

**1UP SURFACES DEALER AGREEMENT**

This DEALER AGREEMENT (the “**Agreement**”) is entered into and made effective as of \_\_\_\_\_ (the “**Effective Date**”), by and between:

**1UP SURFACES, LLC**

Address: 917 CR 4781, Boyd, Texas 76023

Phone: (303) 522-0167

Email: info@1upsurfaces.com

AND

**Dealer:** \_\_\_\_\_ (“**Dealer**”)

Tax ID/Resale #: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

**RECITALS**

**WHEREAS**, 1UP Surfaces is engaged in the business of manufacturing and selling specialized trailer flooring products; and

**WHEREAS**, 1UP Surfaces desires to appoint Dealer as a non-exclusive authorized provider of its trailer flooring products under the terms and conditions set forth herein; and

**WHEREAS**, Dealer desires to accept such appointment and perform the services described herein, subject to the terms and conditions of this Agreement;

**NOW, THEREFORE**, in consideration of the mutual covenants and promises set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**1. Product Description.** 1UP Surfaces is a high-performance, porous rubber flooring system engineered specifically to withstand wear and tear from all types of livestock. It is designed to eliminate the need for heavy black mats and promotes a cleaner, healthier environment for animals by allowing liquids to drain through, preventing animals from standing in urine. 1UP Surfaces also provides enhanced cushioning to reduce fatigue and stress during long hauls, and is both slip-resistant and shock-absorbing. Dealer acknowledges and agrees to accurately represent 1UP Surfaces’ features and benefits as part of their marketing efforts, including but not limited to highlighting its porous nature, cushioning properties, slip-resistance, shock absorption, and durability (collectively, the “**Product(s)**”).

2. **Appointment and Scope of Relationship.** IUP Surfaces hereby appoints Dealer, and Dealer hereby accepts the appointment, to act as IUP Surfaces' non-exclusive Dealer and provider of the Products to Customers within the designated Territory during the Term, in accordance with the terms and conditions of this Agreement. IUP Surfaces retains the unrestricted right, in its sole discretion, to market, distribute, and sell the Products, directly or indirectly, to any individual or entity in the Territory, including without limitation through other distributors, Dealers, Dealers, or directly to end users. Dealer shall not sell, offer to sell, or market the Products outside the Territory without IUP Surfaces' prior written consent. Dealer shall direct to IUP Surfaces all inquiries received regarding potential sales of the Products outside the Territory. Dealer's rights under this Agreement are strictly limited to soliciting customers, promoting IUP Surfaces trailer flooring products, and performing installation services for those products.

3. **Independent Contractor Relationship.** The Parties to this Agreement are independent contractors and nothing in this Agreement is intended to, or shall be deemed to, create a joint venture, partnership, agency or employment relationship, franchise, or business opportunity between the Parties. Neither Party, by virtue of this Agreement, has any right, power, or authority to act or create an obligation, express or implied, on behalf of the other Party. Each Party assumes responsibility for the actions of their personnel under this Agreement and is solely responsible for their supervision, daily direction, and control, wage rates, withholding income taxes, disability benefits, or the manner and means through which the work under this Agreement is to be accomplished. Except as provided otherwise in this Agreement, Distributor has the sole discretion to determine Distributor's methods of operation, accounting practices, personnel practices, and business strategy, practices, and methods. If any provision of this Agreement is deemed to create a franchise or business opportunity relationship between the Parties, then the Parties shall negotiate in good faith to modify this Agreement to effect the Parties' original intent..

4. **Competitive Products.** During the Term of this Agreement, Dealer shall not market, sell, resell, distribute, or install any products that are similar to, compete with, or are intended to substitute for the Products within the Territory. This restriction is absolute and unconditional. In the event Dealer desires to sell, resell, distribute, or install any competing or similar products, Dealer must obtain the prior written consent of IUP Surfaces, which IUP Surfaces may withhold in its sole and absolute discretion. Any breach of this provision shall constitute a material breach of this Agreement, giving IUP Surfaces the right to terminate the Agreement immediately without notice or opportunity to cure, and to seek any and all available remedies at law or in equity.

