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WHOLESALE PROGRAM AGREEMENT

By participating in Be Sparkle’s Wholesale Program, you hereby agree to the following terms and conditions contained within this Agreement entered into by and between BSPARKLE LLC a Texas corporation having its principal place of business at 2929 Wesleyan st, Suite 1704, Houston, TX 77027 (“**Supplier**”) and your business, organization, person or other entity (“**Reseller**”, and together with Supplier, the “**Parties**”, and each, a “**Party**”).

RECITALS

WHEREAS, Supplier is in the business of manufacturing and selling boots , beanies, cuffed beanies, pom beanies and other products (the “**Products**”);

WHEREAS, Reseller is in the business of reselling products that are similar in kind to the Products;

WHEREAS, Reseller wishes to purchase the Products from Supplier and resell these Products to End Users (as defined below), subject to the terms and conditions of this Agreement; and

WHEREAS, Supplier wishes to sell the Products to Reseller and appoint Reseller as a non-exclusive reseller under the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions set out herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE I DEFINITIONS

Capitalized terms have the meanings set out in this Section, or in the Section in which they first appear in this Agreement.

“**Affiliate**” of a Person means any other Person that directly or indirectly, through one or more intermediaries, Controls, is Controlled by, or is under common Control with, this Person.

“**Control**” (and with correlative meanings, the terms “Controlled by” and “under common Control with”) means, regarding any Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of another Person, whether through the ownership of voting securities, by contract, or otherwise.

“**Defective Goods**” means Products that do not comply with the Limited Warranties set forth in Section 13.01. “**End User**” means each final purchaser that has acquired a Product directly from Reseller.

“**Excess Product**” means a Product that, when counted together with all other Products having received by

Reseller under the same Purchase Order, is in excess of the quantities of the Products ordered under that Purchase Order.

“**Intellectual Property Rights**” means all industrial and other intellectual property rights comprising or relating to: (a) Patents; (b) Trademarks; (c) internet domain names, whether or not Trademarks, registered by any authorized private registrar or any federal, state, local or foreign government or political subdivision, or any agency of such government or political subdivision “**Governmental Authority**”), web addresses, web pages, website, and URLs; (d) works of authorship, expressions, designs, and design registrations, whether or not copyrightable, including copyrights and copyrightable works, software and firmware, data, data files, and databases and other specifications and documentation; (e) Trade Secrets; and (f) all other intellectual property rights, and all rights, interests, and protections that are associated with, equivalent or similar to, or required for the exercise of, any of the foregoing, however arising, in each case whether registered or unregistered and including all registrations and applications for, and renewals or extensions of, these rights or forms of protection under the laws of any jurisdiction throughout in any part of the world.



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“**Patents**” means all patents (including all reissues, divisionals, provisionals, continuations and continuations- in-part, re-examinations, renewals, substitutions, and extensions thereof), patent applications, and other patent rights and any other Governmental Authority-issued indicia of invention ownership (including inventor’s certificates, petty patents, and patent utility models).

“**Person**” means any individual, partnership, corporation, trust, limited liability entity, unincorporated organization, association, Governmental Authority or any other entity.

“**Personnel**” means agents, employees, or subcontractors engaged or appointed by Supplier or Reseller.

“**Representatives**” means a Party’s Affiliates, employees, officers, managers, directors, governors, partners, shareholders, members, owners, agents, attorneys, third-party advisors, successors, and permitted assigns.

“**Supplier’s Intellectual Property Rights**” means all Intellectual Property Rights owned by or licensed to Supplier.

“**Supplier’s Trademarks**” means all Trademarks owned by or licensed to Supplier.

“**Trademarks**” means all rights in and to US and foreign trademarks, service marks, trade dress, trade names, brand names, logos, trade dress, corporate names, and domain names and other similar designations of source, sponsorship, association or origin, together with the goodwill symbolized by any of the foregoing, in each case whether registered or unregistered and including all registrations and applications for, and renewals or extensions of, these rights and all similar or equivalent rights or forms of protection in any part of the world.

“**Trade Secrets**” means all inventions, discoveries, trade secrets, business and technical information and know- how, databases, data collections, patent disclosures, and other confidential and proprietary information and all rights therein.

“**US**” means the United States of America, including its territories, possessions, and military bases.

