context requires, Nonconforming Goods are deemed to be Goods for purposes of this Manufacturing Agreement.
- 13.3.17. "Order"** means Terryberry's quote accepted by Customer via Customer's purchase order or other ordering document received by Terryberry to order Terryberry's Goods (including, but not limited to, a fully executed Order), which references the Goods, pricing, payment terms, quantities, and other applicable terms set forth in an applicable Terryberry quote or ordering document.
- 13.3.18. "Person"** means any individual, partnership, corporation, trust, limited liability entity, unincorporated organization, association, Governmental Authority, or any other entity.
- 13.3.19. "Personnel"** of a Party means any agents, employees, contractors, or subcontractors engaged or appointed by such Party.
- 13.3.20. "Professional Goods"** means implementation services, design services, consulting services and/or other professional services provided to Customer by Terryberry under a Order or SOW.

- 13.3.21. "Prohibited Persons"** means anyone on the U.S. Commerce Department's Denied Persons, Entity, or Unverified Lists or the U.S. Treasury Department's list of Specially Designated Nationals and Consolidated Sanctions list.
- 13.3.22. "Purchase Order"** means Customer's purchase order issued to Terryberry hereunder, including all terms and conditions attached to, or incorporated into, such purchase order, and any Release issued by Customer to Terryberry under the Purchase Order. For the avoidance of doubt, any references to Purchase Orders hereunder also include any applicable Releases.
- 13.3.23. "Release"** means a document issued by Customer to Terryberry pursuant to a Purchase Order that identifies the quantities of Goods constituting Customer's requirements (if such quantities are not specified in the original Purchase Order) and the delivery locations and requested delivery dates for such Goods.
- 13.3.24. "SOW" or "Statement of Work"** means a written order executed by the Parties which identifies the Professional Goods ordered by Customer, including the description, and associated fees.
- 13.3.25. "Tooling"** means, collectively, all tooling, dies, test and assembly fixtures, gauges, jigs, patterns, casting patterns, cavities, molds, and documentation (including engineering specifications and test reports) used by Terryberry in connection with its manufacture and sale of the Goods, together with any accessions, attachments, parts, accessories, substitutions, replacements and appurtenances thereto.