5. **Rights of Affiliates.** Dealer may not purchase Products for the benefit of its Affiliates (defined as any entity whose ownership shares at least 51% of common ownership with at least 51% of the ownership of Dealer), and its Affiliates may not purchase Products directly from IUP Surfaces under this Agreement, without the prior written consent of IUP Surfaces, which may be granted or withheld in IUP Surfaces' sole and absolute discretion. Dealer may not assign or delegate any of its rights or obligations under this Agreement, in whole or in part, to any Affiliate without the prior written consent of IUP Surfaces. If consent is given, Dealer shall remain fully responsible and liable for all acts and omissions of its Affiliates relating to the marketing, promotion, sale, and installation of the Products, and notwithstanding any delegation to Affiliates, Dealer shall continue to be fully responsible for performance of its obligations under this Agreement as if such delegation had not occurred. Additionally, in the event consent is given, any person acting on behalf of Affiliate must complete the training requirements set forth in paragraph 7.5 of this Agreement, before any person can assist or participate in the installation of IUP Surfaces Products. As a condition of any such Affiliates purchasing, installing, or providing any IUP

Surfaces Products such Affiliate shall acknowledge, in writing, that it has reviewed this Agreement and agrees to be bound by its terms as if it were an original party hereto.

**6. Territory and Minimum Purchase Requirements.** Dealer will receive a protected territory consisting of a 150-mile radius from Dealer's principal location (the "**Territory**") for three (3) years, provided Dealer purchases at least one (1) trailer kit per every ninety (90) days during the term of this Agreement. Failure to maintain this minimum purchase requirement allows 1UP Surfaces to revoke Dealer's Territory protection without notice and allows 1UP Surfaces, immediately and without further notice, to contract with any other person or entity to serve as a Dealer, installer, or provider of 1UP Surfaces products within the Territory. Nothing contained in this Agreement, however, shall restrict or prohibit 1UP Surfaces from allowing trailer dealerships located within the Territory to purchase and/or install 1UP Surfaces products in trailers sold by the trailer dealership only, such transactions being expressly excepted from Dealer's protected area and Territory.

**7. Dealer Obligations**

**7.1 Marketing and Sale of Products.** Dealer shall, at its sole expense:

a. Advertise, market, promote, and sell the Products in a manner consistent with good business practices, using commercially reasonable efforts to maximize sales volume and expand the sale of the Products to customers within the Territory;

b. Advertise, market, promote, and sell the Products, and conduct all business activities, in a manner that reflects favorably at all times on the Products, the trademarks, and the good name, goodwill, and reputation of 1UP Surfaces;

c. Establish and maintain a qualified and trained sales and marketing organization sufficient to develop, to 1UP Surfaces' satisfaction, the market potential for the sale and installation of the Products;

d. Possess and maintain sufficient knowledge of the trailer flooring industry, including the Products' features, installation protocols, and differences between the Products and any competing products;

e. Make available at least one of Dealer's personnel, if requested by 1UP Surfaces, for instruction in the installation, marketing, sale, and support of the Products;

f. Participate in 1UP Surfaces-led marketing, advertising, promotion, and sales programs and events as reasonably requested by 1UP Surfaces;

g. Use only promotional and marketing materials provided by 1UP Surfaces under Section 7 without modification, and only for the marketing, advertising, promotion, or sale of the Products. Dealer shall not use any other promotional or marketing materials for the Products without 1UP Surfaces' prior written consent; and

h. Comply with all reasonable directions and instructions from 1UP Surfaces regarding the marketing, advertising, promotion, installation, and sale of the Products, including 1UP Surfaces' sales and marketing policies as may be amended from time to time.

7.2 **Reporting and Notice of Complaint or other Matters.** Dealer shall, at its sole expense provide written notice to 1UP Surfaces within three (3) business days of Dealer's awareness or notice of any complaint, product failure or defect, adverse claim, or potential safety issue regarding the products purchased and/or installed by Dealer. Failure to provide timely provide such written notice releases 1UP Surfaces of any responsibility or liability that may have otherwise been owed to Dealer relating to, or arising from, the complaint, product failure or defect, adverse claim, or potential safety issue. Dealer also agrees to fully and voluntarily cooperate with 1UP Surfaces in the investigation and/or resolution of any such complaint, product failure or defect, adverse claim or potential safety issue.

7.3 **Authority to Perform.** Dealer shall, at its sole expense, obtain and maintain all required material certifications, credentials, licenses, permits, registrations, and authorizations necessary to conduct its business and perform its obligations under this Agreement.

