

Terms and Conditions MANUFACTURING AGREEMENT

THIS MANUFACTURING AGREEMENT, is made by ILS Gummies, LLC, a Delaware limited liability company, having a principal place of business at 350 Cypress Hill Dr, McKinney, TX 75071 (“Manufacturer”).

RECITALS

WHEREAS, Company is engaged in the business of developing, manufacturing and distributing premium brand, personal care and other products.

WHEREAS, Manufacturer is engaged in the business of manufacturing and packaging certain nutraceutical products; and

WHEREAS, Company desires to have Manufacturer continue to supply Company with the Products (as hereinafter defined), on a non-exclusive basis, upon the terms and conditions set forth in this Agreement.

WHEREAS, Manufacturer desires to perform the Manufacturing Activities (as hereinafter defined) and to supply Company with the Products (as hereinafter defined), on a non-exclusive basis, upon the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, Company and Manufacturer, intending to be legally bound hereby, agree as follows:

1. Definitions.

For purposes of this Agreement certain capitalized terms have specifically defined meanings which are set forth or referred to in Schedule I (Definitions) which is attached hereto and incorporated herein by reference. Other terms are defined in the text of this Agreement and such terms shall have the meanings respectively ascribed to them.

2. Description Of Agreement Principles; Relationship Manager.

(a) This Agreement defines: (i) the relationship between Company and Manufacturer and (ii) Manufacturer’s obligation to ensure a consistent supply of the Products from Manufacturer to Company, which meets the Specifications, in accordance with the Purchase Orders.

(b) Manufacturer shall, throughout the Term, manufacture, warehouse and sell to Company the Products, and Company shall purchase the Products from Manufacturer on a non-exclusive basis, pursuant to the Purchase Orders placed by Company, upon the terms and conditions set forth in this Agreement and its Schedule and Exhibits, which are hereby incorporated by reference. All of the Products manufactured and delivered to Company hereunder shall comply with the requirements of this Agreement.

3. Product Development.

From time to time during the Term, Company, by written notice to Manufacturer, may request Manufacturer to produce additional products in addition to the Products. At the time it gives Manufacturer such written notice, Company shall also supply Manufacturer with the specifications for the additional products. If Manufacturer accepts the new product(s), the parties shall establish a price for the new product(s) to be manufactured and supplied to Company and Exhibit A (Products) shall be automatically amended to include (i) the new products as “Products” and (ii) the price for such new products; and Exhibit B (Specifications) shall be automatically amended to include the new specifications for the new products as “Specifications”. All other terms, provisions, covenants, warranties, representation, and conditions of this Agreement shall apply to such new products.

Product Formulations and Flavor Systems.

- a. Product Formulations that the Buyer develops will be owned by the buyer (**BUYER FORMULATION(S)**) along with other intellectual property related to the Buyer’s Product including, without limitation, all labels and Buyer-branded packaging and proprietary raw ingredient amounts utilized in the Product. Upon Buyer’s request and for the consideration agreed to by Supplier and Buyer, Supplier may assist in the development of the Buyer’s Formulation.
- b. The Base Formula developed by Supplier’s R&D team as the foundation to the gummy will be owned by Supplier. Formulation bases include excipient combinations of Sugars, Syrups, Pectins and other congealing substances as well as Zero- Sugar substitute granules, powders, and syrups.
 - i. The cooking instruction and all processes and equipment utilized in the manufacturing, depositing and curing processes will remain intellectual property of Supplier indefinitely.
- c. Product Formulations that Supplier develops for the Buyer (**SUPPLIER FORMULATION(S)**) will be owned by Supplier until 20MM individual gummies have been purchased from date of agreement. At that point the Buyer shall own the Product formulation, that was developed in collaboration with Supplier’s R&D team.
 - i. The cooking instruction and all processes and equipment utilized in the manufacturing, depositing, and curing processes will remain intellectual property of Supplier indefinitely.
 - ii. The vendor relationships, terms, pricing and other of specific ingredients are proprietary trade secrets to ILS and only data sheets for each ingredient will be provided for alternate sourcing.
- d. Flavor Systems. Buyer will be the sole owner of all flavor systems that Buyer develops or has developed for the Product by a third party. Supplier will be the sole owner of the flavor systems that Supplier develops. Supplier reserves the right to release the flavor system to the Buyer.

4. **Material Sourcing.**

- (i) Unless otherwise directed by Company and except as provided in subsection 4(b) below, Manufacturer will purchase at its own cost, and supply to Company, all packaging and raw materials necessary to manufacture and package the Products in strict conformity with the Specifications, Laws and the terms of this Agreement (the "Materials"). Except as provided in subsection 4(a)(ii) below, (A) all Materials purchased by Manufacturer shall be ordered in quantities no greater than that required to fulfill the then-current Purchase Orders placed by Company (the "Minimum Material Amount") and (B) Company shall have no liability whatsoever with respect any quantity of Materials ordered by Manufacturer (whether above, at or below the Minimum Material Amount specified by the supplier) which is not used to produce final conforming Products in accordance with the Purchase Orders (such Materials, the "Excess Materials"), including without limitation, any obligation to purchase the same, and the cost thereof shall not be included in the Price.
- (ii) In the event Manufacturer desires to purchase one or more Materials in quantities more than the applicable Minimum Material Amount (the "Safety Inventory"), Manufacturer shall, in each case, first obtain Company's prior written approval thereof. Notwithstanding its approval of the purchase of Safety Inventory, Company shall not be responsible for the cost thereof except to the extent that the Safety Inventory is later used to produce final conforming Products in accordance with the Purchase Orders, in which case, the cost thereof shall be included in the Price for said Products; provided that, in the event Company requests, in writing, that Manufacturer purchase such Safety Inventory in anticipation of future Purchase Orders and Company fails to place such orders, then Company shall, at the request of Manufacturer, purchase any excess Safety Inventory related thereto at Manufacturer's net landed costs so long as (A) the Safety Inventory is unique to the Products and cannot be otherwise used by Manufacturer to produce any other Third Party products (subject to the restrictions contained in Section 14 below), (B) the Safety Inventory is unexpired and otherwise conforms to the Specifications, Laws and the terms of this Agreement and (C) the excess Safety Inventory is not due to any fault on the part of Manufacturer, including without limitation, Manufacturer's failure to fulfill the Purchase Orders in their entirety.

(iii) All Materials purchased by Manufacturer shall be free from defects in material or workmanship, unadulterated, fit for their intended use and conform to the Specifications, Laws and the terms of this Agreement. To the extent Company provides Manufacturer with a list of approved suppliers, Manufacturer shall only purchase such Materials from Company's approved suppliers. Company may from time to time, at its sole discretion, (A) modify its list of approved suppliers or require that, for a given period of time, Manufacturer purchase the Materials only from a specifically designated approved supplier, and (B) upon reasonable notice to Manufacturer, may change the Specifications required for the Products under this Agreement. In addition, Manufacturer agrees to provide Company upon its request, from time to time, with any information regarding the Materials and the source thereof necessary for Company to perform quality control for the Products. In addition, Manufacturer agrees to provide

Company with a Deviation Report (as hereinafter defined) for defective Materials purchased by Manufacturer and a sample thereof within the timeframes set forth in subsection 4(b) below.

