

State of _____

TOLL MANUFACTURING AGREEMENT

This Toll Manufacturing Agreement (this "Agreement") is made as of the _____ day of _____, 20____ (the "Effective Date") by and between:

Buyer: _____ ("Company"), a(n) (Check one) individual
 corporation limited liability company partnership limited partnership limited liability partnership located at _____ [Address] and

Manufacturer: _____ ("Manufacturer"), a(n) (Check one) individual
 corporation limited liability company partnership limited partnership limited liability partnership located at _____ [Address].

The parties agree as follows:

- 1. Toll Manufacturing.** Company shall retain Manufacturer for the production of _____

_____ [Product description] (the "Products") in accordance with the specifications contained in the statement of work attached hereto as Exhibit A (the "SOW"). Company will make all reasonable efforts to provide clear instructions, documentation, and product specifications to Manufacturer. Manufacturer must manufacture the Products in accordance with this Agreement, in compliance with applicable laws and regulation, and using generally accepted industry practice.
- 2. Supply of Materials.** Except as otherwise agreed upon herein, Company shall supply, or arrange to supply, to Manufacturer all raw materials need for the production of the Products (as specified in Exhibit B).
- 3. Purchase Orders.** Company shall submit orders for the Products by submitting a purchase order to Manufacturer (the "Purchase Order") detailing the number of units of the Products to be produced and the date of delivery. Supplier will be entitled to produce no more than the number of units of the Products shown on the Purchase Order. Manufacturer must acknowledge receipt of any Purchase Orders.
- 4. Grant of License.** Company grants to Manufacturer a limited, non-transferrable and non-exclusive license to use the any intellectual property necessary to produce the Products during the term of this Agreement. Nothing in this Agreement shall give Manufacturer any right, title or interest in such intellectual property.
- 5. Ownership of Products.** Company owns all rights to the Products produced by Manufacturer.
- 6. Payment.** Manufacturer will be paid \$ _____ per unit of Product produced under this Agreement.



Tolling Fee (Check one)

- In addition, Manufacturer shall pay a tolling fee of \$ _____.
- There is NO tolling fee.

Payment (Check one)

- Payment will be made within _____ days from the date the Products are delivered.
 - Payment will be made within _____ days from receiving an invoice from Manufacturer.
 - Payment will be made _____
-

7. Late Payments. (Check one)

- Manufacturer will be entitled to charge interest of _____% on any unpaid balance more than _____ days past due.
- Not applicable.

8. Shipments. The Products will be delivered by Manufacturer to Company at the following address: _____ or in accordance with the agreed upon terms and delivery schedule in the Purchase Order. The Products will be suitably packaged in accordance with the SOW. (Check one) Manufacturer Buyer will pay for all freight, insurance and other shipping expenses. Title and risk of loss will pass to Company: (Check one)

- Upon delivery of the Products.
- Upon shipment of the Products.

Manufacturer will use commercially reasonable efforts to deliver the Products on the agreed-upon delivery dates and notify Company of any anticipated delays.

9. Product Acceptance. The Products delivered by Manufacturer will be inspected and tested by Company within _____ days of delivery. If the Products delivered do not comply with the specifications in the SOW and/or Purchase Order, Company has the right to reject the non-conforming Products. Products not rejected within _____ days of delivery will be deemed to be accepted by Company. In the event any Products do not comply with the specifications in the SOW and are rejected by Company, Company may, at its option: (Check all that apply)

- Return for a replacement
- Return for a credit
- Return for a refund

10. Warranties. Manufacturer warrants that it will perform the SOW in a good, professional and workmanlike manner, and Manufacturer will promptly notify Company of any delay or defect in the production of the Products. Manufacturer warrants that the Products will be produced in compliance with the specifications and quality control standards, if any, in the SOW and any Purchase Order, and in compliance with all governmental and environmental regulations.



Substantive defects (Check one)

Manufacturer does NOT warrant that the Products will be free from substantive defects in workmanship. MANUFACTURER MAKES NO REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESS OR IMPLIED, AND EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

Manufacturer warrants that the Products will be free from substantive defects in workmanship for a period of: (Check one)

- _____ days from the date of shipment.
- _____ months from the date of shipment.
- _____ years from the date of shipment.
- Other: _____ from the date of shipment.

The warranty does not apply to any Products that are damaged due to the misuse, abuse, alteration or negligence of any party other than Manufacturer. MANUFACTURER MAKES NO OTHER REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESS OR IMPLIED, AND EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

11. **Term.** This Agreement commences on the Effective Date and will remain in effect for _____ years. This Agreement will automatically: (Check one)

- Renew for a term of _____ year(s), unless either party has given at least _____ days written notice not to renew to the other party.
- Terminate, unless the parties have mutually agreed in writing to renew it for an additional term.

12. **Termination.** Company and Manufacturer may at any time by mutual consent decide to terminate this Agreement pursuant to written and delivered notice to the other party. Company may terminate Manufacturer's rights to produce the Products for any reason on _____ days' written notice of termination. Manufacturer retains the right at any time to terminate its obligations to produce the Products on _____ days' written notice of termination. This Agreement also may be terminated automatically, without notice, (i) upon the institution by or against Company and Manufacturer of any insolvency, receivership or bankruptcy proceedings or any other proceedings for the settlement of debts, (ii) upon Company's or Manufacturer's making an assignment for the benefit of creditors, or (iii) upon Company's or Manufacturer's dissolution.

13. **Default.** If either party should fail to perform its respective obligations under the terms of this Agreement, the other party will notify of the party that it is presumed to be in default and give reasonable recourse to cure the stated issue. The defaulting party will have the opportunity to cure the default within _____ days of notice by the other party. In the event of a failure to cure a breach or default within the stipulated time, the other parties will have the right to terminate this Agreement immediately.