7.4 **Prohibited Acts.** Dealer shall not:

a. Use "1UP Surfaces" or any confusingly similar terms in Dealer's business name or corporate identity;

b. Represent, install, market, sell, or otherwise promote any trailer flooring products that are similar to, competitive with, or intended to substitute for 1UP Surfaces Products during the Term of this Agreement;

c. Fail to follow 1UP Surfaces' installation guidelines, specifications, and protocols, or substitute any unauthorized materials during the installation of 1UP Surfaces Products;

d. Fail to comply with all applicable safety procedures, including the Material Safety Data Sheets (MSDS) provided by 1UP Surfaces for all materials and products used during installation;

e. Make any false or misleading representations or warranties to any Customer regarding 1UP Surfaces, the Products, or any related services;

f. Make any representations, warranties, or statements to Customers regarding the specifications, features, capabilities, or performance of the Products that are inconsistent with materials and information provided by 1UP Surfaces;

g. Engage in any unfair, anti-competitive, deceptive, or misleading practices regarding 1UP Surfaces, the Products, or 1UP Surfaces' trademarks or goodwill;

h. Modify, alter, repackage, or relabel any Products, or market, distribute, or sell the Products other than exactly as delivered by 1UP Surfaces;

i. Resell the Products to any individual or entity that Dealer knows or reasonably suspects may resell the Products to a third party; or

j. Resell or market the Products to any federal, state, or local government, or any political subdivision or agency thereof, without the express prior written approval of 1UP Surfaces.

7.5 **Training Requirements.** All persons who will be performing or assisting installation of 1UP Surfaces products on behalf of, or at the request of, Dealer must fully complete 1UP Surfaces' s mandatory "Trained Dealer" program prior to performing any installations of 1UP Surfaces products.

a. As a condition of training:

- Dealer must purchase a 2,500-pound trailer kit for use during training. Dealer must arrange for appropriate and safe hauling of the trailer kit back to Dealer's location, including but not limited to, supplying sufficient trucks, trailers, and qualified operators and drivers.
- If training occurs at 1UP Surfaces' facility, Dealer shall pay a training fee of \$250.00 per day.
- If training occurs at Dealer's location, Dealer shall pay a training fee of \$350.00 per day, in addition to reimbursing 1UP Surfaces for all reasonable travel, lodging, and meal expenses incurred by 1UP Surfaces personnel conducting the training.

b. Dealer acknowledges and agrees that successful completion of the Trained Dealer program is a condition precedent to performing any warranty-eligible installations under this Agreement, and that failure to complete the program in accordance with 1UP Surfaces' standards may result in immediate suspension or termination of Dealer's rights under this Agreement.

7.6 **Probationary Period.** Dealer will be limited to installing standard trailer flooring for the first twelve (12) months and may not apply Top-Coat products during this period.

## 8. **1UP Surfaces Obligations.**

8.1 **Assistance with Marketing and Promotion.** 1UP Surfaces shall, at its sole discretion:

a. Provide Dealer with promotional information and marketing materials, either free of charge or at Dealer's cost and expense, as determined by 1UP Surfaces, for use solely in accordance with this Agreement;

b. Provide Dealer with such information, material, and limited support as 1UP Surfaces, in its sole discretion, deems necessary to assist Dealer in the marketing, advertising, promotion, and sale of the Products, provided that nothing in this Agreement obligates 1UP Surfaces to undertake any specific marketing initiatives;

c. Allow Dealer, at Dealer's own cost and expense, to participate in any 1UP Surfaces-led marketing, advertising, promotional, or sales programs or events relating to the Products, subject to such conditions as 1UP Surfaces may impose from time to time;

d. At 1UP Surfaces' sole discretion, cooperate with Dealer in advertising and promotion efforts and, if applicable, offer limited cooperative advertising allowances upon written agreement by 1UP Surfaces. Any allowances shall be credited against future purchases only upon receipt of satisfactory evidence of qualifying advertising expenditures by Dealer.

8.2 **Product Regulatory Compliance.** 1UP Surfaces shall:

a. Ensure, in all material respects, that the Products comply with all applicable laws and regulations governing the manufacture and sale of the Products within the Territory; and

b. Obtain and maintain all material licenses, permits, registrations, authorizations, or approvals from applicable regulatory authorities necessary to lawfully manufacture and sell the Products in the Territory.

