

Service Provider Agreement Terms of Service

1. Appointment; Services.

1.1. Generally. Service Provider retains Company to provide the Services, and Company agrees to provide the Services, pursuant to the terms of this Agreement. Except as expressly set forth in Section 3.1, Company shall perform the Services at its sole cost and expense without right of reimbursement from Service Provider.

1.2. Performance. Company intends to use commercially reasonable efforts in the performance of its duties, obligations and responsibilities under this Agreement; however, Company cannot and does not guarantee any specific results. Company represents and warrants that it has no agreement or contract, whether oral or written, express or implied, with any person or entity that will preclude it from fully performing its duties, obligations and responsibilities under this Agreement. No person other than Company shall provide the Services to Service Provider on behalf of Service Provider pursuant to this Agreement unless specifically agreed to by Company in writing.

1.3. Independent Contractor. Company agrees to perform the Services as an independent contractor. Nothing contained herein shall be considered to create an employer-employee relationship between parties. Neither party shall be liable to third parties for the acts of the other party or their respective employees or agents related to the performance of the Services.

1.4. No Agency. Neither party shall act as an agent of the other party without its prior approval.

1.5. No Ownership Interest. Nothing in this Agreement shall be construed to give a party an ownership interest in the other party or its business.

1.6. Force Majeure. It is hereby understood that neither party shall be required to perform or liable for non-performance under this Agreement when non-performance is caused by an act of God, pandemics, elements, strikes, labor or material shortages, or any other acts beyond the reasonable control of the non-performing party as long as the party, using ordinary care, makes all reasonable efforts to perform. The nonperforming party shall immediately notify the other party of any inability to perform and provide an estimate of when performance shall resume. The nonperforming party shall resume normal operations as soon as reasonably practical.

2. Confidentiality; Non-Solicitation.

2.1. Definitions.

“Trade Secrets” shall have the definition stated in California Civil Code 3426.1(d).

“Confidential Information,” means all other confidential and proprietary documentation, information or writing (as defined in California Evidence Code Section 250) not constituting Trade Secrets, including the whole or any portion or phase of any scientific or technical information, idea, design, process, procedure, formula, machine, invention, improvement, manufacturing or sales technique, manufacturing, sales or test data, know-how (whether patentable or unpatentable and whether or not reduced to practice), reimbursement information, business or financial information, customer and supplier names, addresses, or telephone numbers, business plans, marketing plans, strategies, forecasts or other information relating to the business of a party that is of value to the party, but does not include information that is in the public domain or that was otherwise openly disclosed or published by the party or any of its employees or agents

to any third party not bound by any confidentiality agreement (other than by reason of a disclosure in violation of this Section).

“Disclosing Party” means the party who discloses Confidential Information or Trade Secrets to the Receiving Party, including its affiliates, subsidiaries and related entities.

“Receiving Party” means the party who receives Confidential Information or Trade Secrets from the Disclosing Party, including its affiliates, subsidiaries and related entities.

2.2. Restrictions Receiving Party agrees that all Trade Secrets and Confidential Information relating to Disclosing Party obtained by Receiving Party shall be considered confidential and the proprietary information of Disclosing Party. During the Term and continuing after expiration or earlier termination of this Agreement for any reason, Receiving Party shall not use, disclose or authorize any other person or entity to use or disclose any Trade Secrets. During the Term and continuing for a period of five years (5 yrs.) after the expiration or earlier termination of this Agreement for any reason, Receiving Party shall not use, disclose, or authorize any other person or entity to use or disclose, any Confidential Information, except: (i) in the course of the performance of Receiving Party’s or such other person’s duties on behalf of the Disclosing Party; or, (ii) pursuant to Section 3.3.

2.3. Protective Order. Receiving Party shall promptly notify Disclosing Party if Receiving Party becomes legally compelled to disclose Disclosing Party’s Confidential Information so that Disclosing Party may seek a protective order or other appropriate remedy. If a protective order or other remedy is not obtained, then Receiving Party shall disclose only that portion of the Confidential Information that Receiving Party’s legal counsel advises is legally required to disclose. When disclosure is legally required, Receiving Party agrees to use reasonable efforts to obtain assurance of confidential and proprietary treatment of the Confidential Information to be disclosed, if and to the extent possible.