(b) In the event Company elects to directly purchase any of the Materials, Company shall provide Manufacturer with twenty (20) days written notice of same, and thereafter Company shall be responsible for directly purchasing any such Materials, and the Price will be reduced to reflect Company's direct purchase of the same. As of the Effective Date, Company shall purchase the Materials set forth in Exhibit C (Company Supplied Materials). Company will attempt to cause any such Materials to be delivered to Manufacturer as far in advance of the production date for any Purchase Order as commercially reasonable. Manufacturer shall send Company notice of receipt of such Materials within twenty-four (24) hours of Manufacturer's receipt of the same. Manufacturer hereby covenants and agrees to inspect such Materials within three (3) business days of receipt of same to determine whether the Materials are free from defects in material and workmanship, unadulterated, fit for their intended use, and conform to the Specifications, Laws and the terms of this Agreement. If any of the Materials furnished hereunder by Company are defective in material or workmanship, are adulterated or unfit for their intended use, or do not otherwise conform to the Specifications, Laws and the terms of this Agreement; then, Manufacturer shall provide Company with written notice of same (such notice, a "Deviation Report"), a sample of the defective Materials and a reasonable opportunity to inspect the same; such Deviation Report shall be in a form specified by Company and contain such information as reasonably requested by Company. The Deviation Report and sample shall be provided to Company within twenty-four (24) hours of its discovery of the defective Materials; provided that, if Manufacturer fails to provide the Deviation Report and sample within three (3) days of its receipt of the defective Materials, such Materials shall be deemed accepted by Manufacturer. Upon receipt of the Deviation Report and sample, Company may, within a reasonable period of time, elect to further inspect the lot of defective Materials and the non-conformity noted by Manufacturer. Thereafter, Manufacturer may immediately reject such Materials and return such Materials to Company's designee. Manufacturer shall not be responsible for any Materials (or for any charges for the packing, shipping and return or replacement thereof) which are timely and properly rejected in accordance with the above-procedure; provided, however, Manufacturer shall at all times be responsible for all Materials and/or any other property of Company, in Manufacturer's possession, custody or control. For the avoidance of doubt, and notwithstanding any such inspection or lack thereof by Company, Manufacturer shall be solely responsible for any failure of the Materials to be free from defects in material and workmanship, unadulterated, fit for their intended use or to conform to the Specifications, Laws and the terms of this Agreement and nothing contained herein is intended to limit Manufacturer's obligation to produce the Products in strict conformity with the Specifications, Laws and the terms of this Agreement.

(c) Manufacturer shall provide sufficient storage space for the inventories of Materials necessary to timely meet manufacturing and delivery requirements for the Products under this Agreement. Manufacturer shall store all such inventory in a secure location, which location shall be maintained by Manufacturer in a clean and sanitary condition, and shall be free of infestation by rodents, birds, insects and other vermin, and shall maintain appropriate temperature conditions for raw materials, as provided in the Specifications. Manufacturer acknowledges and agrees that the cost of any such storage and warehousing shall be included in the Price. With respect to Materials supplied by Company, unless otherwise instructed by Company, any inventories remaining after a production run will be promptly returned to Company or, at Company's election, made available for pick-up. [warehousing costs for materials not picked up timely?]

(d) All waste generated or resulting from Manufacturing Activities by Manufacturer, including waste minimization and proper disposal, shall be managed by Manufacturer strictly in compliance with

all applicable Laws. Any disposal of any Product (whether or not rejected by Company) that is branded with any of the Company IP or otherwise relates to the Products or the raw materials used in connection with manufacture and supply of the Products (including, without limitation, new product developments) shall be subject to Company's prior written approval, for the purpose of minimizing any negative effect on the goodwill of the Company IP.

(e) The parties acknowledge and agree that Manufacturer shall use its best efforts to prevent the loss of any Materials in the performance of the Manufacturing Activities. In accordance therewith, in the event that any Materials lost by Manufacturer during the Term, meet or exceed the applicable loss percentage set forth in Exhibit D (Loss Percentage) for the total of such Materials, then Manufacturer shall (i) to the extent such Materials are supplied by Manufacturer, not include such costs related thereto in the Price charged to Company for the Products and (ii) to the extent such Materials are supplied by Company, reimburse Company for the cost of such lost Materials through a corresponding deduction, applied to the first three (3) invoices issued by Manufacturer to Company after such loss percentage is met or exceeded.

5. Forecasts and Purchase Orders.

(a) During the Term, Company shall use commercially reasonable efforts to provide Manufacturer with the following forecasts: (i) on or before the first day of each calendar year (i.e., January 1), a rolling, non-binding forecast of Company's production requirements for the upcoming twelve (12) months and (ii) on or before the first day of each calendar quarter (i.e., January 1, April 1, July 1 and October 1, as applicable), a rolling, non-binding forecast of Company's production requirements for the upcoming three (3) months. For the avoidance of doubt, (A) the aforementioned forecasts are for informational purposes only and not binding on Company and any failure to provide these forecasts (or any errors contained therein) shall not be deemed a breach of this Agreement by Company and (B) notwithstanding the provision of any such forecasts by Company, Manufacturer shall not be entitled to order any Materials in excess of the applicable Minimum Material Amount in reliance thereon except with Company's prior written approval in accordance with subsection 4(a)(ii) above.

(b) Company, or Company's designee, shall place purchase orders with Manufacturer (each, a "Purchase Order") as far in advance as commercially reasonable. Each Purchase Order shall specify (i) the total number of units of the Products to be produced and (ii) the completion date for the Products. Manufacturer shall supply Company with the Products in accordance with the Purchase Orders. Purchase Orders will be given by Company to Manufacturer in writing and, will be deemed to be accepted and confirmed by Manufacturer, if Manufacturer does not provide notice of rejection of such Purchase Order in writing to the Company within five (5) Business Days after the Purchase Order is received by Manufacturer.

(c) It is agreed that Purchase Orders cannot be canceled or amended after 5 days of receipt without Manufacturer's written consent (which may be withheld by Manufacturer in its commercially reasonable judgment) and, all such Products will be shipped in accordance with the Purchase Orders.

(d) Upon the cancellation or amendment of a Purchase Order by the Company (including modification of the packaging, label, artwork or formula of Products or materially delaying the delivery date), Purchaser will reimburse Manufacturer within thirty (30) days of written notice for any and all costs and expenses incurred by Manufacturer relating to all finished goods, work in process and commitments for raw material and packaging components relating to Products for which a Purchase Order has been canceled or amended.

(e) Manufacturer hereby covenants, acknowledges and agrees that it is a non-exclusive supplier of the Products to Company, and nothing contained in this Agreement shall be deemed to limit, restrict or abridge Company's right to (i) perform, or use any Third Party contractors to perform, the Manufacturing Activities (and/or activities similar thereto) with respect to the Products or (ii) produce, or use Third Party contractors to produce, any of Company's products other than the Products (whether similar or dissimilar to the Products).

(f) Neither party may introduce any additional or inconsistent terms or attempt to vary or otherwise modify the Product order process set forth in this Agreement except in writing, signed by the other party specifically referencing this Section 5 and agreeing to such different terms. Manufacturer will deliver the quantities of the Products as specified in each Purchase Order, on a timely basis, and as set forth in each Purchase Order. Notwithstanding the foregoing, the parties agree that the relationship managers will meet periodically to review the Product order process described in this subsection (c) and subsection (b) above, and revise the same as the relationship managers may deem necessary to most efficiently and effectively carry out the terms of this Agreement.

6. Delivery, Inspection and Distribution.

(a) Unless otherwise agreed to by the parties in writing, the Products will be made available for pick-up from Manufacturer's facilities located at 350 Cypress Hill Dr, McKinney, TX 75071 ("Manufacturer's Facility"), on or before the completion date specified on the applicable Purchase Order. Manufacturer shall notify Company of the applicable Manufacturer's Facility at which the Products will be made available for pickup at least _____ (___) days prior to the completion date specified on the applicable Purchase Order. Unless Company requests otherwise in a written notice to Manufacturer, all of the Products shall be packed for shipment and storage in accordance with Exhibit B (Specifications), and loaded in accordance with proper loading techniques, including proper bracing, using protective measures to safeguard the Products from shifting and/or damage during shipment. Products delivered under this Agreement shall be F.O.B. Manufacturer's Facility. Company will direct Manufacturer as to the means of shipment and which shipping company or facility shall be engaged by Manufacturer. Company will be responsible for the costs of transportation, including bracing and other special shipping needs, as directed by Company; provided that, Company shall not be responsible for the cost of transporting the Products from one of Manufacturer's Facilities to another.

