

EXCLUSIVE PRODUCT AND PROPRIETARY RIGHTS LICENSE AGREEMENT

This exclusive Product and Proprietary Rights License Agreement ("Agreement") is entered into by and between:

Gryphon Industries LLC ("Owner"), having a place of business at 6886 Nancy Ave, Celina, Ohio 45822,

AND

ToolBox Widget INC. ("TBW"), having a place of business at: 241 Elk Park Rd.. Columbia Falls, MT 59912.

RECITALS

- A. **Whereas**, Owner has developed and is currently selling, under the U.S. registered trademark GRYPMAT, various configurations of flexible, non-slip tool trays for holding and storing tools while sitting on a vehicle, aircraft or other location during use (individually or collectively the "Product").
- B. **Whereas**, TBW is in the business of manufacturing, marketing, and selling products related to the storage and organization of tools, and desires to manufacture, market, and sell the Product on an exclusive, world-wide basis.

Now, therefore, for and in consideration of the mutual covenants set forth hereinafter, it is hereby agreed as follows:

1) Definitions

- a) **"Proprietary Rights"** means any registered or unregistered rights or applications for rights owned, including without limitation, trademarks, trade names, titles, logos, copyrights and neighboring rights, semiconductor chip layouts or masks, trade secrets, patents, patent applications, utility models, registered design rights, unregistered design rights, database rights, get up, trade dress, moral rights, good will, and publicity rights, together with all inventions, discoveries, technology, ideas, know-how, data, information, processes, methods, procedures, formulas, drawings and designs, computer programs, software source code and object code, and all amendments, modifications, and improvements thereto for which such patent, trademark, service mark, copyright and neighboring rights, semiconductor chip layouts or masks, trade secrets, utility models, registered design rights, unregistered design rights, database rights, get up, trade dress, moral rights or publicity rights may exist or may be sought and obtained in the future.

- b) **"Patent"** shall mean: _____ [If applicable, insert country and number of each patent.]
- c) **"Trademark"** means the mark GRYPMAT, as well as any US or foreign trademark registration, including US Trademark Registration 5181033, issued April 11, 2017, and is a Proprietary Right under this Agreement.
- d) **"Product"** shall mean any form of the Product defined above as well as the "Work Product" (as herein defined).
- e) **"Work Product"** shall mean any product or process that Owner develops in the future relating to the Product. Such Work Product shall be immediately disclosed to TBW, and TBW shall have the option to include such Work Product in the present Agreement.
- f) **"Net Sales Price"** shall mean the TBW's gross sales price or invoice price, less trade and quantity discounts, less cost of Product sold, less applicable third party sales and fulfillment fees and less marketing expenses.
- g) **"Owner"** shall mean the Owner named above, its affiliates, assigns, and successors in interest.
- h) **"TBW"** shall mean the ToolBox Widget INC., its affiliates, assigns, and successors in interest.
- i) **"Party"** shall mean Owner and/or TBW as the context indicates.

2) **Product and Proprietary Rights License**

- a) Owner hereby grants to TBW the exclusive right and license to manufacture, use, market, and sell the Product on a worldwide basis, except as specified in Section 2)b below. In this regard, Owner hereby grants to TBW an exclusive, worldwide license to any and all Proprietary Rights related to the Product.
- b) _____
[Specify any exclusions here]

3) **Obligations and Warranties**

- a) Owner shall pay all fees, if any, and take any commercially necessary steps to maintain any and all Proprietary Rights, including the trademark GRYPMAT, relating to the Product.
- b) Owner warrants that it has not licensed or granted any Proprietary Rights in the Product to a third party or has otherwise encumbered any

Proprietary Rights in the Product, including, but not limited to, the granting of a security interest in any Proprietary Rights in the Product.