9. **Representations and Warranties.** Each Party represents and warrants to the other Party that:

a. It is duly organized, validly existing, and in good standing under the laws of its jurisdiction of organization, and has the full right, power, and authority to enter into this Agreement and perform its obligations hereunder;

b. The execution, delivery, and performance of this Agreement by such Party have been duly authorized by all necessary action;

c. When executed and delivered by such Party, this Agreement constitutes the legal, valid, and binding obligation of such Party, enforceable against it in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws affecting the enforcement of creditors' rights generally, and by general principles of equity; and

d. The execution, delivery, and performance of this Agreement by such Party do not and will not conflict with, result in a breach of, or constitute a default under any other agreement to which it is a party or by which it is bound, or violate any applicable law, regulation, or court order.

## **10. Sales, Pricing, and Product Orders**

10.1 **Terms of Sale.** All purchases and sales of Products between 1UP Surfaces and Dealer shall be governed solely by the terms of this Agreement and the commercial terms set forth in any written Purchase Order issued by Dealer and accepted by 1UP Surfaces. The terms of this Agreement supersede and control over any conflicting terms contained in any purchase order, confirmation, invoice, or other document issued by either party, unless expressly agreed to in writing by 1UP Surfaces.

10.2 **Changes in Products and Pricing.** 1UP Surfaces reserves the right, at its sole discretion, to:

- a. update or modify the pricing, specifications, or availability of any Product at any time upon thirty (30) days' written notice to Dealer;
- b. discontinue the manufacture or sale of any Product at any time without liability, provided 1UP Surfaces shall use reasonable efforts to fulfill accepted Purchase Orders for such discontinued Product; and
- c. introduce new products, which may be made available to Dealer at 1UP Surfaces' discretion.
- d. Dealer acknowledges that it must independently verify current pricing and availability with 1UP Surfaces before making any commitments or representations to Customers.

10.3 **Forecasts.** Dealer shall, upon 1UP Surfaces' request, provide good faith non-binding forecasts of its anticipated Product purchases for each upcoming calendar quarter. Such forecasts are for planning purposes only and shall not constitute binding purchase commitments.

10.4 **Purchase Orders.** Dealer shall submit all Purchase Orders to 1UP Surfaces in writing, specifying the type and quantity of Products requested, the requested delivery date, and the delivery location. Purchase Orders shall not be binding on 1UP Surfaces until expressly accepted by 1UP Surfaces in writing.

10.5 **Acceptance or Rejection of Purchase Orders.** 1UP Surfaces shall use commercially reasonable efforts to accept or reject any properly issued Purchase Order within five (5) business days following receipt. If 1UP Surfaces does not respond within such period, the Purchase Order shall be deemed rejected.

10.6 **Order Changes or Cancellations.** No accepted Purchase Order may be cancelled or modified by Dealer without the prior written consent of 1UP Surfaces. 1UP Surfaces may condition any acceptance of a change on the adjustment of pricing, delivery dates, or other terms.

10.7 **Shipment and Delivery.** 1UP Surfaces shall use commercially reasonable efforts to ship Products within ten (10) business days after accepting a written Purchase Order. Delivery shall be made FOB 1UP Surfaces' shipping point, and risk of loss shall pass to Dealer upon delivery to the carrier.

10.8 **Inspection and Acceptance.** Dealer shall inspect all Products upon receipt and notify 1UP Surfaces in writing of any nonconformity, damage, or defect within five (5) business days. If Dealer fails to timely notify 1UP Surfaces, Products shall be deemed accepted. 1UP Surfaces' sole obligation for any valid claim shall be, at its option, to repair or replace the nonconforming Products or refund the applicable purchase price.

10.9 **Title and Security Interest.** Title to Products shall pass to Dealer upon delivery to the carrier. 1UP Surfaces retains and Dealer hereby grants 1UP Surfaces a purchase money security interest in all Products delivered until full payment is received.

10.10 **Pricing, Taxes, and Other Charges.** All prices are exclusive of sales, use, excise, and similar taxes, which shall be the responsibility of Dealer. Dealer shall also bear all shipping, insurance, and handling costs unless otherwise agreed in writing.

10.11 **Payment Terms.** Dealer shall pay all invoiced amounts within thirty (30) days of the date of 1UP Surfaces' invoice. Interest shall accrue on any past due amounts at the rate of 1.5% per month or the highest rate permitted by law, whichever is lower.

10.12 **Invoice Disputes.** Dealer must notify 1UP Surfaces of any dispute regarding an invoice within ten (10) business days of receipt. The parties shall work in good faith to promptly resolve any such disputes. Pending resolution, Dealer shall timely pay all undisputed amounts.