2.4. Disclaimer of Interest. Each Receiving Party acknowledges, understands and agrees that it has no interest, right or title to the Disclosing Party’s Confidential Information. To the extent Receiving Party may be deemed to have such an interest, right or title, Receiving Party agrees to assign, convey, and transfer said interest, right or title in the Confidential Information to Disclosing Party and also to forever discharge, disclaim, release, surrender and waive said interest, right or title in the Confidential Information in favor of the Disclosing Party.

2.5. Specific Performance. The parties expressly agree that monetary damages will not be an adequate remedy for a breach by Receiving Party of the provisions of Section 2.2. Accordingly, the parties agree that Disclosing Party may seek, and shall be entitled to specific performance and injunctive relief resulting from Receiving Party’s breach of the provisions of Section 2.2.

2.6. Non-Solicitation. During the Term and for a period of two (2) years after the expiration or earlier termination of this Agreement, neither party shall: (i) directly or indirectly induce or attempt to induce any employee of the other party to leave their employment or (ii) induce or attempt to induce any employee of the other party to join any company or business with which the soliciting party is affiliated.

3. Compliance with Laws: HIPAA Business Associate Agreement; Change In Law; Privacy Laws.

3.1. Generally. Each party shall be responsible for its compliance with all applicable acts, administrative or judicial precedents or authorities, including their interpretation or administration by any governmental authority or entity charged with the enforcement, interpretation or administration thereof. The parties shall likewise be responsible for compliance with all agreements with, approvals, authorizations, awards, codes, consents, declarations, decrees, directed duties, directives, guideline

documents, guidelines, edicts, exemptions, injunctions, judgments, laws, licenses, non-contractual restriction, orders, ordinances, permits, process, regulations, requests, requirements, rules, rulings, sanctions, standards, statutes, treatises, waivers and/or writs, now in force or as may be enacted or amended, modified, promulgated, revised, or supplemented, of any government agencies, including the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) (individually a “Law” and collectively “Laws”).

3.2. HIPAA Business Associates Agreement. Contemporaneously with the execution of this Agreement, the parties shall execute the “HIPAA Business Associates Agreement” in the form attached hereto as Exhibit C and incorporated herein by reference.

3.3. Disclosures to Third Parties. Notwithstanding Section 2.2 or 2.2, Service Provider may request that Company provide Confidential Information and/or information subject to HIPAA to a third-party; however, Company shall be under no obligation to provide any information unless the third party has executed a BAA and a nondisclosure agreement in a form reasonably acceptable to Company.

3.4. Change In Law. Company shall have the right to modify this Agreement or the Services upon written notice to Service Provider if, either under existing Law or due to a change in Law, Company determines that this Agreement or the Services may be in violation of any applicable Law. Company shall also have the right to terminate this Agreement if it determines in its sole discretion that modifying this Agreement or the Services to comply with applicable Law would be unduly costly or burdensome.

3.5. GLBA and Privacy Laws. Each party will take all commercially reasonable measures to protect Consumer information, including any nonpublic personal information (as defined in the Gramm Leach Bliley Act, 15 U.S.C. §§ 6801 et. seq., and its implementing regulations) and shall comply with all applicable privacy laws. The parties acknowledge and agree that they shall each establish administrative, technical and physical safeguards for Consumer information in their control or possession. Such safeguards shall be designed to: (i) ensure the security of such records and information, (ii) protect against any anticipated threats or hazards to the security or integrity of such records and information; (iii) ensure the proper disposal of such records and information, and (iv) protect against unauthorized access to or use of such records and information.

4. Intellectual Property.

4.1. Ownership. The parties agree that all intellectual property in existence prior to the Effective Date shall remain the sole and exclusive property of the respective party and that the other party shall acquire no rights of any kind in or to such intellectual property.