(b) Company shall have the right to inspect any shipment of the Products after delivery to determine whether it conforms to the terms of the applicable Purchase Order, the Specifications, Laws and/or the terms of this Agreement; provided, however, that Company acknowledges and agrees that the delivered quantities of Product may deviate up to five percent (5%) (plus or minus) from the quantity specified in the applicable Purchase Order (and such deviation alone shall not constitute grounds for the rejection of such Product by Company). Without limiting Company's rights under Section 12, in connection with Company's inspection of the Products hereunder, Company shall have the right to review Manufacturer's books and records relating to the production of the Products to determine if the Products conform to the terms of the applicable Purchase Order, the Specifications, Laws and/or the terms of this Agreement. If any Product furnished hereunder is defective in material or workmanship, adulterated or misbranded, unfit for its intended use or does not otherwise conform to the terms of the applicable Purchase Order, the Specifications, Laws and/or the terms of this Agreement, then, in addition to any other rights it may have under this Agreement, Company shall have the right to reject such Product and return such Product to Manufacturer. All charges for the packing, shipping and return of any rejected Products to Manufacturer

and any reshipment of replacement Products to Company and the risk of loss thereof will be borne by Manufacturer. With each return, Company shall include a statement of the reason for rejection of the Product(s). At Company's option, Manufacturer agrees to cancel the invoice for such rejected Product(s), refund the amounts paid with respect to such rejected Product(s), or ship replacement Products to Manufacturer on an expedited basis. [books and records is a non-starter; material compliance]

(c) Manufacturer may not, without Company's prior written consent, which can be withheld in its sole discretion, appoint a subcontractor to produce the Products or any portion thereof.

7. Specifications; Quality Assurance for the Products.

(a) Manufacturer warrants that it shall manufacture and supply the Products in strict compliance with all of the Specifications, and that the Products, including the ingredients and other materials and packaging used therefore, including without limitation, the Materials, shall be in compliance with Laws. Manufacturer shall ensure that each of the Products produced pursuant to this Agreement are accurately manufactured in accordance with the Specifications, including without limitation, the formulas provided to Manufacturer by Company. Manufacturer shall not make any changes or substitutions to the Specifications (including, without limitation, the ingredients, formulas or manufacturing processes) for any Product without Company's prior written consent, which consent may be withheld by Company in its sole discretion. Thereafter, during the Term, Manufacturer shall conduct testing, and make inspections of, the Materials and Products to ensure that the Products strictly conform to all Specifications, GMPs, HACCP, FDA regulations and all other Laws, which shall include, without limitation, testing during the beginning, middle and end of each production run of the Products (collectively, "Production Run Testing"). Manufacturer shall bear the cost of all Production Run Testing and shall provide the results of such testing (by batch) to Company upon completion of each production run of the Products. In the event Company requests testing in addition to the Production Run Testing (e.g., testing related to research and development) ("Additional Testing"), Company will bear the cost of such Additional Testing; provided that, if Manufacturer conducts any Additional Testing, Manufacturer shall promptly provide all results (i.e. reports and certificates of analysis) to Company, and the same shall be property of Company.

(b) During the Term, Company may implement changes to any of the Specifications, as a result of changes in applicable Laws or for any other reason. Manufacturer shall implement such changes as soon as possible. In the event such changes in the Specifications result in reduced or additional costs of producing the Products, the parties shall, in good faith, negotiate a modification in the Price to be charged to Company.

8. Price; Pricing Terms.

(a) Company agrees to pay Manufacturer the Prices for the Products as set forth in Exhibit A attached hereto. Manufacturer and Company agree that the Price set forth on Exhibit A is intended to compensate Manufacturer for, among other things, labor, overhead, purchasing, shipping and receipt, unloading and warehousing of the Materials, performance of the Manufacturing Activities (including packaging into a single format display and shipping carton), warehousing of finished Products, Production Run Testing of the Materials and Products, loading the finished Products onto a full trailer for transport, administration of all of the foregoing services and profit. Subject to the provisions of Section 8 below, the Price may only be adjusted with the mutual consent of the parties. [Pricing either needs to be PO to PO or have a natural level for price increases]

9. **Payment Terms.** Manufacturer shall invoice Company for each shipment of the Products. Payment shall be made by Company according to agreed upon terms (case by case) from the date the Products are made available for pick-up at Manufacturer's Facility and (ii) Company's receipt of an invoice for the same; provided that, Company shall not be required to pay for quantities of Product more than five percent (10%) over the quantity required in the applicable Purchase Order. All payments shall be payable to Manufacturer by business check to the address set forth on the signature page to this Agreement. All payments shall be deemed received when payment therefor is mailed, postage prepaid by Company, as applicable.

10. **Risk of Loss.**

(a) Title to and risk of loss of the Products shall be transferred to Company from Manufacturer upon receipt for transport by the Company or its agent.

(b) Subject to the provisions of subsection 4(e) above, Manufacturer shall assume responsibility and bear the risk of loss for all Materials supplied by Company and accepted by Manufacturer in accordance with the terms of subsection 4(b) of this Agreement or directly secured by Manufacturer and in the possession of Manufacturer during the Term.

11. **Cooperation and Communications.**

(a) The parties understand that cooperation and, particularly, clear and frequent communications between the parties is essential for efficient and effective performance under this Agreement as well as continuously endeavoring to achieve improvements in Manufacturer's manufacturing process and delivery process. To that end, the parties agree that throughout the Term, they will cooperate as reasonably required to achieve these goals and that (i) Manufacturer shall permit the presence of Company personnel, including Company's agents and/or designees, on its manufacturing sites, on a commercially reasonable basis, for purposes of routine monitoring and inspection, to assist in special projects, or other Product demand related matters

(b) Company personnel, when present in Manufacturer's Facility, shall not unreasonably interfere with Manufacturer's operations. As long as Company's actions under this Section 11 do not unreasonably interfere with Manufacturer's operations, in no event shall Manufacturer's performance of or obligations under this Agreement be altered, reduced, excused, mitigated or otherwise lessened by Company's presence or activities on its sites or by Company's involvement or participation in audit or inspection matters related to Manufacturer's conduct of its business, whether or not specifically related to the Products, by virtue of Company's activities or involvement pursuant to or as permitted by this Agreement, including this Section 11.

12. **Inspection; Audit.**

(a) Company, at any time and from time to time during the Term, shall have the right but not the obligation to inspect and/or audit those portions of the facilities wherein personnel, machinery and/or equipment are engaged in the business of manufacturing, producing or storing the Products pursuant to the terms of this Agreement. Company shall give Manufacturer reasonable notice of such inspection or

audit. Such inspection may include all aspects of Manufacturer's quality control, storage, sanitation procedures, and clean-up periods in order to ensure that the Products manufactured by Manufacturer on behalf of Company comply with the Specifications and Laws. Manufacturer shall maintain and make available to Company upon request, all records related to the manufacture of the Products, including, without limitation, all records relating to the testing of the Products and the materials used in the production of the Products, that Manufacturer conducts on behalf of Company or that Company requires under this Agreement. Company may, at its option, as determined in its sole discretion, and from time to time, rely in whole or in part upon inspections and/or audits of Manufacturer's facilities conducted by Third Party inspectors or auditors. In such events, Manufacturer shall furnish to Company all inspection and/or audit reports, correspondence, work papers, back-up materials and other information requested by Company. Company shall have no obligation to pay for any or all of such Third Party inspection(s) and/or audit(s).