ARTICLE II NON-EXCLUSIVE APPOINTMENT

Supplier, in its sole and absolute discretion, may accept or reject Reseller’s request to resell Be Sparkle’s Products. If Supplier rejects this request, this Agreement shall be automatically terminated and of no further force or effect. Upon acceptance of the request, Supplier hereby appoints Reseller, and Reseller accepts the appointment, to act as a non-exclusive reseller of Products to End Users, provided that Reseller shall only sell the Products at Reseller’s physical retail stores in the US and solely in accordance with the terms and conditions of this Agreement. For purposes of clarity, Reseller shall not resell any Products online via the Internet or any other online means. Supplier may, in its sole and absolute discretion, sell the Products to any other Person, including resellers, retailers, and End Users anywhere in the world.

ARTICLE III NO FRANCHISE OR BUSINESS OPPORTUNITY AGREEMENT

The Parties to this Agreement are independent contractors and nothing in this Agreement shall be deemed or constructed as creating a joint venture, partnership, agency relationship, franchise, or business opportunity between Supplier and Reseller. Neither Party, by virtue of this Agreement, will have any right, power, or authority to act or create an obligation, express or implied, on behalf of the other Party. Each Party assumes responsibility for the actions of their personnel under this Agreement. The relationship created hereby between the parties is solely that of Supplier and Reseller. If any provision of this Agreement is deemed to create a franchise relationship between the parties, then Supplier may immediately terminate this Agreement.



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ARTICLE IV GENERAL RESELLER PERFORMANCE OBLIGATIONS

SECTION 4.01 GENERAL RESELLER PERFORMANCE OBLIGATIONS. The Reseller shall, in good faith and at its own expense:

- a) market, advertise, promote and resell Products and conduct business in a manner that reflects favorably at all times on Products and the good name, goodwill, and reputation of Supplier;
- b) promptly Notify Supplier of and address and investigate any complaint or adverse claim about any Product of which Reseller becomes aware;
- c) observe all directions, instructions, policies and procedures given to it by Supplier; and
- d) upon request by Supplier, provide Supplier with a current and accurate list of all of its retail selling locations or outlets, including any online websites.

SECTION 4.02 REPORTING AND RECORDKEEPING. The Reseller shall, at its own expense, maintain books, records and accounts of all transactions and activities covered by this Agreement and permit full examination thereof

by Supplier and its Representatives in accordance with ARTICLE X.

SECTION 4.03 AUTHORITY TO PERFORM UNDER THIS AGREEMENT. Each Party shall, at its own expense,

obtain and maintain required certifications, credentials, licenses, and permits necessary to conduct business in accordance with this Agreement.

SECTION 4.04 PROHIBITED ACTS.

Notwithstanding anything to the contrary in this Agreement, neither Reseller nor Reseller Personnel shall:

(a) make any representations, warranties, guarantees, indemnities, similar claims, or other commitments:

- I. actually, apparently, or ostensibly on behalf of Supplier, or
- II. to any End User regarding the Products, which representations, warranties, guarantees, indemnities, similar claims, or other commitments are additional to or inconsistent with any then-existing representations, warranties, guarantees, indemnities, similar claims, or other commitments in this Agreement or any written documentation provided by Supplier to Reseller;

(b) engage in any unfair, competitive, misleading, or deceptive practices respecting Supplier,

Supplier's Trademarks or the Products, including any product disparagement or “bait-and-switch” practices;

(c) separate any accessories sold, bundled, or packaged with any Product from the Product, or remove or modify the contents or documentation of or related to the Product or accessories;

(d) sell or offer to sell any of the Products or other Supplier-branded products, other than the Products purchased by Reseller from Supplier; or

(e) sell, either directly or indirectly, or assign or transfer, any Products to any Person when



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Reseller knows or has reason to suspect that the Person may resell any or all of the Products to a third party, including any third party reseller or distributor; or

(f) promote, market, sell, or distribute Products using promotional information and material, unless the promotional information or material was provided by Supplier.

ARTICLE V ORDERS PROCEDURE

SECTION 5.01 PURCHASE ORDER. Upon acceptance of Reseller’s application to resell Products, Reseller shall place orders for Products via Supplier’s website (www.besparklefashion.com) (each a “Purchase Order”); provided, however, that each Purchase Order shall be for no less than 25 Products. By placing a Purchase Order, Reseller makes an offer to purchase Products under the terms and conditions of this Agreement and the applicable Purchase Order, and on no other terms.