## **11. Warranty and Repairs**

11.1 **Limited Warranty.** 1UP Surfaces warrants that, for a period of twelve (12) months from the date of delivery of the Products to the Customer, the Products (excluding Samples) will:

- a. be free from material defects in workmanship and material; and
- b. conform in all material respects to 1UP Surfaces' published specifications applicable to such Products.

Dealer may pass through to its Customers only this limited warranty, subject to compliance with Sections 10.2 through 10.5. Dealer shall not make any representations, warranties, or guarantees to any Customer regarding the Products that are inconsistent with or in addition to the express warranty set forth herein. Dealer shall promptly notify 1UP Surfaces in writing of any known warranty claims and cooperate fully with 1UP Surfaces' investigation of such claims.

11.2 **Warranty Remedies.** If any Product fails to conform to the warranty during the applicable warranty period, then, at 1UP Surfaces' sole option, 1UP Surfaces shall either (a) repair the non-conforming Product; (b) replace the non-conforming Product; or (c) refund the original purchase price paid by Dealer for the affected Product. **THIS SECTION 10.2 SETS FORTH DEALER'S SOLE AND EXCLUSIVE REMEDY, AND 1UP Surfaces' ENTIRE LIABILITY, FOR ANY BREACH OF WARRANTY RELATING TO THE PRODUCTS.**

11.3 **Warranty Limitations.** 1UP Surfaces shall have no obligation under the warranty if:

- a. Dealer or Customer fails to notify 1UP Surfaces in writing within ten (10) business days after discovery of a non-conformity;
- b. The Product has been subjected to misuse, neglect, accident, abuse, or use in a manner inconsistent with its intended purpose, specifications, or instructions;
- c. The Product has been modified, repaired, improperly installed, or otherwise altered without the prior written consent of 1UP Surfaces; or
- d. Dealer fails to follow all required 1UP Surfaces installation protocols, training requirements, and repair procedures exactly as specified by 1UP Surfaces.
- e. Dealer shall not service, repair, modify, alter, reconstruct, reverse engineer, or otherwise change any Product except as expressly authorized in writing by 1UP Surfaces.

11.4 **Warranty Disclaimers.** EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, 1UP SURFACES DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT. DEALER ACKNOWLEDGES AND AGREES THAT IT HAS NOT RELIED ON ANY OTHER REPRESENTATIONS OR WARRANTIES MADE BY 1UP SURFACES OR ITS REPRESENTATIVES EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT.

11.5. **Warranty Claim Procedures.** Dealer must submit all warranty claims in accordance with 1UP Surfaces' warranty procedures, including (a) submitting samples and photographs of the alleged defect; (b) providing all reasonably requested documentation and assistance; and (c) obtaining prior written authorization from 1UP Surfaces before undertaking any repairs. 1UP Surfaces shall restock Dealer with repair materials, if applicable, only upon validation of a warranty claim and in accordance with 1UP Surfaces' replenishment policies.

12. **Term.** The term of this Agreement shall commence on the Effective Date and, unless earlier terminated as provided herein, shall continue for a period of three (3) years (the "Initial Term"). Thereafter, this Agreement shall automatically renew for additional successive one (1) year periods unless either Party provides written notice of its intent not to renew at least sixty (60) days prior to the expiration

of the then-current term. If either Party provides timely notice of its intent not to renew, this Agreement shall terminate upon expiration of the then-current term.

**13. Termination.** Notwithstanding anything to the contrary in this Agreement, either Party may terminate this Agreement, without cause, by providing thirty (30) days' prior written notice to the other Party. Additionally, this Agreement may be terminated immediately by either Party upon written notice if:

- a. the other Party fails to pay any amount due under this Agreement and remains in default for more than ten (10) days following receipt of written notice;
- b. the other Party is in material breach of this Agreement (except payment obligations) and fails to cure such breach within thirty (30) days after receipt of written notice; or
- c. the other Party becomes insolvent, makes a general assignment for the benefit of creditors, files for or has filed against it any bankruptcy or insolvency proceeding, or has a receiver appointed for a substantial portion of its assets.

Any termination under this Section 12 is without prejudice to any other rights or remedies available to the terminating Party.

**13.1 Effect of Expiration or Termination.** Upon expiration or termination of this Agreement:

- a. 1UP Surfaces may cancel any pending Purchase Orders where delivery is due after the effective date of termination;
- b. Dealer shall immediately cease representing itself as an authorized Dealer of 1UP Surfaces products and shall promptly return or destroy all Samples, promotional materials, and Confidential Information, as directed by 1UP Surfaces; and
- c. Neither Party shall be liable to the other for any compensation, reimbursement, loss of profits, goodwill, or similar losses arising from termination or expiration of this Agreement.