(b) In addition to the foregoing, at Company's request, Manufacturer shall submit to an audit and/or inspection of Manufacturer's facilities from Third Party auditors selected by Company and/or Company's retailers, and at Company's cost, with such frequency as Company and/or Company's retailers may require during the Term, and upon completion of same, Manufacturer agrees to promptly furnish the results thereof to Company and/or Company's retailers. Failure of Manufacturer to comply with the terms shall constitute a material default by Manufacturer hereunder.

13. Confidential Information.

Manufacturer and Company acknowledge and agree that during and after the Term, each party will not use any Confidential Information of the other party nor disclose such Confidential Information to any person, firm, corporation, association or other entity for any reason or purpose whatsoever, except pursuant to a valid order of a court having jurisdiction thereof as explained in this Agreement or as otherwise provided in this Agreement. Each party agrees that violation of this provision will cause irreparable damage or injury to the other party, the exact amount of which would be impossible to ascertain, and that, for such reason, among others, such other party shall be entitled to an injunction, without the necessity of posting bond therefore, restraining any further violation of this Agreement. The rights to an injunction shall be in addition to, and not in limitation of, any rights and remedies that such party may have against the breaching party, including, but not limited to, the recovery of damages. For purposes of this Agreement, the term "Confidential Information" means any information of any kind, nature, and description disclosed to, discovered by or otherwise known by either party, as a direct or indirect consequence of or through its relationship with the other party, including, but not limited to, the terms of this Agreement, the Specifications, and all information relating to research, developments, inventions, copyrights, product lines, product ingredients, product composition, product processes, manufacturing processes, design, purchasing, finances, financial affairs, accounting, merchandising, selling, distribution networks, employees, trade secrets, business practices, merchandise resources, supply resources, service resources, system designs, procedure manuals, the prices it obtains or has obtained or at which it sells or has sold its services or products, the name(s) of its personnel, and reports; provided, however, that the term "Confidential Information" shall not include any information which (i) was available to or in possession of either party prior to the time of disclosure to such party by the other party or its representatives or Affiliates, (ii) is or becomes generally available to the public other than as a result of disclosure to either party by the other party or its representatives or Affiliates, or (iii) is or becomes available to either party on a non-confidential basis by a Third Party which is not bound by this Agreement or any confidentiality agreement with the other party.

14. Non-Competition and Non-Solicitation. (we won't misappropriate your IP); formulations are all our IP)

(a) Manufacturer acknowledges and agrees that Company has incurred considerable cost and expense in designing and developing the Company IP and the Products.

(b) Manufacturer hereby covenants and agrees that it shall not, directly or indirectly, for its own account or for the account of any Third Party, sell, subcontract, manufacture or produce, or enter into any agreement with any Third Party to sell, subcontract, manufacture or produce, at any time (during the Term) any products that utilize any of the Company IP, including, but not limited to, the formulas, designs or shapes or Company's other proprietary product specifications utilized in the manufacture of the Products; provided, however, that the manufacture by Manufacturer of products containing non-proprietary raw materials similar to those contained in the Products shall not, in and of itself, be deemed a violation hereof.

(c) In addition to the restrictions set forth in subsection 14(b) above, during the Term and for a period of two (2) years after the expiration or termination of this Agreement, for whatever reason, Manufacturer agrees that it will not, directly or indirectly, (i) solicit for employment or hire any employee of the other party or any of its Affiliates with whom it has had contact with or who becomes known to it in connection with its relationship with Company, or (ii) solicit induce, influence, cause, advise or encourage any customers of the other party to terminate its relationship with Company, nor shall either party cooperate with others in doing or attempting to do so. [two way non-solicit; public person can find out. Way to wrap in other mfg partners?]

(d) Manufacturer agrees that the restrictions set forth in this Section 14 are fair and reasonable, are reasonably required to protect Company's business interests, and would not unfairly or unreasonably restrict Manufacturer's business. Nothing set forth herein shall limit or restrict Manufacturer's obligations under Section 13 or 15 hereof

15. Intellectual Property.

(a) Subject to the terms and conditions of this Agreement, during the Term (or until the earlier termination of this Agreement), Company hereby grants to Manufacturer a non-exclusive, non-assignable license to use the Company IP during the Term (i) to manufacture the Products for Company in accordance with and pursuant to the terms and provisions of this Agreement at Manufacturer's Facility and (ii) to assist Company in research and development efforts pursuant to Section 3 hereof.

(c) Other than as expressly set forth in subsection 15(a) hereof, as of the Effective Date, Manufacturer has no right, title or interest, and during the Term, Manufacturer shall not acquire any right, title or interest of any kind or nature whatsoever in or to the Company IP, or the goodwill associated therewith. Manufacturer shall not contest the rights of Company or its Affiliates in respect of the Company IP, including any additions or improvements to the Company IP by whomever developed; Manufacturer hereby waives any claim Manufacturer may have, arising under any law or in equity, with respect to the Company IP, other than claims arising directly from Company's breach of subsection 15(a) hereof.

(d) Manufacturer covenants and agrees that no right or remedy of Manufacturer for any default under this Agreement by Company hereunder, or any provision of this Agreement, shall confer upon Manufacturer, or any person or entity claiming by or through Manufacturer, the right to use the Company IP in any fashion other than as expressly set forth in subsection 15(a) hereof. Upon the expiration or sooner termination of this Agreement, Manufacturer shall remove and return to Company all tangible embodiments containing Company IP, and shall not use the Company IP. In the event of any breach of this covenant by Manufacturer, Company shall be entitled to relief by injunction, and to all other available legal rights or remedies.

(e) Other than as expressly set forth in subsection 15(a) hereof, Manufacturer may not itself use the Company IP. Manufacturer may not apply for any international or domestic, federal, state, local or territorial registration of any rights in the Company IP. Without Company's prior written consent, Manufacturer may not use any of the Company IP as all or part of its legal name or any other trade or assumed name under which Manufacturer does business. No other letter, word, design, symbol, or other matter of any kind shall be superimposed on, associated with, or shown in such proximity to the Company IP so as to alter or dilute them and Manufacturer shall not combine any of the trademarks with any other trademark, service mark or logo.

(f) Manufacturer agrees that all Company IP and any improvements, modifications, enhancements or alterations to the Company IP, including, without limitation, the formulas and product specifications, design, or processes of the Products made, created or conceived during the Term shall belong exclusively to Company, irrespective of whether such improvements, modifications, enhancements or alterations are developed singularly by Manufacturer or anyone acting on behalf of or in concert or combination with Manufacturer; Manufacturer acknowledging that any such efforts on the part of Manufacturer have been specially commissioned by Company, and all copyrightable Company IP shall be deemed to be a "work-made-for-hire" (as defined in the U.S. Copyright Act of 1976, as amended), and created in the course of the services rendered hereunder. All rights, title and interest in and to any inventions (whether patentable or not), product designs (whether copyrightable or not) or other intellectual property developed or created by Manufacturer or anyone acting on behalf of or in concert or combination with Manufacturer relating to the Products or design shall belong exclusively to Company. Manufacturer waives any and all paternity, integrity, moral or any other similar rights, existing under judicial or statutory law of any country in the world, or under any treaty, regardless of whether or not such right is denominated or generally referred to as a "moral right", that Manufacturer may have now, or in the future, in and to the Company IP; "moral right" means any rights to claim authorship of any Company IP, to object to or prevent the modification of any Company IP, or to withdraw from circulation or control the publication or distribution of any Company IP, and any similar right, existing under judicial or statutory law of any country in the world, or under any treaty, regardless of whether or not such right is denominated or generally referred to as a "moral right". Where, by operation of law, any of the rights described herein, including, without limitation, any rights to the Company IP, do not vest initially in Company, good and valuable consideration being extant, the adequacy and receipt of which Manufacturer hereby acknowledges, Manufacturer irrevocably assigns and transfers to Company, in perpetuity, all of Manufacturer's worldwide rights, title and interest, whether such rights are vested or contingent, in and to any such Company IP, including, without limitation, any inventions, copyrights, and other intellectual property, to Company and further agrees to assist Company in connection with any efforts to obtain patent or, copyright or other intellectual property protection for such intellectual property in any jurisdiction throughout the world. Manufacturer hereby appoints Company as attorney-in-fact to execute any documents necessary to obtain such protection or to otherwise effect assignment from Manufacturer to Company. The power of attorney shall be a power of attorney coupled with an interest and irrevocable.