SECTION 5.02 SUPPLIER’S RIGHT TO ACCEPT OR REJECT PURCHASE ORDERS. Supplier may, in its sole discretion, accept or reject any Purchase Order. No Purchase Order is binding on Supplier unless accepted by Supplier by email confirmation to Reseller or by shipping the Products purchased under and applicable Purchase Order to the Reseller.

SECTION 5.03 CANCELLATION OF PURCHASE ORDERS. Supplier may, in its sole discretion, without liability or penalty, cancel any Purchase Order placed by Reseller and accepted by Supplier, in whole or in part, if Supplier reasonably determines that Reseller is in violation of its payment obligations under or has breached or is in breach of this Agreement. Upon cancellation of a Purchase Order pursuant to this Section, Supplier shall refund the Price paid to Supplier prior to cancellation less any direct and indirect costs incurred or accrued by Supplier prior to cancellation of the Purchase Order.

ARTICLE VI SHIPMENT AND DELIVERY

SECTION 6.01 SHIPMENT DELIVERY, TITLE, RISK OF LOSS. When placing a Purchase Order, Reseller shall provide the delivery location for the Products (each a “Delivery Point”) and shall select the method of shipment for the Products, using Supplier’s standard methods for packaging and shipping the Products. Supplier may, in its sole discretion, without liability or penalty, make partial shipments of Products to Reseller. All Prices are FOB Delivery Point. Title and risk of loss to Products shipped under any Purchase Order passes to Reseller on Supplier’s delivery of such Products to the Delivery Point.

SECTION 6.02 LATE DELIVERY. Any time quoted for delivery is an estimate only; provided, however, that Supplier shall use commercially reasonable efforts to deliver all Products on or before the estimated delivery date. Subject to Section 15.19, Supplier is not liable for or in respect of any loss or damage arising from any delay in filling any order, failure to deliver or delay in delivery. No delay in the shipment or delivery of any Product relieves Reseller of its obligations under this Agreement, including accepting delivery of any remaining installment or other orders of Products.

SECTION 6.03 INSPECTION. Reseller shall inspect Products received under this Agreement within 14 days of receipt (the “Inspection Period”) of the Products and either accept or, if any Products do not conform to the Purchase Order or are Defective Goods (collectively, the “Nonconforming Goods”), reject the Nonconforming Goods. Reseller will be deemed to have accepted the Products unless it Notifies Supplier in writing of any Nonconforming Goods during the Inspection Period and furnishes written and photographic evidence or other documentation as reasonably required by Supplier. If Reseller timely Notifies Supplier of any Nonconforming Goods, Supplier shall replace the Nonconforming Goods with conforming Products or refund the Price for the Nonconforming Goods at its discretion. Supplier shall use its best efforts to promptly ship to Reseller, at Suppliers expense and risk of loss, the replaced Products. Reseller shall ship, at Supplier’s expense and risk of loss, all Nonconforming Goods and Excess Products to Supplier’s facility as provided by written communications from a member of Supplier’s Customer Service Team, unless Supplier otherwise instructs Reseller to destroy any such Products. Reseller acknowledges and agrees that the remedies set out in Section 6.03 are Reseller’s exclusive remedy for the delivery of Nonconforming Goods.



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SECTION 6.04 LIMITED RIGHT OF RETURN. Except as provided under Section 6.03, Section 13.02 and Section 13.04, all sales of Products to Reseller under this Agreement are made on a one-way basis and Reseller has no right to return Products purchased under this Agreement.

ARTICLE VII PRICE AND PAYMENT

SECTION 7.01 PRICE. Reseller shall purchase the Products from Supplier at the Supplier's prices for such Products set out on Supplier's website in effect when the Supplier accepts the related Purchase Order ("Prices").

Supplier's Prices are subject to change at any time and from time to time in Supplier's sole discretion and without Notice to Reseller.

SECTION 7.02 SHIPPING CHARGES AND TAXES. Reseller shall pay for shipping charges set forth in the Purchase Order. All Prices are exclusive of, and the Reseller shall be responsible for, all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any Governmental Authority on any amounts payable by Reseller under this Agreement.