Any rights, obligations, or provisions intended to survive termination shall survive in accordance with Section 12.1.

**14. Post-Termination Non-Compete.** Upon expiration or termination of this Agreement for any reason, Dealer agrees that, for a period of two (2) years from the effective date of such expiration or termination, Dealer shall not, directly or indirectly, whether on Dealer's own behalf or on behalf of any other person or entity:

- a. Sell, solicit the sale of, install, market, promote, distribute, or otherwise provide any trailer flooring products that are competitive with or substantially similar to the Products;

- b. Assist or engage with any business engaged in selling, installing, marketing, or distributing trailer flooring products that compete with or substitute for the Products; or
- c. Contact, solicit, or attempt to divert any customer, prospective customer, dealer, Dealer, or distributor of IUP Surfaces for the purpose of selling or installing competitive products.

14.1 **Geographic Scope.** The geographic scope of this restriction shall include the Territory, any area within a 15-mile radius of Dealer's principal place of business, and any geographic region in which Dealer marketed, promoted, installed, or sold IUP Surfaces Products during the twelve (12) months preceding termination.

a. Dealer acknowledges and agrees that this non-compete covenant is reasonable and necessary to protect IUP Surfaces' legitimate business interests, including the protection of IUP Surfaces' confidential information, trade secrets, goodwill, customer relationships, investment in training Dealer, and the integrity of IUP Surfaces' dealer and Dealer network.

b. Dealer further agrees that IUP Surfaces shall be entitled to injunctive relief, in addition to any other remedies available at law or in equity, to enforce the terms of this Section.

## 15. **Confidential Information.**

15.1 **Definition of Confidential Information.** During the Term, either Party (the "**Disclosing Party**") may disclose or make available to the other Party (the "**Receiving Party**") confidential information including business, financial, technical, product, pricing, and other proprietary information ("**Confidential Information**"). Confidential Information does not include information that (a) is or becomes publicly known through no breach of this Agreement; (b) is obtained lawfully from a third party without restriction; or (c) is independently developed without use of Confidential Information.

15.2 **Protection and Use of Confidential Information.** The Receiving Party shall protect the Disclosing Party's Confidential Information with at least the same degree of care it uses for its own confidential information, but no less than commercially reasonable care. The Receiving Party shall not use Confidential Information for any purpose other than performance of this Agreement and shall not disclose Confidential Information except to its employees, contractors, or advisors who need to know such information to fulfill obligations under this Agreement and who are bound by confidentiality obligations. This obligation shall continue during the Term and for five (5) years after expiration or termination. Upon termination, all Confidential Information must be returned or destroyed, and the Receiving Party shall certify compliance in writing. The Disclosing Party shall be entitled to seek injunctive relief for any breach of this Section.

**16. Compliance with Laws and Policies.** Each Party shall comply with all applicable federal, state, and local laws, regulations, and ordinances applicable to the operation of its business and performance under this Agreement. Dealer shall comply with all 1UP Surfaces policies and procedures applicable to Dealers, as may be amended by 1UP Surfaces from time to time.

**17. INDEMNIFICATION. SUBJECT TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, DEALER SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS 1UP SURFACES, ITS OFFICERS, DIRECTORS, MANAGERS, MEMBERS, SHAREHOLDERS, EMPLOYEES, AGENTS, AFFILIATES, SUCCESSORS, AND PERMITTED ASSIGNS (COLLECTIVELY, THE “1UP SURFACES INDEMNIFIED PARTIES”) FROM AND AGAINST ANY AND ALL LOSSES, DAMAGES, LIABILITIES, DEFICIENCIES, CLAIMS, ACTIONS, JUDGMENTS, SETTLEMENTS, INTEREST, AWARDS, PENALTIES, FINES, COSTS, OR EXPENSES OF WHATEVER KIND, INCLUDING REASONABLE ATTORNEYS' FEES (“LOSSES”), INCURRED BY ANY 1UP SURFACES INDEMNIFIED PARTY, ARISING OUT OF OR RELATING TO ANY THIRD-PARTY CLAIM ALLEGING:**

**A. BREACH OR NON-FULFILLMENT OF ANY REPRESENTATION, WARRANTY, COVENANT, OR OBLIGATION OF DEALER UNDER THIS AGREEMENT;**

