**INDEMNIFICATION AGREEMENT**

In consideration of mutual value received as set out below, **THIS AGREEMENT** is made as of the \_\_\_\_ day of May , 2018 (“the Effective Date”), by and between \_\_\_\_\_\_\_\_\_\_\_\_\_, (“\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_”), a corporation organized and existing under the laws of the State of \_\_\_\_\_\_\_\_\_\_\_\_\_\_, and \_\_\_\_\_\_\_\_\_\_\_\_\_\_, a corporation organized and existing under the laws of the State of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(“Customer”) (each a “Party” and collectively, the “Parties”) enter into this following agreement (this “Agreement”) with respect to the Products as defined below.

**DEFINITIONS**

 The following terms have the following meanings when used in this Agreement:

 **“Cartridges”** means both remanufactured printer cartridges originally manufactured by various Original Equipment Manufacturers (“OEM”) as defined below and remanufactured and new build toner cartridges compatible with various OEM printers.

**“Original Equipment Manufacturer”** **(“OEM”)** means an entity that manufactures and sells printers and cartridges for use in its printers. Examples include, but are not limited to, Hewlett-Packard, Canon, Xerox and Lexmark.

 **“Confidential Information,”** subject to any existing non-disclosure agreement, shall mean any and all information disclosed by the Parties to each other, verbally or in writing, in the course of effectuating this Agreement. Confidential Information shall not include information in possession of one Party prior to the date of disclosure by the other Party, information in the public domain, by publication or any other means which did not constitute an unauthorized disclosure under this or any other similar agreement, information supplied to a Party without restriction by a third party who is not obligated to maintain the information as confidential and information a Party has expressly consented to have made public.

**“Products”** means and refers to newly built, non-OEM Cartridges provided by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ listed by product code on Exhibit A, together with any non-OEM Cartridge substitutes (i.e. Cartridges that can be used in any printers that the listed Products can be used in) for such Cartridges provided by third parties. For avoidance of doubt, “Products” includes remanufactured OEM cartridges which can substitute for the Products listed on Exhibit A, but does not include new OEM products which can substitute for the Products listed on Exhibit A.

**“Terms and Conditions”** means and refers to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_’s “Seller’s Terms and Conditions” that accompany each invoice or are made available to Customer.

**1. CONSIDERATION**

 1.1 As consideration for \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_’s agreement to indemnify as set out below, Customer agrees it will purchase Products from \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

1.2 Customer is free to purchase OEM cartridges. Such purchases will not terminate this Agreement or the indemnification obligations of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ as set out below.

2. INDEMNIFICATION

 **2.1** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ agrees that it shall indemnify Customer from and against any and all liability to third parties resulting from, or arising out of, any claim, demand or action which alleges that the sale, offer for sale, or use of the Products Customer purchases from \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ infringes any intellectual property owned by the various OEM’s (“Claim”).

 **2.2 Conditions on Indemnification**

 The Parties expressly agree and understand that \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ will only indemnify Customer if all of the following conditions are met:

 (a) Customer shall purchase Products from \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, subject to the conditions in Section 1;

 (b) Customer notifies \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ immediately upon receipt of a Claim, in writing, without delay;

 (c) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ has the sole discretion on how to respond to Claim(s);

 (d) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ has the right to direct and control any legal action, including complete discretion to choose the law firm(s) and attorney(s) to pursue any legal action; **AND**

 (e) Customer shall provide assistance and Cooperation, as defined in Sections 2.3 and 2.5 below, at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_’s request, to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ in responding to or defending any claims.

 **2.3** Immediately upon receipt of a Claim Customer shall, without delay, notify \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, in writing, of the Claim(s) (the “Notification”). \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, at its sole discretion, shall decide how to respond. After the Notification, Customer shall provide reasonable assistance to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, to the extent requested by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, in order to assist \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ in responding or defending any Claim(s). \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ will notify Customer, in writing, of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_'s decision as to how to respond to the OEM.

 **2.4** If \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ decides legal action is necessary in regard to a Claim, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ shall have complete discretion to choose the law firm(s) and attorney(s) to pursue such legal action. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ will consult with Customer with respect to such selection. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ shall have the right to direct and control any such legal action. Customer may retain its own counsel at Customer’s expense to monitor and advise Customer.

**2.5** Customer agrees to require its employees to provide assistance, as reasonably requested by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, in the following areas: (a) the litigation process which includes but is not limited to, consultation, providing information based on observations, knowledge and experience (b) the discovery process, which includes but is not limited to, assistance with and participation in document discovery, preparation for and appearance as witnesses at depositions and trial, and in any proceedings thereafter related to the Claim(s), (c) the inspection of facilities and Products, and (d) any other matters that may arise that are reasonably related to the Claim(s) (“Cooperation”). Failure of Customer to provide Cooperation at any time, will result in automatic termination of this Agreement. Any approved costs incurred by Customer shall be reimbursed by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

**2.6** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ shall fully, completely, and promptly indemnify Customer for any legal costs and expenses including but not limited to attorney’s fees incurred by Customer in such legal action, with respect to a Claim. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ may, at its sole discretion, enter into a settlement or compromise with respect to any Claim including, but not limited to, ceasing to sell Products to Customer. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ shall provide indemnification to Customer for any award, damages, fees, payment, penalty or cost which it incurs pursuant to any award, court decision or the like or any settlement or compromise. Customer shall have the right to approve any settlement in regard to any claim brought against Customer.