SECTION 7.03 PAYMENT TERMS. Reseller shall pay for the Products in full upon placement of a Purchase Order by credit card or as otherwise approved by Supplier.

ARTICLE VIII RESALE OF THE PRODUCTS

SECTION 8.01 PRICE. Reseller establishes its own resale prices and terms regarding products it sells, including the Products. Reseller acknowledges that it has received a copy and has reviewed Supplier's Unilateral Pricing Policy.

Agreement, Reseller acknowledges and agrees that:

- (a) any and all Supplier's Intellectual Property Rights are the sole and exclusive property of Supplier or its licensors;
- (b) Reseller shall not acquire any ownership interest in any of Supplier's Intellectual Property Rights under this Agreement;
- (c) any goodwill derived from the use by Reseller of Supplier's Intellectual Property Rights inures to the benefit of Supplier or its licensors, as the case may be;
- (d) if Reseller acquires any Intellectual Property Rights in or relating to any product (including any Product) purchased under this Agreement (including any rights in any Trademarks, derivative works or patent improvements relating thereto), by operation of law, or otherwise, these rights are deemed and are hereby irrevocably assigned to Supplier or its licensors, as the case may be, without further action by either Party; and
- (e) Reseller shall use Supplier's Intellectual Property Rights solely for the purposes of performing its obligations under this Agreement and only in accordance with this Agreement and the instructions of Supplier.

SECTION 9.01 OWNERSHIP. Subject to the express rights and licenses granted by Supplier in this

- (a) take any action that interferes with any of Supplier's rights in or to Supplier's Intellectual Property Rights, including Supplier's ownership or exercise thereof;
- (b) challenge any right, title, or interest of Supplier in or to Supplier's Intellectual Property Rights;
- (c) make any claim or take any action adverse to Supplier's ownership of Supplier's Intellectual Property Rights;
- (d) register or apply for registrations, anywhere in the world, for Supplier's Trademarks or any other Trademark that is similar to Supplier's Trademarks or that incorporates Supplier's Trademarks in whole or in confusingly similar part;



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- (e) use any mark, anywhere, that is confusingly similar to Supplier’s Trademarks;
- (f) engage in any action that tends to disparage, dilute the value of, or reflect negatively on the products purchased under this Agreement (including Products) or any Supplier Trademark;
- (g) misappropriate any of Supplier’s Trademarks for use as a domain name without prior written consent from Supplier; and
- (h) alter, obscure, or remove any of Supplier’s Trademarks or trademark or copyright notices or any other proprietary rights notices placed on the products purchased under this Agreement (including Products), marketing materials, or other materials that Supplier may provide.

SECTION 9.03 NO CONTINUING RIGHTS. On termination of this Agreement, Reseller shall immediately cease all display, advertising, promotion, and use of all of Supplier’s Trademarks and shall not thereafter use, advertise, promote, or display any trademark, trade name, or product designation or any part thereof that is similar to or confusing with Supplier’s Trademarks or with any trademark, trade name, or product designation associated with Supplier or any Product.

ARTICLE X AUDIT RIGHTS

SECTION 10.01 AUDIT RIGHTS. On reasonable request, during the Term and within one year after termination of this Agreement, Supplier may audit Reseller’s files relating to its sales of Products. Supplier may conduct any audit under this Section 10.01 at any time during regular business hours but no more frequently than semi- annually.

ARTICLE XI TERM, TERMINATION

SECTION 11.01 TERM. The term of this Agreement commences on the date of Supplier’s acceptance of the Reseller’s application to resell Products and continues until either Party provides written notice of termination to the other Party (the “Term”, and shall also include any Post-Term Resale Period). For purposes of clarity, either Party may terminate this Agreement at any time and for any reason or for no reason.

