

# GENERAL TERMS AND CONDITIONS

## 1. Resources

- 1.1. Consultant will provide such resources and utilize such employees and/or contractors, as it deems necessary to perform the Services and Deliverables. The manner and means used by Consultant to provide the Services and Deliverables are in the sole discretion and control of Consultant. All work shall be performed remotely unless otherwise mutually agreed upon in the Statement of Work.

## 2. Confidentiality

- 2.1. Both Parties shall maintain the confidentiality of any proprietary or confidential information (collectively, "Confidential Information") shared between them during the course of this Agreement.
- 2.2. For purposes of this Agreement, "Confidential Information" means any information which is disclosed between the Business Owner or its Representatives and ZOLALART or its Representatives, during the time this Agreement is in effect, whether verbal, electronic or written, tangible or intangible, and in whatever form or medium provided, including, but not limited to: (a) technical, financial, scientific, commercial and any other information which relates to Client's actual and/or proposed business, business transactions, products, concepts, reports, data, works-in-progress, designs, development tools, specifications, computer software, source code, object code, flow charts, databases, trade secrets, know-how, inventions, software, drawings, processes, patents, contents of pending patent applications, designs, methods, techniques, applications, chemical formulas, compounds, improvements, patterns, compilations, programs, devices, and/or empirical formulae; (b) any marketing strategies, plans, financial projections, operations, sales estimates, business plans, investments, and performance results relating to the past, present or future business activities of the parties and/or their affiliated companies, agents, and contractors; (c) plans for products or service, product features and upgrades, product sales targets, and customer or supplier lists; (d) any other information furnished together with all analyses, compilations, studies or other documents or records prepared by ZOLALART and/or its Representatives to the extent such analyses, compilations, studies, documents or records contain, otherwise reflect, or are generated from such information; (e) any other information which is or should be reasonably understood to be confidential or proprietary to a party, or that a party expressly identifies in writing, or marks, as confidential before or within a reasonable time after disclosure to the other party. As used herein, "Representatives" means officers, directors, shareholders, consultants, attorneys, employees or agents of party or its Affiliates.
- 2.3. Notwithstanding anything in the foregoing to the contrary, "Confidential Information" shall not apply to information which: (a) was lawfully possessed, as evidenced by the party's records, prior to receiving the Confidential Information from the other party; (b) is or has been independently developed by the party without violation of the terms of this Agreement, as evidenced by party's records, and without reference or access to any Confidential Information; or is generally available to the public, through no fault of or failure to act by a party inconsistent with their obligations under this Agreement.
- 2.4. Each party agrees that Confidential Information shall be kept strictly confidential, and neither party shall, directly or indirectly, use, copy, publish, summarize, or disclose, verbally, electronically or otherwise such Confidential Information, except in the case that each party may disclose Confidential Information (a) to its professional advisors and authorized representatives to the extent that such disclosure is necessary to perform under this Agreement; (b) to any person whom a party contracts with, in each case in relation to and to the extent necessary for performance under this Agreement; (c) where required by any court of competent jurisdiction or any competent judicial, governmental, supervisory or regulatory body; or (d) where required by the laws or regulations with jurisdiction over the affairs of the parties, provided that the parties shall, in case of (a) and (b) above obtain an undertaking of confidentiality from all such persons to the same extent that such party is bound hereunder.
- 2.5. Each party agrees that, during and after the termination or expiration of this Agreement, each party will not communicate, divulge, or make available to any person or entity (other than entities or persons expressly authorized by a party to receive such information) any of the Confidential Information except upon the prior written authorization of the disclosing party or as may be required by law or legal process. Each party further agrees that upon the termination or expiration of this Agreement, it will deliver promptly to the other party any such Confidential Information in its possession (whether in electronic or hard copy form), including any duplicates thereof. If the provisions of any applicable law or the order of any court would require a party to disclose or otherwise make available any such information, it shall provide the other party with prompt prior written notice of such required disclosure and a reasonable opportunity to contest the requirement of such disclosure or apply for a protective order with respect to such information through the appropriate proceedings.

## 3. Intellectual Property Rights

- 3.1. As used herein, the term "IP Rights" shall mean recognized protectable intellectual property such as: copyrights, trademarks, patents, trade secrets, industrial design rights, rights of priority, know-how and any and all other legal rights protecting

intangible proprietary information. Examples of inventions, innovations, and/or developments that may contain protectable IP Rights include, without limitation: artwork, photographs, formulas, algorithms, methods, methodologies, design flows, processes, databases, mechanical and electronic hardware, articles, writings, compositions, works of authorship, and improvements.