**B. BODILY INJURY, DEATH, OR DAMAGE TO REAL OR TANGIBLE PERSONAL PROPERTY CAUSED BY THE WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF DEALER OR ITS PERSONNEL;**

**C. ANY FAILURE BY DEALER TO COMPLY WITH APPLICABLE LAWS, REGULATIONS, OR ORDINANCES;**

**D. BODILY INJURY, DEATH, OR DAMAGE TO REAL OR TANGIBLE PERSONAL PROPERTY CAUSED BY DEALER’S INSTALLATION OF THE PRODUCTS OR FAILURE TO ADHERE TO 1UP SURFACES’ INSTALLATION PROTOCOLS;**

**E. ANY CLAIM THAT DEALER’S MARKETING, DISTRIBUTION, INSTALLATION, SALE, OR USE OF THE PRODUCTS, OR DEALER’S USE OF 1UP SURFACES’ TRADEMARKS OUTSIDE THE SCOPE OF THIS AGREEMENT, INFRINGES OR MISAPPROPRIATES ANY INTELLECTUAL PROPERTY RIGHT OF ANY THIRD PARTY.**

**17.1 Procedure.** If any 1UP Surfaces Indemnified Party becomes aware of any claim, event, or fact that may give rise to a claim for indemnification under this Agreement, the 1UP Surfaces Indemnified Party shall promptly notify Dealer in writing of such claim, event, or fact. The failure to promptly notify Dealer shall not relieve Dealer of its obligations hereunder except to the extent that Dealer is actually prejudiced by such failure. Upon receipt of such notice, Dealer shall have the exclusive right to assume and control the defense of the claim with counsel reasonably acceptable to 1UP Surfaces, and 1UP Surfaces shall cooperate in the investigation, defense, and settlement of such claim at Dealer’s expense; provided, however, that 1UP Surfaces

shall have the right to participate in the defense of such claim, at its own expense. Dealer shall not settle any such claim without (i) the prior written consent of IUP Surfaces, unless the settlement includes an unconditional release of all IUP Surfaces Indemnified Parties from all liability with respect to such claim and does not impose any obligations or restrictions on IUP Surfaces Indemnified Parties other than the payment of money, and (ii) IUP Surfaces' review and approval of the terms of settlement. If Dealer fails to assume control of the defense of any such claim within a reasonable time after receipt of written notice, IUP Surfaces may defend the claim in such manner as it may deem appropriate, at Dealer's cost and expense, and Dealer shall remain responsible for indemnifying the IUP Surfaces Indemnified Parties in accordance with this Agreement.

**18. LIMITATION OF LIABILITY. EXCEPT FOR LIABILITY ARISING FROM (A) INDEMNIFICATION OBLIGATIONS UNDER THIS AGREEMENT, (B) BREACH OF CONFIDENTIALITY OBLIGATIONS UNDER THIS AGREEMENT, OR (C) INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, OR ENHANCED DAMAGES, LOSS OF DATA, LOST PROFITS OR REVENUES, OR DIMINUTION IN VALUE OF BUSINESS, ARISING OUT OF OR RELATING TO ANY BREACH OF THIS AGREEMENT, REGARDLESS OF:**

**(I) WHETHER SUCH DAMAGES WERE FORESEEABLE;**

**(II) WHETHER OR NOT THE PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; AND**

**(III) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT, OR OTHERWISE) ON WHICH THE CLAIM IS BASED.**

**18.1 THE FOREGOING LIMITATION SHALL NOT APPLY TO THE GROSSLY NEGLIGENT ACTS OR OMISSIONS OR WILLFUL MISCONDUCT OF EITHER PARTY. THE FOREGOING LIMITATIONS APPLY EVEN IF THE REMEDIES PROVIDED UNDER THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE.**

**19. Insurance.** Each Party shall maintain commercially reasonable insurance coverage during the Term, including general commercial liability and product liability insurance, with minimum limits of \$1,000,000 per occurrence. Upon request, certificates of insurance must be provided showing the other Party as an additional insured.