SECTION 11.02 EFFECT OF TERMINATION.

a) Termination of this Agreement does not affect any rights or obligations that:

- (i) are to survive the expiration or earlier termination of this Agreement under Section 15.03; or
- (ii) were incurred by the Parties before the expiration or earlier termination; or
- (iii) under Purchase Orders that have been accepted by Supplier; provided that if a

Party terminates this Agreement because the other Party has either (A) breached any provision of this Agreement, or (B) becomes insolvent or files, or has filed against it, a petition for voluntary or involuntary bankruptcy or under any other insolvency law, makes or seeks to make a general assignment for the benefit of its creditors or applies for, or consents to, the appointment of a trustee, receiver, or customer for a substantial part of its property, or is generally unable to pay its debts as they become due; then such termination shall automatically terminate all outstanding Purchase Orders

(b) Upon termination of this Agreement, Reseller shall promptly:

- (i) cease to represent itself as Supplier’s authorized reseller regarding the Products, and shall otherwise desist from all conduct or representations that might lead the public to believe that Reseller is authorized by Supplier to sell the Products;
- (ii) return to Supplier all documents and tangible materials (and any copies) containing, reflecting, incorporating or based on Supplier’s Confidential Information;



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(iii) permanently erase all of Supplier’s Confidential Information from its computer systems, except for copies that are maintained as archive copies on its disaster recovery backup systems, its information technology backup systems, or both. Reseller shall destroy any such copies on the normal expiration of its backup files; and

(iv) certify in writing to Supplier that it has complied with the requirements of this Section 11.02.

(c) The Party terminating this Agreement 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 termination of this Agreement.

SECTION 11.03 POST-TERM RESALE PERIOD. Upon termination of this Agreement, except for termination by Supplier for a material breach of this Agreement, Reseller may, in accordance with the applicable terms and conditions of this Agreement, sell off its existing inventories of Products for a period of 6 months following the last day of the Term (the “Post-Term Resale Period”).

ARTICLE XII CONFIDENTIALITY

SECTION 12.01 PROTECTION OF CONFIDENTIAL INFORMATION. From time to time during the Term, Supplier (as “Disclosing Party”) may disclose or make available to Reseller (as “Receiving Party”) information about its business affairs, goods and services, confidential information, and materials comprising or relating to Intellectual Property Rights, trade secrets, third-party confidential information, and other sensitive or proprietary information; such information, as well as the terms of this Agreement, whether orally or in written, electronic, or other form or media, and whether or not marked, designated, or otherwise identified as “confidential” constitutes “Confidential Information” hereunder. Confidential Information excludes information that, at the time of disclosure and as established by documentary evidence:

(a) is or becomes generally available to and known by the public other than as a result of, directly or indirectly, any breach of this ARTICLE XII by Receiving Party or any of its Representatives;

(b) is or becomes available to Receiving Party on a non-confidential basis from a third-party source, provided that such third party is not and was not prohibited from disclosing such Confidential Information;

(c) was known by or in the possession of Receiving Party or its Representatives before being disclosed by or on behalf of Disclosing Party;

(d) was or is independently developed by Receiving Party without reference to or use of, in whole or in part, any of Disclosing Party’s Confidential Information; or

(e) must be disclosed under applicable law.
Receiving Party shall, for so long as such Confidential Information retained the

characteristic of Confidential Information:

(i) protect and safeguard the confidentiality of Disclosing Party’s Confidential

Information with at least the same degree of care as Receiving Party would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care;

(ii) not use Disclosing Party’s Confidential Information, or permit it to be accessed or used, for any purpose other than to exercise its rights or perform its obligations under this Agreement; and

(iii) not disclose any such Confidential Information to any Person, except to Receiving Party’s Representatives who must know the Confidential Information to assist Receiving Party, or act on its behalf, to exercise its rights or perform its obligations under this Agreement.

Receiving Party shall be responsible for any breach of this ARTICLE XII caused by any of its Representatives. The provisions of this ARTICLE XII shall survive termination or expiration of this Agreement for any reason.



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In the event of any conflict between the terms and provisions of this ARTICLE XII and those of any other provision in this Agreement, the terms and provisions of this ARTICLE XII will prevail.

ARTICLE XIII REPRESENTATIONS AND WARRANTIES

SECTION 13.01 RESELLER REPRESENTATIONS AND WARRANTIES. Reseller represents and warrants to Supplier that:

- (a) it is duly organized, validly existing and in good standing in the jurisdiction of its formation;
- (b) obligations under this Agreement; it has the full right, power and authority to enter into this Agreement and to perform its
- (c) the execution of this Agreement by its Representative whose signature is set out at the end hereof has been duly authorized by all necessary corporation action; and
- (d) it is in, and throughout the Term will continue to be in, compliance with all laws applicable to this Agreement, the Products and the operation of its business.

