

## HOLD HARMLESS AGREEMENT

This Hold Harmless Agreement ("Agreement") is made on April 6, 2020 by and between \_\_\_\_\_ ("Buyer") and Berry Global, Inc. ("Berry") (Buyer and Berry each a "Party").

1. As a result of the critical situation caused by COVID-19 and the low market supply of facemasks needed to protect healthcare workers and others throughout the world, Berry has developed a face shield ("Product") for general purpose use only. Due to the urgency of the need and the requested speed to market, the Buyer understands that Berry has not undertaken typical or customary FDA, OSHA, safety, healthcare, or other regulatory testing and approval of the Product, and that Berry is therefore unable to warrant or represent that the Product will provide the necessary protection against the virus causing COVID-19 or other viruses, disease, or other biological exposure. Customer agrees to assume all responsibility and liability in relation to (1) its use of the Product; and (2) any third party application and use of the Product. Berry hereby disclaims all warranties, including without limitation, the warranties of merchantability and of use for a specific purpose, and offers the Product to Buyer "as is." Buyer agrees that all Products are sold on the condition that Buyer will examine and test samples to determine whether the Products: (i) meet Buyer's requirements; (ii) are appropriate for the Buyer's intended use; and (iii) comply with Buyer's compatibility and use requirements.
2. THE BUYER AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS BERRY AND ITS SUBSIDIARIES AND AFFILIATES, AND THE SHAREHOLDERS, DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS OF BERRY AND ITS SUBSIDIARIES AND AFFILIATES FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, FINES, PENALTIES, OR DAMAGES OF ANY KIND INCLUDING WITHOUT LIMITATION CLAIMS FOR BODILY INJURY, PERSONAL INJURY, OR DEATH AS A RESULT OF THE USE OR DISTRIBUTION OF THE PRODUCT BY BUYER, BUYER'S EMPLOYEES, PATIENTS, MEMBERS OF THE PUBLIC, AND ANYONE ELSE RECEIVING THE PRODUCT FROM BUYER. THE BUYER'S INDEMNIFICATION OBLIGATION SHALL INCLUDE WITHOUT LIMITATION BERRY'S ATTORNEY'S FEES AND EXPENSES AND SHALL FURTHER INCLUDE FINES, PENALTIES, COSTS AND OTHER IMPOSITIONS MADE BY ANY GOVERNMENT OR QUASI GOVERNMENT AGENCY AS A RESULT OF THE BUYER'S USE OR DISTRIBUTION OF THE PRODUCT.
3. The Buyer agrees to purchase and maintain public liability insurance naming Berry as an additional insured to support the indemnification provisions set forth above with limits of no less than five million dollars (\$5,000,000) per occurrence and in the aggregate and agrees that such policy will provide for no less than 30 days' notice of cancellation or modification to Berry. Buyer agrees that the maintenance of such insurance shall not obviate or mitigate its obligation of indemnification set forth above and that such obligations of indemnification shall be enforceable independently of the insurance provisions set forth above.
4. This Agreement shall be binding on and shall inure to the benefit of the parties and their legal representatives, successors, and assigns.
5. Any provision of this Agreement may be altered or amended only by a written document signed by both Parties. Each Party agrees that another Party's failure to enforce any provision under this Agreement shall not constitute a waiver or serve as a bar to subsequent enforcement of such provision or any other provision under this Agreement.

6. This Agreement is to be construed in accordance with the laws of the state of Indiana without regard to its choice of law principles. Any dispute shall be subject to the jurisdiction of Indiana courts.
7. If any provision of this Agreement is held invalid by any tribunal in a final decision, such provision shall be deemed modified to eliminate the invalid element, and, as so modified, such provision shall be deemed a part of this Agreement. If it is not possible to modify any such provision to eliminate the invalid element, such provision shall be deemed eliminated from this Agreement. The invalidity of any provision of this Agreement shall not affect the force and validity of the remaining provisions.

BUYER: \_\_\_\_\_

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

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_

BERRY GLOBAL, INC.

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

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_