Manufacturer hereby represents to Company that all employees of Manufacturer to perform any work incidental to the manufacture and supply of the Products hereunder have executed and agreed, or shall execute and agree, to be bound by written work made for hire contracts and written agreements to assign any and all rights, title and interest in and to any work created by said employee to Company (g) Manufacturer shall promptly notify Company of any litigation filed or threatened against Manufacturer involving the Company IP, as well as any apparent third-party infringement of the Company IP of which Manufacturer becomes aware and, at Company's expense, shall cooperate fully with Company on such matters.

16. Environmental.

(a) Manufacturer agrees that its plants, facilities, equipment, and Manufacturing Activities shall be throughout the Term, in compliance with all applicable Environmental Laws.

(b) Manufacturer agrees that, without limiting any other indemnification set forth herein, it shall have sole liability, as between itself and the Company Parties, and will hold the Company Parties harmless from and against any and all claims, demands, losses, costs, damages, injury, suits, judgments, penalties, expenses, liens, obligations, penalties, assessments, citations, directives and liabilities of any kind or nature, including reasonable attorneys' fees and other litigation related costs, which result from (i) Manufacturer's violation or alleged violation of or failure or alleged failure to comply with any Environmental Laws, (ii) any release or threatened release of any Hazardous Materials, whether emanating or migrating on-site or off-site of any portion of any facility used in connection with Manufacturing Activities or (iii) any liability or alleged liability under and Environmental Laws.

17. Representations, Warranties and Covenants.

(a) The parties represent and warrant to each other that each has the legal capacity and authority, right and power to enter into this Agreement; that there is no further action necessary to make this Agreement binding upon such party in accordance with its terms; and that there is no suit, action, contract, commitment, arbitration or legal administrative or other proceeding or governmental investigation pending or, to such party's knowledge, threatened against it or affecting such party's ability to perform its obligations under this Agreement.

(b) Each of the parties hereunder represents and warrants to the other that in connection with its obligations under this Agreement, it shall comply with all applicable Laws and has obtained, or will promptly obtain upon execution of this Agreement, all applicable Permits and/or registrations.

(c) Manufacturer represents, warrants and covenants to Company that:

(i) at all times during the Term, Manufacturer shall supply Company the Products in accordance with Purchase Orders placed by Company;

(ii) at all times during the Term, Manufacturer shall maintain the equipment, materials and storage capacity necessary to manufacture the Products in accordance with the Purchase Orders;

(iii) all of the Products manufactured, processed, and packaged on behalf of Company pursuant to this Agreement shall be manufactured, processed and packaged in conformity with the Specifications and Laws (including GMPs and HACCP), and shall be free of any defects and fit for their intended use

by infants and toddlers; in the event Manufacturer becomes aware of any change in any Law relating to the Specifications and/or Products during the Term, Manufacturer shall promptly notify Company of same in writing;

(iv) all Materials that Manufacturer uses in the manufacture of the Products shall, when utilized by Manufacturer, be merchantable of good quality, free from defects, shall not be misbranded and shall strictly conform to the Specifications. Manufacturer shall certify in writing from time to time promptly, upon Company's request, that the manufacturing facility used to produce the Products are in compliance with the Specifications and Laws;

(v) Manufacturer shall regulate the climate of the facilities used to store the Materials and Products in such a manner as to minimize waste of the Materials and/or Products and to otherwise prevent the growth of yeast, mold or other microorganisms.

(vi) the Manufacturing Facility used to store the Materials and produce the Products pursuant to this Agreement shall be the only facility approved by Company; any such additional facilities are subject the inspection and approval of Company, in writing, prior to Manufacturer performing any Manufacturing Activities related to the Products therein; that all such manufacturing facilities are in compliance with Laws, including without limitation, Environmental Laws; that all such manufacturing facilities are clean, sanitary, secure and free of infestation by rodents, birds, insects and other vermin; that it is the sole owner of all manufacturing facilities (notwithstanding any mortgages) and the equipment to be used to produce the Products pursuant to this Agreement (notwithstanding any leased or financed equipment); that all such equipment is and shall be maintained in good working order and repair during the Term;

(vii) it shall perform its obligations hereunder in a timely and professional manner, consistent with the manner in which it produces products for itself and its Affiliates and/or produces products for similar customers, using trained technical and manufacturing personnel sufficient in number and experience to manufacture and package the Products and in accordance all applicable Agency requirements;

(viii) it will convey to Company good title to the Products sold to Company pursuant to this Agreement, free of any liens or encumbrances thereon, and shall not permit any Third Party to acquire a security interest in or lien on any Products or any proceeds thereof;

(ix) Manufacturer shall maintain its manufacturing facilities and manufacture the Products in such a manner that Company shall legally be permitted to advertise the Products as then-currently labeled and advertised;

(x) it shall promptly notify Company in writing of any of concerns relating to Company's ingredient list, formulas, process parameters, quality assurance specifications or other Specifications. Time is of the essence with respect to such notification; and

(xi) as of the Effective Date, there are no strikes or lockouts affecting Manufacturer's facilities or its ability to produce the Products in accordance with the Specifications, Laws or the terms of this Agreement and, to Manufacturer's knowledge, no such strikes or lockouts are imminent or have otherwise been threatened.

18. Insurance.

(a) Manufacturer shall, at its sole expense, have in full force and effect throughout the Term the following insurance in amounts which are commercially reasonable and sufficient given Manufacturer's business or as legally required in the case of workers' compensation, but in no event shall the coverage amounts be less than those indicated below:

(i) Commercial general liability insurance, including products liability endorsement, and full seizure, Product withdrawal and recall liability sufficient to cover Company under this Agreement, of at least \$5,000,000.00 for each occurrence and \$5,000,000.00 in the aggregate.

(ii) All risks of physical loss or damage insurance covering Manufacturer's assets and loss of income at the manufacturing sites used for the manufacture of Products in amounts equal to fifty percent (50%) of the amounts necessary to replace the assets and to cover their net profit and fixed expenses for a minimum period of twelve (12) months.

(iii) Workers' compensation insurance in the statutory amounts required in each state of operation under this Agreement with coverage for employers' liability in an amount of not less than \$1,000,000.00 for each occurrence.

(iv) Umbrella insurance of at least \$5,000,000.00 for each occurrence.

(b) To the extent obtainable without unreasonable costs, the above insurance policy shall contain a waiver of subrogation in connection with any loss or damage covered under such policy.

(c) Before commencement of any production under this Agreement, and promptly upon Company's request, Manufacturer shall provide Company with a certificate which evidences the above insurance coverage with insurance carriers having at least an "A" rating by A.M. Best, or if A.M. Best ratings are not available, then a comparable rating by a comparable insurance rating agency, and provides: (i) that Company is an additional named insured to the extent of its interest, (ii) for a separation of insured(s) clause which states that the insurance policy shall apply to Company as if it were the only named insured and separately to each insured against whom a claim is made or suit is brought, (iii) for a primary endorsement which states that the coverage under the insurance policy is primary with respect to Company, and (iv) that the insurance is not cancelable by Manufacturer without at least thirty (30) days prior written notice to Company. Company may (but shall not be obligated to), at its sole discretion and expense, purchase additional insurance.