SECTION 13.02 LIMITED PRODUCTS WARRANTY. During the Inspection Period and subject to the provisions of Section 13.03, Section 13.04, and Section 13.05, Supplier warrants that the Products are new and will be free from significant defects in material and workmanship (“Limited Warranties”). Reseller shall not provide any warranty regarding any Product other than the Supplier warranty described in this Section 13.02.

SECTION 13.03 WARRANTY LIMITATIONS. Limited Warranties do not apply where the Product has been subjected to abuse, misuse, neglect, negligence, accident, or use contrary to any instructions issued by Supplier or has been altered by Persons other than Supplier.

SECTION 13.04 EXTENT OF LIABILITY. During the Inspection Period, regarding any Defective Goods, Reseller has no right to return for repair, replacement, credit, or refund any Product except as set out in this Section 13.

Reseller shall not service, repair, modify, alter, replace, or otherwise change any Product, in whole or in part, either itself or by or through any third party. THIS SECTION 13.04 SETS FORTH RESELLER’S SOLE REMEDY AND SUPPLIER’S ENTIRE LIABILITY FOR ANY BREACH OF ANY WARRANTY RELATING TO THE PRODUCTS.

SECTION 13.05 WARRANTIES DISCLAIMER, NON-RELIANCE. EXCEPT FOR THE LIMITED EXPRESS WARRANTIES DESCRIBED IN SECTION 13.01 AND SECTION 13.02, (A) NEITHER SUPPLIER NOR ANY PERSON ON

SUPPLIER’S BEHALF HAS MADE OR MAKES ANY EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY WHATSOEVER, INCLUDING ANY WARRANTIES OF: (i) MERCHANTABILITY; OR (ii) FITNESS FOR A PARTICULAR PURPOSE, WHETHER ARISING BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED AND (B) RESELLER ACKNOWLEDGES THAT IT HAS NOT RELIED ON ANY REPRESENTATION OR WARRANTY MADE BY SUPPLIER, OR ANY OTHER PERSON ON SUPPLIER’S BEHALF, EXCEPT AS SPECIFICALLY DESCRIBED IN SECTION 13.01 AND SECTION 13.02 OF THIS AGREEMENT.



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ARTICLE XIV LIMITATION OF LIABILITY

SECTION 14.01 NO LIABILITY FOR CONSEQUENTIAL OR INDIRECT DAMAGES. IN NO EVENT IS SUPPLIER OR ITS REPRESENTATIVES LIABLE FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR

ENHANCED DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO ANY BREACH OF THIS AGREEMENT, REGARDLESS OF: (A) WHETHER THE DAMAGES WERE FORESEEABLE; (B) WHETHER OR NOT RESELLER WAS ADVISED OF THE POSSIBILITY OF THE DAMAGES; AND (C) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) ON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

SECTION 14.02 MAXIMUM LIABILITY FOR DAMAGES. IN NO EVENT SHALL SUPPLIER’S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH

OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID AND AMOUNTS ACCRUED BUT NOT YET PAID TO SUPPLIER UNDER THIS AGREEMENT IN THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM. THE FOREGOING LIMITATIONS APPLY EVEN IF THE RESELLER’S REMEDIES UNDER THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE.

ARTICLE XV MISCELLANEOUS

SECTION 15.01 FURTHER ASSURANCES. On a Party’s reasonable request, the other Party shall, at its sole cost and expense, execute and deliver all such further documents and instruments, and take all such further acts, reasonably necessary to give full effect to this Agreement.

SECTION 15.02 ENTIRE AGREEMENT.

(a) This Agreement, including and together with related exhibits, schedules, attachments, and appendices, together with each Purchase Order, constitutes the sole and entire agreement of the Parties with respect to the subject matter contained herein and therein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, regarding such subject matter.

(b) Without limitation of anything contained in Section 15.02(a), each Party acknowledges that except for the representations and warranties contained herein, neither Party nor any other Person has relied on any other express or implied representation or warranty, either written or oral, on behalf of the Party, including any representation or warranty arising from statute or otherwise in law.