**20. Force Majeure.** Neither Party shall be liable or responsible to the other Party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations to make payments to the other Party hereunder), when and to the extent such failure or delay is caused by or results from acts beyond the impacted Party's ("**Impacted Party**") reasonable control, including, without limitation, the following force majeure events ("**Force Majeure Events**"): (a) acts of God; (b) flood, fire, earthquake, epidemic, or

explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest; (d) action by any governmental authority or requirements of law; (e) embargoes or blockades in effect on or after the date of this Agreement; (f) national or regional emergency; (g) strikes, labor stoppages or slowdowns, or other industrial disturbances; (h) telecommunications breakdowns, power outages, shortages of warehouse or storage space, inadequate transportation services, or inability or delay in obtaining supplies of adequate or suitable materials; and (i) other similar events beyond the reasonable control of the Impacted Party. The Impacted Party shall give written notice of the Force Majeure Event to the other Party within five (5) days of the occurrence, stating the anticipated duration of the Force Majeure Event. The Impacted Party shall use diligent efforts to end the failure or delay and minimize the effects of such Force Majeure Event. The Impacted Party shall resume performance of its obligations as soon as reasonably practicable after the removal of the cause. In the event that the Impacted Party's failure or delay remains uncured for a period of thirty (30) days following the notice provided under this Section, the other Party may thereafter terminate this Agreement upon ten (10) days' written notice.

**21. Entire Agreement.** This Agreement, including and together with any related exhibits, schedules, and attachments, constitutes the sole and entire agreement of the Parties with respect to the subject matter contained in this Agreement and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral. If there is an inconsistency between any of the provisions in the main body of this Agreement and the related exhibits, schedules, and attachments, the provisions in the main body of this Agreement/the exhibits, schedules, and attachments shall prevail.

**22. Survival.** Subject to the limitations and other provisions of this Agreement, Sections 1 through 21 of this Agreement, as well as any other provision that, in order to give proper effect to its intent, should survive such expiration or termination, shall survive the expiration or termination of this Agreement.

**23. Notices.** All notices, requests, consents, claims, demands, waivers, and other communications under this Agreement must be in writing and addressed to the other Party at the addresses set forth on the first page of this Agreement (or to any other address that the receiving Party may designate from time to time in accordance with this Section). Unless otherwise agreed herein, all notices must be delivered by personal delivery, nationally recognized overnight courier, or certified or registered mail (in each case, return receipt requested and postage prepaid), or email. Except as otherwise provided in this Agreement, a notice is effective only (a) on receipt by the receiving Party, and (b) if the Party giving the notice has complied with the requirements of this Section.

**24. Headings.** The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement.

**25. Severability.** If any term or provision of this Agreement is invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability does not affect any other term or provision of this Agreement; provided, however, that if any fundamental term or provision of this Agreement is invalid, illegal, or unenforceable, the remainder of this Agreement is unenforceable. On a determination that any term or provision is invalid, illegal, or unenforceable, the Parties shall negotiate in good faith to

modify this Agreement to achieve the intended commercial result of the original provision to the greatest extent possible.

**26. Amendments.** No amendment to this Agreement is effective unless it is in writing[, identified as an amendment to this Agreement,] and signed by an authorized representative of each Party.

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

**28. Cumulative Remedies.** All rights and remedies provided in this Agreement are cumulative and not exclusive, and the exercise by either Party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or later be available at law, in equity, by statute, in this or any other agreement between the Parties or otherwise.

**29. Assignment.** Neither Party may assign any of its rights or delegate or subcontract any of its obligations under this Agreement without the prior written consent of the other Party. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves the assigning or delegating Party of any of its obligations under this Agreement.

**30. Successors and Assigns.** This Agreement is binding on and inures to the benefit of the Parties and their respective successors and permitted assigns.

**31. No Third-Party Beneficiaries.** Subject to the next sentence, the Parties do not confer any rights or remedies upon any other individual or entity except the Parties to this Agreement and their respective successors and permitted assigns.

**32. Choice of Law; Forum.** This Agreement, and all matters arising out of or relating to this Agreement, are governed by, and construed in accordance with, the laws of the State of Texas, without regard to the conflict of laws provisions thereof to the extent these principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of Texas. Each Party agrees that it will not commence any action, litigation, or proceeding of any kind whatsoever against the other Party in any way arising from or relating to this Agreement, and all contemplated transactions, including contract, equity, tort, fraud, and statutory claims, in the courts of the State of Texas sitting in Wise County, Texas. Each Party submits to the exclusive jurisdiction of these courts and agrees to bring any action, litigation, or proceeding only in the courts of the State of Texas sitting in Wise County, Texas. Each Party agrees that a final judgment in any action, litigation, or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

**33. Counterparts.** This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the Effective Date by their duly authorized representatives.

1Up Surfaces, LLC d/b/a 1UP Surfaces  
Flooring

\_\_\_\_\_

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_