(d) Notwithstanding the foregoing, Manufacturer hereby agrees to increase its insurance coverage amounts described in subsection 18(a) above, from time to time, based on the recommendation of Company's insurance professional.

19. Term and Termination.

(a) Term. The initial term of this Agreement shall be deemed to commence on the Effective Date and shall continue in full force and effect until the first (1st) anniversary thereof, unless earlier terminated in accordance with subsections 19(b) and 19(c) below (the initial term and any extensions thereof, collectively the “Term”). Notwithstanding the foregoing, the term of this Agreement shall thereafter automatically renew for additional, successive terms of one (1) year unless earlier terminated in accordance with subsections 19(b) and 19(c) below.

(b) Termination; For Cause. A party may terminate this Agreement “for cause”, upon the happening of any of the following events:

(i) immediately by either party upon the dissolution of the other party, or the appointment of a receiver, liquidator or the like for the other party or all its property, or the other party commences a voluntary case under any applicable bankruptcy or insolvency law or consents to the entry of an order for relief in any involuntary case for a liquidation or a court with jurisdiction enters a decree for relief in any involuntary case involving the liquidation of the other party or if either party becomes insolvent or takes, or fails to take any action which constitutes an admission of inability to pay its debts as they mature;

(ii) immediately by Company in the event Manufacturer fails to meet the Specifications or production obligations set forth in this Agreement or otherwise defaults in the performance of any material obligation under this Agreement, or otherwise breaches any of Manufacturer’s representations, warranties or covenants set forth herein, and, in any case, fails, within thirty (30) days after written notice specifying such default by Company, to cure such default; provided, however, in the event Manufacturer commits fraud it shall have no opportunity to cure such default and Company may terminate this Agreement immediately; or

(iii) immediately by Company in the event in Manufacturer fails provide Company with the Products in accordance with Purchase Orders placed by Company.

(c) Termination; Without Cause. Company may terminate this Agreement for any reason, or no reason at all, without penalty, upon providing Manufacturer with one hundred eighty (180) days notice of its intent to terminate this Agreement. However, through those 180 days order volume would sustain within 20% of the previous quarters volume prior to intent to terminate.

(d) Effect Of Termination. Upon the expiration or the termination of this Agreement by a party for any reason whatsoever, at Company’s request, Manufacturer shall extend this Agreement for a mutually agreed upon period, but in no event less than sixty (60) days, to provide to Company or its designee (i.e., a successor manufacturer) reasonable termination and transition assistance services to facilitate the orderly transition of the production of the Products to Company or its designee, including removal of any Materials supplied by Company from Manufacturer’s facilities. Such termination assistance services shall include without limitation, designation by Manufacturer of a responsible person familiar with this Agreement and Manufacturer’s production of the Products hereunder, developing a plan for the orderly transition of the production of the Products from Manufacturer to Company or its designee, providing reasonable training to Company or its designee regarding the production of the Products; using commercially reasonable efforts to make available to Company, pursuant to mutually agreeable terms and conditions, any Third Party services or supplier then being used by Manufacturer in connection with producing the Products pursuant to this Agreement, and/or furnishing Company with duplicates of data files and any other electronic records, magnetic tapes, media and/or printouts, as determined by Company,

of Manufacturer's database or data relating to the raw material or performance of Manufacturer's obligations hereunder (excluding any proprietary cost information) and such other activities upon which the parties may reasonably agree or Company may reasonably require in order to effect an orderly transition. Company shall pay Manufacturer for such termination assistance services at mutually agreed upon rates, negotiated by the parties in good faith.

(e) Unless explicitly indicated in this Agreement to the contrary, any expiration of the Term or termination of this Agreement shall not relieve the parties of any rights, obligations or liabilities existing, accruing or arising under this Agreement before the termination or expiration (including, without limitation, the obligation of Manufacturer to manufacture any Products pursuant to the Purchase Orders approved by Company, and made during the Term and the obligation of payment for any conforming Products delivered thereunder) and the provisions in this Agreement relating to product development (Section 3), confidentiality (Section 13), non-competition and non-solicitation (Section 14), intellectual property (Section 15), indemnification (Section 21) and arbitration (Section 22) shall survive the termination or expiration of this Agreement for the period indicated in this Agreement, and if no such period is indicated, for a period ending thirty (30) days following the expiration of the statute of limitations period applicable to the claim arising thereunder.

(f) Notwithstanding anything in this Agreement to the contrary, in the event of an alleged payment default by either party (the "defaulting party"), the parties agree that, provided that:

(i) the defaulting party has deposited the amount of the alleged payment default in an attorney escrow account of an attorney selected by the non-defaulting party (or if the non-defaulting party elects not to select an attorney, by an attorney selected by the defaulting party) within thirty (30) business days of receipt of the payment default notice; and

(ii) the defaulting party, within thirty (30) business days of receipt of the payment default notice has submitted the matter to arbitration in accordance with Section 22 hereof;

then, this Agreement shall not be deemed terminated (unless terminated for another valid reason in accordance with the terms of this Agreement) and the parties shall continue to perform their respective responsibilities hereunder, until such time as (A) the arbitrator has made a determination on whether such alleged payment default constitutes a terminable default under this Agreement, and (B) the non-defaulting party then elects to terminate this Agreement therefore, in accordance with this Section 19.

20. Recall; Customer Complaints.

(a) If Company is required, or it determines it is reasonably necessary in order to minimize or avoid bodily injuries or danger to any person or property, or due to a material defect in one or more identifiable product qualities, to withdraw or recall any or all of the Company's products, or where requested to do so by any Governmental Authority or if there is any governmental seizure of its products for any reason whatsoever, Company will notify Manufacturer promptly of the details regarding such withdrawal, recall (voluntary or involuntary) or seizure action (each, a "Recall"), including providing copies of all relevant documentation concerning such action. Manufacturer hereby covenants it will fully cooperate with and use diligent efforts to assist Company in investigating any such Recall. All regulatory contacts that are made and all activities concerning the Recall will be coordinated by Company.

(b) Manufacturer shall bear the full cost and expense (including damages and costs to Company and to third parties) and shall indemnify and hold Company harmless of and from any such Recall which occurs, due to (i) a failure of any Product sold by Manufacturer to Company hereunder to conform to the Specifications (including, without limitation, the Products being adulterated or misbranded due to the acts or omissions of Manufacturer) or any warranty, covenant or representation made by Manufacturer herein, or other requirement set forth in this Agreement;; or (ii) the negligent or intentional act or omission of Manufacturer in connection with the production of the Products hereunder. Company shall cooperate with Manufacturer in connection with any such Recall and shall act in a manner to minimize cost and expense incurred in connection with the foregoing as is reasonable under the circumstances.

(c) Manufacturer shall promptly and thoroughly investigate any complaint from customers or otherwise, and provide Company with information necessary for Company to respond to such complaint.

21. Indemnity.

(a) Company shall defend, indemnify, and hold Manufacturer, its Affiliates, and their respective officers, shareholders, directors and agents, and their respective successors and assigns (the “Manufacturer Parties”) harmless from and against any and all Claims of any kind or nature, including reasonable attorneys’ fees and other litigation related costs incurred by the Manufacturer Parties to the extent and only to the extent arising directly or indirectly out of or in connection with a breach by Company of its obligations under this Agreement, except to the extent such Claims result from the Manufacturer Parties’ negligence, gross misconduct and/or a breach by Manufacturer of its obligations under this Agreement.