SECTION 15.03 FURTHER ASSURANCES. Subject to the limitations and other provisions of this Agreement:

(a) the representations and warranties of the Parties contained herein and related exceptions, limitations, or qualifiers survive the expiration or earlier termination of this Agreement for a period of 12 months after the expiration or termination; and

(b) any other provision that, to give proper effect to its intent, should survive such expiration or termination, survive the expiration or earlier termination of this Agreement for the period specified therein, or if nothing is specified for a period of 12 months after expiration or termination. Notwithstanding any right under any applicable statute of limitations to bring a claim, no lawsuit or other action based on or arising in any way out of this Agreement may be brought by either Party after the applicable survival period’s expiration; provided, however, that the foregoing limitation does not apply to the collection of any amounts due to Supplier under the Agreement; and provided, further, that any claims asserted in good faith with reasonable specificity and in writing by Notice before the applicable survival period’s expiration is not thereafter barred by the relevant period’s expiration, and these claims survive until finally resolved.



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SECTION 15.04 NOTICES. All notices, requests, consents, claims, demands, waivers, and other communications under this Agreement (each, a “Notice” and with the correlative meaning, “Notify”) must be in writing and addressed to the other Party at its address set out in the Preamble (or to any other address that the receiving Party may designate from time to time in accordance with this Section). Unless otherwise agreed herein, all Notices must be delivered by personal delivery, nationally recognized overnight courier or certified or registered mail (in each case, return receipt requested, postage prepaid). Notwithstanding the foregoing, Notice given by email to the Wholesale Program Manager of Supplier or to the email address provided by Reseller in the Wholesale Application satisfies the requirements of this Section 15.04. Except as otherwise provided in this Agreement, a Notice is effective only (a) on receipt by the receiving Party, and (b) if the Party giving the Notice has complied with the requirements of this Section.

SECTION 15.05 INTERPRETATION. For purposes of this Agreement: (a) the words “include,” “includes,” and “including” are deemed to be followed by the words “without limitation”; (b) the word “or” is not exclusive; (c) the words “herein,” “hereof,” “hereby,” “hereto,” and “hereunder” refer to this Agreement as a whole; (d) words denoting the singular have a comparable meaning when used in the plural, and vice-versa; and (e) words denoting any gender include all genders. Unless the context otherwise requires, references in this Agreement: (x) to sections, exhibits, schedules, attachments, and appendices mean the sections of, and exhibits, schedules, attachments, and appendices attached to, this Agreement; (y) to an agreement, instrument, or other document means the agreement, instrument, or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof; and (z) to a statute means the statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. The Parties drafted this Agreement without regard to any presumption or rule requiring construction or interpretation against the Party drafting an instrument or causing any instrument to be drafted. The exhibits, schedules, attachments, and appendices referred to herein are an integral part of this Agreement to the same extent as if they were set out verbatim herein.

SECTION 15.06 HEADINGS. The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement.

SECTION 15.07 SEVERABILITY. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability does not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. On a determination that any term or provision is invalid, illegal, or unenforceable, the Parties shall negotiate in good faith to modify this Agreement to effect the original intent of the Parties as closely as possible in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

SECTION 15.08 AMENDMENT AND MODIFICATION. No amendment to or modification of this Agreement is effective unless it is in writing, identified as an amendment to this Agreement and signed by an authorized Representative of each Party.

SECTION 15.09 WAIVER.

- (a) No waiver under this Agreement is effective unless it is in writing and signed by an authorized representative of the Party waiving its right.
- (b) Any waiver authorized on one occasion is effective only in that instance and only for the purpose stated, and does not operate as a waiver on any future occasion.
- (c) None of the following constitutes a waiver or estoppel of any right, remedy, power, privilege, or condition arising from this Agreement:
 - (i) any failure or delay in exercising any right, remedy, power, or privilege or in enforcing any condition under this Agreement; or
 - (ii) any act, omission, or course of dealing between the Parties.

SECTION 15.10 CUMULATIVE REMEDIES. All rights and remedies provided in this Agreement are

cumulative and not exclusive, and the exercise by either Party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or later be available at law, in equity, by statute, in any other agreement between the Parties or otherwise. Notwithstanding the previous sentence, the Parties intend that Reseller’s rights under Section 6.02, Section 6.03, and Section 13.04 are the Party’s exclusive remedies for the events specified therein.