- c) Owner warrants that to the best of its knowledge, the Product does not infringe any patent, trademark, or other Proprietary Rights of a third party anywhere in the World.
- d) Owner warrants that it owns the molds and associated tooling currently used to manufacture the Product, and such molds and associated tooling are all in good working order. TBW is granted the right and license to use such molds and associated tooling, without charge, for the manufacture of the Product. Owner shall provide TBW with all commercially reasonable assistance in transitioning the manufacture of the Product from the Owner to TBW, including utilizing the existing manufacturing vendor(s) for the Product.
- e) With one exception, the molds and associated tooling will continue to be owned by Owner. The one exception is for the mold designated as "Large Grypmat Mold" and its associated tooling. TBW will purchase the Large Grypmat Mold and associated tooling from Owner for the amount of \$6,188.00, whereupon TBW will own the mold and associated tooling.
- f) TBW agrees to use its best commercial efforts to manufacture, market, and sell the Product.

4) Expansion of Proprietary Rights

If requested by TBW, Owner will file trademark registration applications for the GRYPMAT trademark in countries where sales of the Product are occurring and/or where significant marketing or sales campaigns are underway or have occurred. In this regard, the Parties understand and appreciate that unlike in the United States, in almost all countries a trademark registration can be obtained without the need to use the trademark in the country of interest. As such, a competitor or any third party can seek to register the GRYPMAT mark in a country in advance of any attempt by the Owner to register is GRYPMAT mark in such country.

5) Term

This Agreement shall be effective as of the date of execution by all Parties and shall continue for an initial term of three (3) years or until otherwise terminated pursuant to the terms of this Agreement. If by at least ninety (90) days before the end of the then current term neither Party gives notice to the other Party of its decision to not extend the term of this Agreement, this Agreement shall automatically be extended for an additional one-year term.

6) **Royalty**

- a) **Royalty Rate:** TBW shall pay to Owner a Royalty at the rate of ten percent (10%) of the Net Sales Price as defined in Section 1(f) above for each unit of the Product sold. Such Royalty shall accrue, become due, and payable when the Product is shipped by TBW, or by any affiliate, vendor, or contractor of TBW. Licensee shall pay the Royalty due to Owner within thirty (30) days after the end of each calendar month in which the Product is shipped.
- b) **Returned Product:** Owner shall not be paid a Royalty on Product that is returned to TBW. However, if the returned Product is later resold, Owner shall be paid a Royalty on such resold Product.
- c) **Royalty Report:** TBW shall prepare and provide a written report ("Royalty Report") to Owner detailing accurately the volume of Product shipped, the sales prices, the cost of the Product, the total sales made in such quarter, the total cost of the Product sold in such quarter, together with an itemization of any adjustments.
- d) **Royalty Payment:** Payment of Royalties shall be via ACH payment to the financial institution routing number and account number provided by Owner. If Owner desires to change the routing number and account number, Owner shall give notice of such change at least ten (10) business days prior to the due date of the next Royalty payment.
- e) **Royalty Term:** A Royalty shall be paid for as long as the Product is manufactured, distributed, and/or sold by TBW. In the event that this Agreement is lawfully terminated by Owner or TBW, TBW may continue to sell Product that has already been manufactured, and shall pay Owner the Royalty specified herein.
- f) **Foreign Exchange:** If Royalty payments are made to TBW in a foreign country, TBW shall obtain any permits and documents needed in order to make said payments under any currency or applicable foreign exchange regulations, and will make all Royalty payments to Owner in U.S. Dollars.

7) **Samples**

If requested by Owner, but not more often than one time during a calendar year, TBW shall furnish to Owner three (3) samples of each configuration of the Product including its packaging.