 **2.7** During the pendency of a Claim, regardless of the terms of any other contract between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and Customer, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ shall have the right to cease the sale of Products or, at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_’s discretion, provide Customer products substitutable for the Products at issue in the Claim (“Substitute Products”). Customer shall have the right to cease the purchase of Products and accept Substitute Products. If such decision to cease selling or purchasing Products or Substitute Products is made by either Party, the acting Party must notify the other Party in writing. In such case, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_’s indemnification will only apply to Products and Substitute Products that Customer sells to a third party within thirty (30) days from the date of the written notification. For the avoidance of doubt, if a Claim is made against Customer and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ notifies Customer of its decision to cease selling Products or Substitute Products to Customer in writing on June 1, then \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_’s indemnification will only apply to Products and Substitute Products that Customer sells through \_\_\_\_\_\_\_\_\_\_\_. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ agrees to buyback any Products sold Customer which it cease selling due to Claims.

 **2.8** If during the pendency of a Claim Customer elects to continue to purchase Products and Substitute Products from \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ agrees to continue to sell Products and Substitute Products to \_\_\_\_\_\_\_ then \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ shall provide indemnification in accordance with this Agreement for Claims, expenses or penalties incurred by \_\_\_\_\_\_\_ as a result of purchase of Products or Substitute Products from \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

3. CONFIDENTIALITY (Subject to any existing non-disclosure agreement)

 3.1 Neither Party will disclose any Confidential Information to a third party including, but not limited to, suppliers, without the prior express written consent of the other Party. Each Party will be fully responsible for insuring the protection of any Confidential Information disclosed to a third party. Each Party agrees to limit access to Confidential Information to those of its employees or third parties who have a need to know the Confidential Information in order to effectuate this Agreement.

 3.2 The disclosure of Confidential Information will not be deemed by implication or otherwise to vest in the receiving Party any rights in the Confidential Information.

 3.3 At any time, upon written request, each Party agrees that it will return any and all written or electronic embodiments of Confidential Information disclosed by the other Party that is then in its possession.

 3.4 This Confidentiality provision shall survive any relationship, contractual or otherwise between the Parties. The obligation to keep information confidential arising out of this agreement will survive termination of this agreement.

 3.5 The Parties shall have the right to seek injunctive relief if necessary to insure compliance with any of the above provisions.

 3.6 Customer agrees that it will not reveal to any third party, without the express written consent of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, the existence of this Agreement.

**4. Termination**

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ may terminate this Agreement at any time by providing forty-five (45) days written notice to Customer. The termination is effective forty-five (45) days from the date of notification to Customer. In the event of termination of this Agreement, the terms of this Agreement shall still apply to any Claim for which \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ sold Products prior to the date of termination.

**5. NOTICES**

 Any notice required or permitted to be given hereunder shall be deemed to have been received on the day delivered to such party at the address set forth below, or at such address specified by such party in writing. Fax or email notices are also sufficient.

If to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 If to Customer: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**6. ASSIGNMENT AND MODIFICATION**

 **6.1** This Agreement shall be binding and shall inure to the benefit of the Parties and their respective assigns. Neither this Agreement nor any of the rights, interests or obligations hereunder of the Parties may be assigned by either of the Parties without the written consent of the other Party which consent shall not be unreasonably withheld or delayed.

 **6.2** Any modification or amendment to this Agreement must be in writing and signed and approved by both Parties.

 **6.3** Any modification or amendment to Exhibit A must be in writing and approved by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ on behalf of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and \_\_\_\_\_\_\_\_\_\_\_\_\_\_ on behalf of Customer. Notices shall be sent to the addresses listed in Section 5.

**7. GOVERNING LAW**

This Agreement shall be construed, and the rights and obligations of the Parties shall be determined, in accordance with the laws of the State of \_\_\_\_\_\_\_\_\_\_\_ without regard to its conflict of laws principles.

**8. ENTIRE AGREEMENT**

This Agreement constitutes the entire understanding between the Parties with respect to the subject matter hereof.

**9. SEVERABILITY**

If any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect then such provision shall be declared null and void and the remainder of the provisions of the agreement shall remain in full force and effect.

*[Signatures on Following Page]*

 **IN WITNESS WHEREOF**, the duly authorized representatives of the Parties have executed this Agreement as of the Effective Date.

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 (Signature) (Signature)

Name: \_\_\_\_\_\_\_\_\_\_\_ Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 (Print Name) (Print Name)

Title: Vice President\_ Title: \_\_\_\_\_\_\_\_\_

 (Print Title) (Print Title)

**Exhibit A**