- 3.2. This Agreement does not grant Business Owner any IP Rights or title of ownership to any ZOLALART IP Rights, including any ZOLALART processes, or configurations of Business Owner's data or information.
- 3.3. In addition, ZOLALART shall retain sole and exclusive ownership of and all right, title and interest in and to the ZBOARDS, and all right, title and interest in all IP Rights of ZOLALART existing prior to ZOLALART's performance under this Agreement. Nothing herein is intended to restrict ZOLALART's right to use any and all ideas, concepts, expertise, know-how and learnings ZOLALART may discover, acquire or develop during its performance under this Agreement which is of general application and does not contain any Business Owner Confidential Information or other Business Owner-specific information (all of the foregoing the ZOLALART Property).

#### **4. Indemnity; Limitations on Liability**

- 4.1. Each party agrees to hold indemnify, defend and hold harmless the other, its officers, agents, employees, and assigns against any and all claims, losses, damages, liabilities, costs, and expenses (including reasonable attorney's fees), pursuant to any third party claim brought against the indemnified party arising from the other party's willful, unlawful or negligent act.
- 4.2. If the ZBOARDS, or any part thereof, is or, in the opinion of ZOLALART may become the subject of any claim, suit or proceeding for infringement of any third party patent, copyright, or industrial property right, or misappropriation of any third party trade secret, or if it is finally determined by a court of competent jurisdiction that the ZBOARDS, or any part thereof, infringes any third party patent, copyright, or industrial property right, or misappropriates any third party trade secret, and use of the ZBOARDS is, as a result, enjoined, then ZOLALART may, at its sole discretion either: (a) modify the Deliverable to avoid the allegation of infringement or misappropriation, while at the same time maintaining compliance of the ZBOARDS with the requirements under this Agreement; or (ii) obtain for Business Owner, at no cost to Business Owner, a license to continue using and exploiting the ZBOARDS in accordance with this Agreement. Notwithstanding anything to the contrary in this Agreement, ZOLALART shall have no obligation or responsibility with respect to any infringement or misappropriation claim based upon (i) any use of the ZBOARDS not in accordance with this Agreement or for purposes not reasonably intended by ZOLALART; (ii) any use of the ZBOARDS in combination with other products, equipment, software, or data not supplied by ZOLALART; or (iii) any use of any release of the ZBOARDS other than the most current release made available to Business Owner; or (iv) any modification of the ZBOARDS made by any person other than ZOLALART.
- 4.3. EXCLUDING BREACH OF A PARTY'S CONFIDENTIALITY OBLIGATIONS HEREUNDER, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR SPECIAL, CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE OR EXEMPLARY DAMAGES, HOWEVER CAUSED, INCLUDING BUT NOT LIMITED TO LOST PROFITS, LOSS OF DATA, LOSS OF ACTUAL OR ANTICIPATED PROFITS OR REVENUES, LOSS OF BUSINESS REPUTATION OR OPPORTUNITY, LOSS BY REASON OF SHUTDOWN, NON-OPERATION OR INCREASED EXPENSE OF MANUFACTURING OR OPERATION, COST OF CAPITAL, DAMAGE OR LOSS OF PROPERTY OR EQUIPMENT OF COMPANY, OR CLAIMS OF CUSTOMERS OF COMPANY, WHETHER FOR BREACH OF WARRANTY, CONTRACT, TORT NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 4.4. EACH PARTY'S TOTAL, CUMULATIVE LIABILITY TO THE OTHER PARTY FOR ANY DAMAGES OR LOSS ARISING FROM OR RELATING TO THIS AGREEMENT WILL NOT EXCEED AMOUNTS PAID BY COMPANY TO CONSULTANT HEREUNDER. THIS LIMITATION IS CUMULATIVE, WITH ALL PAYMENTS FOR ALL LIABILITIES UNDER OR IN CONNECTION WITH THE AGREEMENT BEING AGGREGATED TO DETERMINE SATISFACTION OF THE LIMIT. THE EXISTENCE OF ONE OR MORE CLAIMS WILL NOT ENLARGE THE LIMIT. NOTWITHSTANDING THE ABOVE, THE LIMITATIONS SET FORTH IN THIS SECTION SHALL NOT APPLY TO THE EXTENT EITHER PARTY CAN BE SHOWN TO HAVE ENGAGED IN WILFULL OR CRIMINAL MISCONDUCT IN THE PERFORMANCE OF ITS OBLIGATIONS UNDER THIS AGREEMENT.
- 4.5. No action, regardless of form, arising from these Terms and Conditions may be brought by either party more than one year after the cause of action has accrued.