4.2. Return of Property. Upon the termination of this Agreement, or in the event Service Provider should cease business activity for any reason, including bankruptcy, Service Provider will return to Company any property, documentation, records, Confidential Information and materials made available to Company by Service Provider, including any copies and any applicable notes, summaries, analyses, and reports made by either party’s employees, agents and consultants containing Confidential Information. All documents, data and other tangible objects (in whatever format) containing or representing Confidential Information disclosed by Company to Service Provider, and all copies or extracts thereof that are in the possession of Service Provider shall remain Company’s property.

5. Dispute Resolution.

5.1. Initial Dispute Resolution. “Dispute” means a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of terms, payment of money, extension of time or other relief with respect to the conditions, provisions and/or terms of this Agreement. If a Dispute arises out of or relates to this Agreement or its breach, the parties shall endeavor to settle the Dispute first through direct discussions. If the Dispute cannot be settled through direct discussions, the parties shall endeavor to settle the Dispute by mediation before recourse to binding arbitration set forth in Section 10.2. The mediation shall be held in Bakersfield, California within sixty (60) days of one (1) party filing a request for mediation with the other party. Either party may terminate the mediation at any time after the first session, but the decision to terminate must be delivered in person by the party’s representative to the other party’s representative and the mediator.

5.2. Binding Arbitration. If the Dispute cannot be settled by mediation the parties shall submit the Dispute to binding arbitration pursuant to the Commercial Arbitration Rules of the American Arbitration Association. A written demand for arbitration shall be filed with the American Arbitration Association and the other party within a reasonable time after the Dispute has arisen, but in no event after the expiration of the applicable statute of limitations for a legal or equitable proceeding. The arbitration proceedings shall be held in Bakersfield, California. The arbitration award shall be final and binding, and judgment may be entered upon it in accordance with applicable Law in any court having jurisdiction.

5.3. Waiver of Jury Trial. TO THE EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON, ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY COURSE OF CONDUCT OR DEALINGS, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY IN CONNECTION HEREWITH. EACH OF THE PARTIES (i) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (ii) ACKNOWLEDGES THAT IT HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS CONTAINED IN THIS SECTION.

6. Miscellaneous Provisions.

6.1. Enforceability. The parties’ rights are of a special and unique character; therefore, if there is a material breach by any party of any provision of this Agreement, the other party would not have an adequate remedy at law. It is expressly agreed that the parties’ rights may be enforced by an action for specific performance and such other equitable remedies as provided under California law.

Any party’s use of any remedy specified herein for enforcement of this Agreement is not exclusive and shall not deprive such party of, or limit the application of, any other remedy provided by law or equity.

6.2. Attorneys’ Fees and Disbursements. In the event of any action at law or in equity between the parties to enforce or interpret this Agreement, the unsuccessful party to the litigation shall pay all costs and expenses, including reasonable attorneys’ fees and disbursements, incurred by the successful party. The successful party shall be the party entitled to recover the costs of the suit, whether or not the suit proceeds to final judgement. If no costs of suit are awarded, the arbitrator or court, as applicable, shall determine the successful party. If the successful party recovers judgment in the action or proceeding, such costs, expenses, attorneys’ fees and disbursements may be included in the judgment.

6.3. Waiver. No waiver of any default, failure or delay to exercise any right or remedy by a

party shall operate as a waiver of (i) any other default, (ii) the same default in the future or (iii) any right or remedy with respect to the same or any other occurrence.

6.4. Further Assurances. Each party agrees to cooperate fully with the other parties in the performance of this Agreement. Each party shall execute and deliver any additional documents, instruments, papers or other assurances and shall perform any further acts, which may be reasonably necessary to carry out the intent of the parties and this Agreement.

6.5. Notices. All notices, demands, or other communications that either party is required or permitted to give to the other party, pursuant to this Agreement (collectively referred to as “Notices”) shall be given in writing and shall be: (i) personally served; (ii) sent by registered or certified mail, postage prepaid; (iii) sent by telex or facsimile (“fax”) or (iv) sent by a nationally recognized overnight delivery service or courier (such as Federal Express).