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SECTION 15.11 EQUITABLE REMEDIES. Each Party acknowledges and agrees that (a) a breach or threatened breach by such Party of any of its obligations under ARTICLE XII would give rise to irreparable harm to the other Party for which monetary damages would not be an adequate remedy and (b) in the event of a breach or a threatened breach by such Party of any of these obligations, the other Party shall, in addition to any and all other rights and remedies that may be available to such Party at law, at equity, or otherwise in respect of this 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 do not afford an adequate remedy. Each Party agrees that it 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 15.11.

SECTION 15.12 ASSIGNMENT. Reseller may not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Supplier. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves the assigning or delegating Party of any of its obligations under this Agreement. Supplier may assign any of its rights or delegate any of its obligations to any Affiliate or to any Person acquiring all or substantially all of Supplier's assets without the consent of Reseller.

SECTION 15.13 SUCCESSORS AND ASSIGNS. This Agreement is binding on and inures to the benefit of the Parties and their respective permitted successors and permitted assigns.

SECTION 15.14 NO THIRD-PARTY BENEFICIARIES. This Agreement benefits solely the Parties to this Agreement and their respective permitted successors and permitted assigns and nothing in this Agreement, express or implied, confers on any other Person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

SECTION 15.15 CHOICE OF LAW. This Agreement, including all exhibits, schedules, attachments, and appendices attached hereto and thereto, and all matters arising out of or relating to this Agreement, are governed by, and construed in accordance with, the laws of the State of Minnesota, US, without regard to the conflict of laws provisions thereof to the extent these principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of Minnesota.

SECTION 15.16 CHOICE OF FORUM. Each Party irrevocably and unconditionally agrees that it will not commence any action, litigation, or proceeding of any kind whatsoever against the other Party in any way arising from or relating to this Agreement, including all exhibits, schedules, attachments, and appendices attached hereto and thereto, and all contemplated transactions, including contract, equity, tort, fraud, and statutory claims, in any forum other than the courts of the State of Minnesota sitting in Hennepin County, and any appellate court from any thereof. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of these courts and agrees to bring any action, litigation, or proceeding only in the courts of the State of Minnesota sitting in Hennepin County. Each Party agrees that a final judgment in any action, litigation, or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

SECTION 15.17 WAIVER OF JURY TRIAL. Each Party acknowledges and agrees that any controversy that may arise under this Agreement, including any exhibits, schedules, attachments, and appendices attached to this Agreement, is likely to involve complicated and difficult issues and, therefore, each Party irrevocably and unconditionally waives any right it may have to a trial by jury in respect of any legal action arising out of or relating to this Agreement, including any exhibits, schedules, attachments, and appendices attached to this Agreement, or the transactions contemplated hereby.

SECTION 15.18 COUNTERPARTS. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. Notwithstanding anything to the contrary in Section 15.04, a signed copy of this Agreement delivered by facsimile, email, or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.



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SECTION 15.19 FORCE MAJEURE. No Party shall be liable or responsible to the other Party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations to make payments to the other Party under this Agreement), when and to the extent the failure or delay is caused by or results from acts beyond the impacted Party's ("Impacted Party") reasonable control, including the following force majeure events ("Force Majeure Events"): (a) acts of God; (b) flood, fire, earthquake, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest; (d) requirements of law; (e) actions, embargoes, or blockades in effect on or after the date of this Agreement; (f) action by any Governmental Authority; (g) national or regional emergency; (h) strikes, labor stoppages or slowdowns or other industrial disturbances; and (i) shortage of adequate power or transportation facilities. The Impacted Party shall give Notice to the other Party, stating the period of time the occurrence is expected to continue. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of the Force Majeure Event are minimized. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause.

SECTION 15.20 NO PUBLIC ANNOUNCEMENTS OR TRADEMARK USE. Unless expressly permitted under this Agreement, neither Party shall:

(a) make any statement (whether oral or in writing) in any press release, external advertising, marketing, or promotion materials regarding the other Party or its business unless:

- (i) it has received the express written consent of the other Party, or
- (ii) it must do so by law; or

(b) use the other Party's Trademarks, service marks, trade names, logos, symbols, or brand names, in each case, without the prior written consent of the other Party.



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