(b) Manufacturer shall defend, indemnify, and hold Company, its Affiliates, and their respective officers, shareholders, directors and agents, and their respective successors and assigns (the “Company Parties”) harmless from and against any and all Claims of any kind or nature, including reasonable attorneys’ fees and other litigation related costs incurred by the Company Parties to the extent and only to the extent arising directly or indirectly out of or in connection with (i) a breach by Manufacturer of its obligations under this Agreement, including, without limitation, any breach of Manufacturer's representations and warranties set forth in this Agreement or the failure of any of the Products to comply with the Specifications or Laws, (ii) any claim or action by, or on behalf of a Third Party, arising as a result of the actions or inactions of Manufacturer, including without limitation, all claims alleging a violation of a third-party rights and (iii) any claim or action by, on behalf of or related to any former, present or future employee of Manufacturer arising as a result of their employment at Manufacturer or separation or termination from Manufacturer, including, without limitation, claims relating to salaries, benefit plans, workers compensation, overtime, severance, termination liabilities, payroll, unemployment or other taxes, insurance, or arising under the occupational health and safety or other applicable federal, state or local laws or regulations.

22. Choice of Law; Arbitration.

(a) Applicable Law. All questions concerning the construction, validity, and interpretation of this Agreement and the performance of the obligations imposed by this Agreement shall be governed by the internal law, not the law of conflicts, of the State of California.

(b) **Arbitration.** All disputes relating to this Agreement, shall be submitted to, and decided in, a confidential arbitration under the rules of JAMS in Los Angeles, California. The arbitrability of this provision shall be solely determined by JAMS. In the event that any party seeks relief under this Agreement in any venue other than through JAMS (including, but not limited, to federal or state court), then the complaining party shall pay all of the costs, fees (including attorneys' fees), and expenses of the responding party. Each party shall pay its own proportionate share of arbitrator fees and expenses. The parties each waive the right to seek any consequential, indirect, incidental, and punitive damages and the arbitrator shall have no authority to award such damages. The sole monetary remedy of each party in the event of any breach hereunder shall be a demand for arbitration seeking the recovery of monetary damages actually suffered. The parties waive their right to a jury trial. The parties further waive any right of appeal. In the event that either files any claim against any shareholder, employee, officer, director, member, manager, representative, principal, or agent of the other party, then the parties hereby agree that any such claims shall also be subject to this dispute resolution section..

23. Injunctive Relief.

Manufacturer acknowledges and agrees that Company would be damaged irreparably in the event Manufacturer fails or refuses to perform its obligations hereunder. Accordingly, Manufacturer agrees that Company shall be entitled to an injunction or injunctions to prevent breaches of the provisions of this Agreement, including, without limitation Sections 13, 14, 15 and 16, by Manufacturer and to enforce specifically this Agreement and the terms and provisions hereof without bond or other security being required in any court of the United States, any foreign jurisdiction, or any state having jurisdiction, this being in addition to any other remedy to which Company is entitled at Law or in equity.

24. Force Majeure.

Neither party shall be liable to the other for any delay or failure to perform any of the services or obligations set forth in this Agreement due to causes beyond its reasonable control, and without the non-performing party's fault or negligence, including, without limitation, acts of God, such as fires, floods, earthquakes and other natural disasters, terrorism, declared or undeclared wars, civil disturbances, and accidents in transportation. Notwithstanding the foregoing, raw material or labor shortages or Strikes are not force majeure events. The affected party's performance under this Agreement shall be excused and extended for the period of the delay, provided that the affected party immediately notifies the other party of the reason for and the estimated extent of the delay and the affected party takes all reasonable steps to mitigate the effects of the delay. If such force majeure condition continues for a period of thirty (30) days and Company determines that it substantially interferes with the further performance by either party to this Agreement, Company may terminate this Agreement immediately upon notice, and the "Term" of this Agreement shall be deemed to have expired on the date thereof. If this Agreement is terminated pursuant to this Section 24, each party shall bear the costs it has incurred before the date of termination, including the costs associated with raw materials and other materials, work-in-process and finished Products not delivered to Company by the date of termination. Manufacturer currently has in effect the contingency plans in the event of a Force Majeure Event.

25. Notices.

All notices and other communications required or permitted by this Agreement shall be in writing, may be given by a party or its legal counsel, and shall be deemed to be duly given (a) when personally delivered (provided written confirmation thereof is also delivered by express courier), (b) upon delivery

by a nationally recognized courier service in the United States which provides evidence of delivery, or (c) upon delivery of a facsimile or email transmission, provided a copy thereof is also delivered in person or by express courier. Notice to Company shall be sufficient if given to its address as set forth on the first page of this Agreement, attention: VP, Operations. Notice to Manufacturer shall be sufficient if given to its address as set forth on the first page of this Agreement, attention: _____. Either party may, from time to time by notice given in accordance with this Section 25, advise the other of changes of address or additional addresses for the giving of notices.

26. Independent Contractors.

The parties are independent contractors and engage in the operation of their own respective businesses. Neither Manufacturer nor Company shall be considered the agent of the other for any purpose whatsoever except as otherwise provided herein. Neither Manufacturer nor Company has any authority to enter into any contracts or assume any obligations for the other or to make any warranties or representations on behalf of the other party. Nothing in this Agreement shall be considered to establish a relationship of copartners or joint venture between Manufacturer and Company. Under no circumstances shall Company be liable for the debts or obligations of Manufacturer or for the wages, salaries, or benefits the individuals producing products for Manufacturer, whether employees or independent contractors of Manufacturer or of a Third Party. The operation of the designated manufacturing plants, and all machinery and other equipment employed by Manufacturer, the disposal of all materials by Manufacturer in conjunction with the performance of its obligations hereunder, shall be subject to the sole control and responsibility of Manufacturer.

27. Assignment; Successors And Assigns; Further Assurances.

Neither party may assign its rights, delegate its performance duties or obligations, or assign any remedy or cause of action relating to or arising under this Agreement, without the prior written consent of the other party; provided, however, Company and Manufacturer may assign, without the prior written consent, Company's rights, delegate its performance duties or obligations, or assign any remedy or cause of action relating to or arising under this Agreement to a successor in ownership of all or substantially all of its business assets, whether by sale of assets, merger, consolidation or otherwise. Any assignment in violation of this Section 27 shall be null and void. This Agreement shall be binding and inure to the benefit of each of the parties and its successors and permitted assigns. At the request of a party to this Agreement, any other party or assignee to this Agreement will promptly execute any documents necessary to confirm or establish the respective rights of Company and Manufacturer and assignee pursuant to this Agreement.

28. Amendment.

Except as otherwise provided in this Agreement, neither this Agreement nor any Schedule or Exhibit hereto may be amended except by a document duly signed by a duly authorized representative of each party. Each such amendment will be sequentially numbered.

29. Schedules; Exhibits; Entire Agreement; Construction.

The Schedules and Exhibits are a part of and incorporated by reference into this Agreement. This Agreement, together with any Schedules and Exhibits attached to this Agreement, contain all of the terms, warranties, representations, agreements, covenants, conditions, and provisions the parties have agreed

upon with respect to the subject matter of this Agreement and it supersedes any and all written or oral agreements, understandings or representations relating to its subject matter. If the terms of this Agreement conflict with the terms of any Schedule or Exhibits, the terms of this Agreement shall control. The parties hereto have consulted with and have been counseled by their own legal counsel and other advisors, and are entering into this Agreement voluntarily and with a full understanding of the meaning and legal effects of each provision contained in this Agreement. The parties hereto and their respective legal counsel have been involved in the negotiation and drafting of this Agreement. In the event of any dispute regarding the interpretation of any provision of this Agreement, the parties agree that this Agreement and the provisions hereof shall not be construed against any one party as the drafter of this Agreement.

30. Severability.

In the event that any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement in any other jurisdiction, but this Agreement shall be reformed and construed in any such jurisdiction as if such invalid or illegal or unenforceable provision had never been contained herein and such provision shall be reformed so that it would be valid, legal and enforceable to the maximum extent permitted in such jurisdiction.