#### **5. Force Majeure**

- 5.1. Neither party shall be liable for delay or failure in the performance of its contractual obligations arising from any one or more events which are beyond its reasonable control, including but not limited to, acts of God, omissions or regulations of any government or subdivision thereof, judicial action, epidemics, fire, storm, accident, war, riot, labor disputes, labor stoppages, transportation failure, communications failures or disruptions or internet failures or disruptions. Upon such delay or failure affecting one party, that party shall notify the other party and use all reasonable efforts to cure or alleviate the cause of such delay or failure with a view to resuming performance of its contractual obligations as soon as practicable. Notwithstanding the foregoing, in every case the delay or failure to perform must be beyond the control and without the fault or negligence of the party claiming excusable delay. Performance times under this Agreement shall be considered extended for a period of time equivalent to the time lost because of any delay which is excusable hereunder.

## 6. Limited Warranties and Exceptions

- 6.1. ZOLALART represents and warrants (a) that ZOLALART has the right to enter into this Agreement and perform its obligations hereunder; (b) that ZOLALART has the necessary expertise and qualifications to provide the services and deliverables under this Agreement; and (c) that ZOLALART will provide the services and deliverables in a professional and workmanlike manner, in accordance with applicable laws, regulations, and industry standards. Services and deliverables will be warranted by ZOLALART for a period of 60 days.
- 6.2. THE WARRANTY ABOVE IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR
- 6.3. ZOLALART shall remedy defects and errors directly attributable to the Services and Deliverables within a period of 60 calendar days from delivery to Business Owner. Business Owner's sole and exclusive remedy for any breach of the warranty described in this Agreement will be, at the discretion of ZOLALART, the correction by ZOLALART of any purported defect or error.

## 7. Governing Law; Dispute Resolution

- 7.1. This Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to its conflict of laws principles. Each of the parties irrevocably submits to the exclusive jurisdiction of the state and federal courts located in San Jose, California for the purpose of any suit, action, proceeding or judgment relating to or arising out of the Agreement and the transactions contemplated hereby. Each of the parties waives all defenses of lack of personal jurisdiction and forum non conveniens. In any action or suit to enforce any right or remedy under this Agreement, the prevailing party will be entitled to recover its costs, including reasonable attorneys' fees.
- 7.2. The parties shall attempt in good faith to resolve any dispute arising under this Agreement informally according to the following procedures. Upon written request of either party identifying a dispute to be resolved, each party will designate a representative with the responsibility and authority to resolve the dispute. These representatives shall meet preliminarily within fifteen (15) days after the request to identify the scope of the dispute and the information needed to discuss and attempt to resolve such dispute. These officers shall then gather relevant information regarding the dispute and shall meet to discuss the issue and to negotiate in good faith to resolve the issue.
- 7.3. In the event the parties are unable to resolve the dispute within sixty (60) days after the first meeting of the designated officers as specified above (or such longer time as the parties agree), then either party may pursue all legal remedies in accordance with Section 16.

## 8. Miscellaneous

- 8.1. **Entire Agreement.** This Agreement constitutes the entire understanding between the Parties with respect to the subject matter here of and supersedes all prior discussions, negotiations, and agreements, whether written or oral.
- 8.2. **Notices.** Notices to be given or submitted by either party to the other pursuant to this Agreement shall be in writing and directed to each party to the address first above mentioned.
- 8.3. **Severability.** If any term or provision of this Agreement is determined to be invalid or unenforceable for any reason, it shall be adjusted rather than voided, if possible, to achieve the intent of the parties to extent possible. In any event, all other terms and provisions shall be deemed valid and enforceable to the maximum extent possible.
- 8.4. **Assignment.** Neither party shall have the right to assign, delegate, or subcontract any portion of its rights, duties, or obligations under this Agreement to any third party and any attempt to do so shall be void.
- 8.5. **Modification.** Business Owner agrees that any terms and conditions of any purchase order or other instrument issued by Business Owner in connection with the Agreement that are in addition to or inconsistent with the terms and conditions of this Agreement shall be of no force or effect. This Agreement may be modified only by a written instrument duly executed by an authorized representative of ZOLALART and Business Owner.
- 8.6. **No Waiver.** The failure of a party to enforce any provision of this Agreement shall not constitute a waiver of such provision or the right of such party to enforce such provision or any other provision.
- 8.7. **Non-Disparagement.** Provided each party does not breach the Agreement, both parties agree not to make any statements, written or verbal, or cause or encourage others to make any statements, written or verbal, that defame, disparage, ridicule or criticize the personal or business reputation, practices, conduct, services or products of each party, its employees, directors, or officers. The parties acknowledge and agree that this prohibition extends to statements, written or verbal, (a) made to anyone, including but not limited to, the news media, investors, potential investors, any board of directors or advisory board or directors, industry analysts, competitors, strategic partners, vendors, employees (past and present), Affiliates and clients, and/or (b) made through any form of communication, including, but not limited to e-mail, chat rooms, tweets, blogs, instant messaging, and social media.