All Notices are to be given at the addresses set forth in the signature boxes below. Notices given by a party pursuant to the alternative methods described in this Section shall be deemed delivered to and received by the other party at the following times: (i) for Notices personally served, on the date of hand delivery to the other party or its duly authorized employee, or representative or contact; (ii) for Notices given by registered or certified mail, on the date shown on the return receipt as having been delivered to and received by the other party or parties; (iii) for Notices given by fax, on the date the Notice is faxed to the other party or parties; provided, however, that Notices given by fax shall not be effective unless either (a) a duplicate copy of such faxed Notice is promptly given by first-class mail, postage prepaid, and addressed as provided above or (b) the sending party’s facsimile equipment is capable of providing a written confirmation of the receiving party’s receipt of such notice; provided that any Notice given by fax after 5 p.m. or on a non-business day (recipient’s time) shall be deemed received on the next business day or (iii) for Notices delivered by overnight courier, on the next business day after the Notice has been deposited with the courier as evidenced by the receipt provided by the courier.

Each party shall make an ordinary, good faith effort to ensure that accepts or receives Notices provided in accordance with this Section. A party may change its designated contact, address or fax number, or designate additional agents, addresses or fax numbers for notice purposes by giving notice to the other party in the manner set forth in this Section. Such address change shall not be effective until five (5) days after the notice is delivered or received by the other party.

6.6. Binding Effect. Subject to Section 13.7, this Agreement shall inure to and for the benefit of and be binding upon each party’s respective parent, subsidiary or affiliated organizations, and all others acting for, under, or in concert with the party, including but not limited to agents, assignees, employees, independent contractors and successors.

6.7. Assignability. Notwithstanding Section 13.6, neither party shall assign, sell or otherwise transfer this Agreement or any right or interest therein without prior written consent. Neither party shall suffer or permit any assignment, sale, or transfer to occur by operation of law without the prior written consent of the other party. Consent shall not be unreasonably conditioned, delayed or withheld. Any attempted assignment, sale or transference without consent shall be voidable by the nonconsenting party and shall be considered a breach of this Agreement.

No consent to any assignment, sale or transference shall constitute a further waiver of this Section. Notwithstanding anything in this Section to the contrary, Company may, without Service Provider’s consent, assign this Agreement upon either the change-in-control, conversion, merger, or sale of any of the Company’s stock or membership interests, or substantially all of the Company’s assets. Company shall give Service Provider written notice of any assignment at least thirty (30) days prior to the effective date of

the assignment.

6.8. No Third-Party Beneficiary. This Agreement is made for the sole benefit of the parties and their respective successors and assigns and no other person or persons shall have any right of action hereon.

6.9. No Partnership or Joint Venture Created. Nothing in this Agreement shall be construed, deemed or interpreted by the parties or any third person to create an agency relationship or partnership, joint venture or any other association between the parties other than that of independent contractor.

6.10. Entire Agreement. This Agreement and the attached exhibits, incorporated herein by reference, constitutes the entire agreement between the parties and supersedes all prior agreements, conditions, contracts, promises, representations, understandings, or warranties, whether oral or written, express or implied, of the parties.

6.11. Modification. Except as provided in Section 2.4, this Agreement may not be altered, amended or modified in any respect, except by a writing duly executed by all the parties.

6.12. Governing Law; Venue. This Agreement shall be construed and enforced in accordance with the internal laws of the State of California. This Agreement is entered into, executed, delivered, and performed in Bakersfield, California. All claims must be brought in the Kern County Superior Court or in the United States District Court of the Southern District of California.

6.13. Construction; Computation of Time. Headings are used herein for convenience only and shall have no force or effect in the construction or interpretation of this Agreement.

6.14. Partial Invalidity. If any provision of this Agreement shall be held illegal, null or void for any reason the parties shall negotiate an equitable adjustment of the affected provision considering the purpose of this Agreement.

6.15. Separate Counterparts; Facsimile & Electronic Signatures. This Agreement shall be executed in two (2) or more separate counterparts, each of which shall be deemed to be an original and to constitute the same contract. This Agreement may be signed by facsimile, and any such facsimile copy shall be equivalent to a binding signed original for all purposes. This Agreement also may be executed electronically. The parties expressly agree that the execution and delivery of this Agreement shall be governed by the Electronic Signatures in Global and National Commerce Act (ESIGN), 15 U.S.C. § 7001 *et seq.*