14. **Effect of Termination.** Upon the termination of this Agreement, the rights and licenses granted to Manufacturer pursuant to this Agreement, including without limitation the right to use the intellectual property and manufacture the Products, will automatically terminate. All payments owing from Company to Manufacturer, or refunds due from Manufacturer, will become immediately due and payable, and



legally enforceable, upon termination. Manufacturer will not make or retain any copies or samples of any confidential items or information which may have been entrusted to it.

15. **Confidentiality.** In the course of producing the Products, each party may be exposed to confidential and proprietary information of the other party, including designs, drawings, materials, manufacturing specifications, trade secrets, business and financial information and other confidential information (the "Confidential Information"). Manufacturer will keep confidential all Confidential Information of Company, including details of the manufacturing the Products, and will manufacture the Products in accordance with strict security procedures. During the term of this Agreement, each party will refrain from disclosing any Confidential Information of the other party, except for the strict purposes or activities specifically authorized in this Agreement or if required by law. Each party will use all reasonable efforts to maintain the privacy of the Confidential Information in its possession or control.

16. **Prohibited Acts.** Neither Manufacturer, nor any agent, representative, affiliate, or subcontractor of Manufacturer, will have the right to copy, manufacture or distribute the Products without the express prior written approval of Company. Anyone who copies, manufactures or distributes the Products without a license and prior written approval of Company will be liable for any cost or loss in sales, revenue or profits by Company, plus all applicable attorneys' fees and costs incurred in investigating and prosecuting an action against the offending party. Company will notify those to whom it entrusts knowledge of, or access to, the Products that Company and the offending party will be liable for losses.

17. **Inspection of Books.** Company will have the right, upon reasonable request, to audit and review the books and records of Manufacturer sufficient to verify the number and quality of the Products being manufactured. Any such audit will be conducted at Company's expense and at such times and in such a manner as to not unreasonably interfere with Manufacturer's normal operations. Manufacturer shall maintain all such books and records for a period of _____ years after shipment of the Products.

18. **Insurance.** Company and Manufacturer agree to maintain appropriate insurance to adequately cover their respective risks under this Agreement, with coverage amounts commensurate with levels in their respective markets.

19. **Limitation of Liability.** In no event will either party be liable for costs, expenses, or damages in connection with this Agreement in excess of actual costs, expenses, damages, or provable and actual lost revenue.

20. **Force Majeure.** Neither party will be liable for the costs or expenses arising from any failure or delay in the performance of this Agreement that is due and attributable to causes beyond the control of either party, including but not limited to acts of God, weather, war, civil unrest, strikes, lockouts, destruction of production facilities, riots, insurrection, terrorist attacks, government regulatory actions, acts or decrees of governmental or military bodies, fire, casualty, flood, earthquake, or any other force majeure event, provided that the party has used commercially reasonable efforts to mitigate the effects of the cause. Supplier will not be liable for any delays in the normal production or interruption in the workflow process caused by changes to the specifications by.

21. **Amendments.** This Agreement may not be modified or amended except by a written agreement signed by all of the parties.

22. **Notices.** Any notice or communication under this Agreement must be in writing and sent via personal delivery, overnight courier service, or certified or registered mail, postage prepaid, return receipt



requested and addressed to the to the address stated above or to another address as that party may subsequently designate by notice and shall be deemed given on the date of delivery.

23. **No Waiver.** No party shall be deemed to have waived any provision of this Agreement or the exercise of any rights held under this Agreement unless such waiver is made expressly and in writing. Waiver by any party of a breach or violation of any provision of this Agreement shall not constitute a waiver of any other subsequent breach or violation.

24. **Assignment.** The parties agree that their rights and obligations under this Agreement may not be transferred or assigned without the prior written consent of Buyer. Buyer may assign its rights and obligations under this Agreement without Supplier's consent.

25. **Successors and Assigns.** This Agreement shall be binding and inure to the benefit of the parties and their respective legal representatives, heirs, administrators, executors, successors and permitted assigns.

26. **Governing Law.** This Agreement and the rights and obligations of the parties hereto shall be governed by and construed in accordance with the laws of the State of _____, without regard to its conflicts of laws provisions.

27. **Disputes.** Any dispute arising from this Agreement shall be resolved through: (Check one)

Court litigation. Disputes shall be resolved in the courts of the State of _____.

(Check if applicable)

If either party brings legal action to enforce its rights under this Agreement, the prevailing party will be entitled to recover from the other party its expenses (including reasonable attorneys' fees and costs) incurred in connection with the action and any appeal.

Binding arbitration. Binding arbitration shall be conducted in accordance with the rules of the American Arbitration Association.

Mediation.

Mediation, then binding arbitration. If the dispute cannot be resolved through mediation, then the dispute will be resolved through binding arbitration conducted in accordance with the rules of the American Arbitration Association.

28. **Severability.** If any provision of this Agreement is held to be invalid, illegal or unenforceable in whole or in part, the remaining provisions shall not be affected and shall continue to be valid, legal and enforceable as though the invalid, illegal or unenforceable part had not been included in this Agreement.

29. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together, shall constitute one and the same document.



30. **Headings.** The section headings herein are for reference purposes only and shall not otherwise affect the meaning, construction or interpretation of any provision of this Agreement.

31. **Entire Agreement.** This Agreement contains the entire agreement between the parties hereto with respect to the subject matter hereof, and supersedes all prior negotiations, understandings and agreements.

32. **Miscellaneous.** _____

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

Company Full Name **Company Signature** **Company Representative Name and Title**

Manufacturer Full Name **Manufacturer Signature** **Manufacturer Representative Name
and Title**



Exhibit A

STATEMENT OF WORK



Exhibit B

RAW MATERIALS