8) Records

TBW shall keep complete, legible, and accurate records with respect to all sales of Product subject to Royalty under this Agreement. The records shall be made, kept, and maintained in a manner such that the Royalty Reports can be verified by an outside independent auditor or by Owner or its representative(s). Owner, or its authorized agent or representative, within two (2) years after a Royalty has been paid shall have the right to examine and audit the records of TBW upon reasonable notice during normal business hours, not more than once per calendar year. In the event of a dispute as to the sufficiency or accuracy of such records, Owner may have an independent auditor examine and certify such records at Owner's expense unless a discrepancy of more than five percent (5%) in the Royalty Reports is discovered, wherein the reasonable cost of the audit shall be at TBW's expense. TBW shall make prompt adjustment to compensate for any mistakes or omissions disclosed by any such audit, examination, or certification of TBW's records.

9) Product Warranty/No Defects

- a) Owner warrants that there are no current or past claims from a third party or governmental agency that the Product is defective and there are no and have not been any suits based on any alleged defect in the Product.
- b) TBW shall maintain sufficient liability insurance to cover the risks and indemnities assumed by TBW including standard product liability insurance. The amount of the product liability insurance shall at no time have limits less than one million dollars (\$1,000,000) for a single event or incident.

10) Markings

TBW shall mark all Products, which it manufactures, distributes, markets, or sells with proper United States Government required markings, trade required markings and, if applicable, notice of patent marking under 35 U.S.C. Section 287.

11) Termination for Cause

- a) **Default:** If either Party materially defaults under any term, condition, or covenant of this Agreement, or otherwise materially breaches this Agreement, the other party shall have the right to terminate this Agreement upon giving thirty (30) days' written Notice of Intent to Terminate, specifying such failure, breach, or default to the breaching/defaulting Party. If the breach or default is not cured within thirty (30) days of receipt of the Notice of Intent to Terminate, this Agreement shall terminate thirty (30) days from the date of such Notice of Termination.

- b) **Bankruptcy:** If either Party shall go into receivership, bankruptcy, or insolvency, or make an assignment for the benefit of creditors, or go out of business, this Agreement may be immediately terminated by the other Party by written notice, but without prejudice to any rights of the other Party hereunder.
- c) **Mutual Consent:** This Agreement may be terminated at any time with mutual consent of the Owner and TBW expressed in writing.

12) Infringement

- a) If either Party reasonably believes that a Propriety Right pertaining to the Product is infringed upon by a third party, the discovering Party shall immediately communicate the details to the other Parties.
- b) Upon notification or discovery of potential infringement, TBW shall have the right, but not the obligation, to take whatever action it deems necessary, including the filing of lawsuits, to protect its rights under this Agreement and to terminate such infringement. Owner shall cooperate with TBW if TBW takes any such action. The reasonable expenses incurred by TBW in any enforcement action shall be offset against the Royalty due Owner, but at a rate of 50% of the Royalty due, until the reasonable expenses have been reimbursed. If TBW recovers any awards or damages for any action it takes hereunder, Owner shall receive a percentage of the awards or damages, net of expenses of the TBW, as calculated by the applicable Royalty Rate.
- c) If TBW does not take action to terminate the infringement within thirty (30) days after written notice of infringement, Owner may take action to protect its Proprietary Rights. TBW shall cooperate with Owner if Owner takes any such action. All expenses incurred by Owner shall be borne by Owner. If Owner recovers any awards or damages for any action it takes hereunder, Owner shall retain 100% of such awards or damages, after reimbursing TBW for out of pocket expenses incurred by TBW as provided in this paragraph.

13) Notices

All notices, reports, or statements under this Agreement shall be in writing and shall be sent by e-mail to the following addresses, with a request for a delivery receipt, or to a substituted email address given by notice under this Agreement. Any such notice, report, or statement shall be considered sent or made on the day specified on the email delivery receipt.