31. Waiver.

Any party's failure to insist on strict performance of any provision of this Agreement shall not be deemed a waiver of any of its rights or remedies, nor shall it relieve any other party from performing any subsequent obligation strictly in accordance with the terms of this Agreement. No waiver shall be effective unless it is in writing and signed by the party against whom enforcement is sought. The waiver shall be limited to provisions of this Agreement specifically referred to therein and shall not be deemed a waiver of any other provision. No waiver shall constitute a continuing waiver unless the writing states otherwise.

32. Parties in Interest.

Nothing in this Agreement is intended to confer any rights or remedies on any persons other than Company and Manufacturer. This Agreement shall not be construed to relieve or discharge any obligations or liabilities of Third Parties, nor shall it be construed to give any right of subrogation or action against Company or Manufacturer or their respective Affiliates.

33. Miscellaneous.

Each party warrants to the other that it has not incurred nor will it incur any liability for brokerage fees, finder's fees, agents' commissions, or other similar forms of compensation in connection with this Agreement or any transaction that this Agreement contemplates. Except as otherwise provided in this Agreement, no party shall unreasonably withhold, condition or delay any agreement, approval, acceptance, consent or similar action required by any provision of this Agreement. The section headings in this Agreement are included for convenience only and shall not be deemed to limit or otherwise affect the construction of any of its provisions. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument; provided, however, that this Agreement will not be effective until each party has executed and delivered to each other party at least one counterpart of this Agreement signed by that party. A signed

counterpart of this Agreement, which a party delivers by facsimile, shall be deemed to have the same effect as if the party had personally delivered a signature original of that counterpart.

[remainder of page intentionally left blank; signature page to follow]

IN WITNESS THEREOF, each party has caused this Amended and Restated Supply Agreement to be executed as of the date first above written by their duly authorized representatives.

MANUFACTURER: ILS GUMMIES, LLC

SCHEDULE I TO MANUFACTURING AGREEMENT

Definitions

For purposes of this Agreement (as defined below), unless the context clearly indicates otherwise, the following terms shall have the following meanings:

“*Affiliate*” or “*Affiliates*” means with respect to any Person, any other Person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with, such first mentioned Person. As used in this definition of Affiliate, the term “*control*” (including “*controlled by*” and “*under common control with*”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, as trustee, by contract, or otherwise.

“*Agency*” or “*Agencies*” means the Food and Drug Administration, the Federal Trade Commission, the United States Department of Agriculture and any other federal, local, provincial or other governmental, advisory or regulatory authority, instrumentality, department, commission, board, bureau, agency or court which now regulates, or may in the future regulate, Manufacturing Activities.

“*Agreement*” means this Manufacturing Agreement, its Schedule and all Exhibits attached hereto, all as amended in accordance herewith from time to time.

“*Claims*” means any and all claims, demands, suits, losses, assessments, citations, obligations, liabilities, damages, fines, judgments, expenses and costs (including, without limitation, reasonable attorney’s fees and expenses and settlement costs) arising from any cause of action brought by a Third Party or Third Parties, whether in contract, tort (including, without limitation, negligence), warranty, strict liability, product liability, statutory duty or otherwise.

“*Confidential Information*” shall have the meaning set forth in Section 13 hereof.

“*Company*” shall have the meaning set forth in the introductory paragraph hereof.

“*Company IP*” shall have the meaning set forth in subsection 15(b) hereof.

“*Company Parties*” shall have the meaning set forth in subsection 21(b) hereof.

“*Effective Date*” shall have the meaning set forth in the introductory paragraph hereof.

“*Environment*” means soil, subsurface land or strata, wetlands, surface water, groundwater and air.

“*Environmental Laws*” means any current or future federal, state or local laws, statutes, orders rules, regulations, permits, approvals, licenses, registrations, directives, filings or authorizations related to

pollution or protection of the Environment, including, without limitation, the Comprehensive Environmental Responses, Compensation and Liability Act, 42 U.S.C. §§ 9601 et seq., and occupational health and safety Laws, including, without limitation, the Occupational Safety and Health Act of 1970, as amended (29 U.S.C. §§ 651 et seq).

“Hazardous Materials” means any substance or material that is listed, classified, defined, determined, identified or regulated by any Agency under any Environmental Laws as a hazardous substance, hazardous waste, infectious, pollutant, contaminant, toxic waste or toxic substance, including, without limitation, petroleum and petroleum products, by-products or breakdown products, radioactive materials, friable asbestos, asbestos s-contaminating materials and polychlorinated biphenyls and materials otherwise regulated under any Environmental Laws.

“Laws” means all current or future United States federal, state, or local laws, statutes, orders, rules, regulations, ordinances, permits, approvals, licenses, registrations, directives, filings or authorizations of any Agency applicable to the Manufacturing Activities, in effect for any period during the Term, including, without limitation, the Federal Food, Drug and Cosmetic Act, the Current Good Manufacturing Practices (“GMPs”) as specified in the U.S. Code of Federal Regulations, the Bioterrorism Act of 2002, Hazard Analysis Critical Control Point (“HACCP”) and Environmental Laws.

“Manufacturer” shall have the meaning set forth in the introductory paragraph hereof.

“Manufacturer Parties” shall have the meaning set forth in subsection 21(a) hereof.

“Manufacturing Activities” means any and all procedures, processes operations or activities related to the development, manufacture, ingredients, packaging (in bulk and for retail sale), labeling, storage, unloading, loading, shipping, or disposal of the Products, in each case, in accordance with the Specifications and Laws.

“Materials” shall have the meaning set forth in subsection 4(a) hereof.

“Person” or *“Persons”* means any individual, corporation, governmental or regulatory authority, limited liability company, partnership, trust, estate, unincorporated association or other entity.

“Price” means, for each of the Products, the price is set forth on Exhibit A, as modified and as amended from time to time in accordance with the terms hereof.

“Products” means the products to be manufactured and sold by Manufacturer and purchased by Company hereunder, as set forth on Exhibit A, as same may be amended from time to time in accordance with the terms hereof.

“Product” shall mean any one of the Products.

“Purchase Order” shall have the mean set forth in Section 5(b) of this Agreement.

“Specifications” means (a) Company’s formula, ingredient and product specifications for each of the Products, and (b) the manufacturing process for each of the Products, all as set forth in the Company’s Quality Agreement and/or Specifications Manual, if any, referenced on Exhibit B attached hereto, as may

be amended from time to time in accordance with the terms hereof. The term “Specifications” shall include any revisions issued by Company to the Specifications and/or any specifications provided by Company for products added to Exhibit B after the Effective Date.

“*Rejection Notice*” shall have the meaning set forth in subsection 5(c) hereof.

“*Term*” shall have the meaning set forth in subsection 19(a) hereof.

“*Third Party*” or “*Third Parties*” means any and all Persons other than Company or Manufacturer.

[“*Tolling Fee*” shall initially mean the tolling set forth on Exhibit B hereto as the same may change from time to time in accordance with subsections 8(c) and 8(d) of this Agreement.]

EXHIBIT A TO MANUFACTURING AGREEMENT

Products & Price

<u>SKU</u>	<u>Case Size</u>	<u>Product Description</u>	<u>Cost of Materials</u>	<u>Tolling Fee</u>	<u>Price</u>
			\$	\$	\$
			\$	\$	\$
			\$	\$	\$
			\$	\$	\$

EXHIBIT B TO MANUFACTURING AGREEMENT

Specifications

(attached)

EXHIBIT C TO MANUFACTURING AGREEMENT

Company Supplied Materials

[Note: Provide.]

EXHIBIT D TO MANUFACTURING AGREEMENT

Loss Percentage

[Note: Provide.]