Owner email address(es) : _____

TBW email addresses: jon@toolboxwidget.com and ryan@toolboxwidget.com

[Jonathan/Ryan, we suggest that you specify at least two email addresses for TBW]

14) Transfer Rights and Obligations

- a) The rights of Owner under this Agreement shall be assignable or otherwise transferable, in whole or in part, by Owner and shall vest Owner's assignees or transferees with the same rights and obligations as were held by Owner after Owner gives at least thirty (30) days notice of assignment or transfer to TBW.
- b) Upon written approval by Owner, this Agreement shall be assignable by TBW to any entity that succeeds to the business of TBW to which Products relate, or in connection with the sale or transfer of substantially all of the business of TBW. Owner shall not unreasonably withhold its approval for of assignment by TBW.

15) Mediation and Litigation

If any dispute arises under this Agreement, the Parties shall negotiate in good faith to settle such dispute. If the Parties cannot resolve such dispute themselves, then either Party shall submit the dispute to mediation to the Judicial Arbitration and Mediation Service. Mediation shall be in Seattle, Washington and the law of the State of Washington will govern all adversary proceedings brought by one Party against the other. The prevailing Party shall be entitled to an award of fees and costs of mediation not to exceed \$10,000. All other attorneys' fees and costs shall be paid by the Party retaining the attorney. The Parties may litigate their differences in a Federal District Court of the Western District of Washington in Seattle, Washington if the mediator cannot resolve the dispute. The prevailing Party shall be entitled to recovery of reasonable attorneys' fees and costs up to \$50,000.

16) Confidentiality, Continuing Obligations

- a) The terms and conditions of this Agreement shall be maintained in strict confidence by all Parties.
- b) Owner agrees to maintain in strict confidence any materials and information provided by TBW that was not common knowledge or in the public domain, including but not limited to proprietary pricing, development and distributorship information, customer accounts, customer lists, royalty statements and information, and any other information which is indicated by TBW to be confidential.
- c) Any rights and obligations under this Agreement that by their nature extend beyond the Term of this Agreement, including but not limited to

the confidentiality obligations set forth herein, shall survive any expiration or termination of this Agreement.

17) Taxes

Each Party shall be responsible for its own taxes including income and other taxes required under applicable laws arising from payments made pursuant to this Agreement.

18) Counterparts

This Agreement may be executed in any number of original counterparts, and together they shall constitute one Agreement.

19) Severability

If any provision of this Agreement is found or deemed by a court of competent jurisdiction to be invalid or unenforceable, it shall be considered severable from the remainder of this Agreement and shall not cause the remainder to be invalid or unenforceable.

20) Waiver, Modification

- a) The waiver of any breach of this Agreement may be evidenced only by a writing executed by the Party waiving the breach, which written waiver shall not constitute a waiver of any other breach.
- b) A provision or term of this Agreement may be modified only by a writing executed by both of the Parties.

21) Force Majeure

The Parties shall not be liable for any delay in performance, nor shall such constitute a breach of this Agreement hereof, if such delay is due to Acts of God, wars, strikes, embargoes, acts of Government or public authority or condition beyond the control of the Parties; however, the burden for establishing such condition shall be on the Party asserting it and the duty to fulfill such obligation shall immediately return upon the discontinuation of the condition delaying such performance.

22) Compliance with Laws

The Parties shall comply with all U.S. and foreign laws and regulations applicable to the performance of their respective obligations under this Agreement.

23) Non-Frustration

Neither Party to this Agreement shall commit any act or take any action which frustrates or hampers the rights of the other Party under this Agreement. Each Party shall act in good faith and engage in fair dealing when taking any action under or related to this Agreement.

24) Signatures, Entire Agreement.

The terms and conditions herein constitute the entire Agreement between TBW and Owner and shall supersede all previous agreements, either oral or written, between the TBW and Owner hereto with respect to the subject matter hereof. The Parties, having carefully read this Agreement and having consulted or have been given an opportunity to consult counsel, have indicated their consent to all of the above terms by signing this Agreement. Each signatory hereto represents that it is authorized to sign this Agreement on behalf of the Party for whom it executes this Agreement.

_____ Date: _____

TBW (print name & title) _____

_____ Date: _____

Owner (print name & title) _____