

SERVICE AGREEMENT FOR FACIS ACCESS

THIS SERVICE AGREEMENT (the “Agreement”), made this _____ day of _____ 2009 (“Effective Date”) between Intellicorp Records, Inc., (“Intellicorp”) with offices at 3000 Auburn Drive, Suite 410, Beachwood, Ohio 44122 and _____ (“Customer”) with offices at _____ (collectively the “Parties”) with references to the following:

WHEREAS, Intellicorp owns, licenses and operates an online information system that provides access to various databases, records and information to approved Customers that enable Customers to perform searches and retrieve information; and

WHEREAS Intellicorp is authorized by its third party provider to license to its customers access to the Fraud and Abuses Control Information System (“FACIS[®]”) a web-based service containing information on disciplinary actions taken in the healthcare industry.

NOW, THEREFORE, in consideration of the premises herein contained, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

1. LICENSE AND RESTRICTION ON USE

- a. Customer is granted a nonexclusive, nontransferable, limited license to access FACIS[®] and use FACIS[®] and its information solely for internal business purposes. Customer may not access or use the information provided by FACIS[®] for the benefit of other parties, to determine an individual’s eligibility for credit, insurance, for personal, family or household purposes, to determine employment or as the sole source for making adverse employment decisions or to determine an individual’s eligibility for a government license or benefit or for commercial or charitable solicitation or for the purpose of selling or offering to sell property or service to any person or entity whose name is obtained through FACIS[®]. Customer agrees to restrict access to the FACIS information and data only to those employees of Customer who have a need to use it solely for purposes of Customer’s internal business (“authorized employees”). Except as may be specifically permitted herein, neither Customer nor its employees shall sell, transfer, distribute, publish, disclose, display or otherwise make FACIS or any of the information therein available, in whole or in part, to any other person or entity, without the express written consent of Intellicorp. Customer may not directly or indirectly compile, store, or maintain materials from FACIS to develop its own source or database. The above notwithstanding, information obtained from FACIS may be used for corporate compliance efforts or to verify information provided by an employee. Information obtained from FACIS[®] must always be verified with the reporting agency before making a final decision.
- b. Only Customer’s employees or authorized individuals may access and use FACIS. Customer will be provided a personal Identification Number (‘ID’) from Intellicorp to access and use FACIS. An individual’s ID may not be transferred, shared or otherwise provided to any other individuals. Access to and use of the FACIS must be discontinued simultaneously: with the termination of employment. Materials and features may be added to, withdrawn from, changed or restricted from FACIS without notice.

2. FEES

Customer is responsible for and shall pay all charges and usage fees associated with the use of FACIS. Customer authorizes Intellicorp to charge all Fees directly to the credit card provided, as they are incurred or become due. For accounts that are invoiced, Customer authorizes Intellicorp to charge all past due accounts to the credit card securing said account. Intellicorp may suspend, disrupt or terminate Customer's account and any ID issued to Customer if payments to Intellicorp for the FACIS services become past due or for other reasons in accordance with the terms of this Agreement.

3. NO WARRANTY

- a. **ALL MATERIALS AND PRODUCTS ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, INCLUDING ANY WARRANTIES OR REPRESENTATIONS OF ACCURACY, TIMELINESS, CURRENTNESS OR COMPLETENESS. NEITHER INTELICORP NOR ITS THIRD PARTY PROVIDERS MAKE REPRESENTATIONS, COVENANTS OR WARRANTIES, EITHER EXPRESS OR IMPLIED, OF ANY KIND, WITH RESPECT TO FACIS, INFORMATION CONTAINED IN FACIS OR MATERIALS DELIVERED OR THE MEDIA OR MEDIUM ON OR THROUGH WHICH THE INFORMATION IS DELIVERED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF CONDITION, QUALITY, DURABILITY, SUITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR IN RESPECT OF ANY WARRANTY ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF DEALING OR USAGE OF TRADE ARISING OUT OF OR CAUSED IN WHOLE OR IN PART BY INTELICORP'S OR ITS THIRD PARTY PROVIDERS' ACTS OR OMISSIONS WHETHER NEGLIGENT OR OTHERWISE IN PROCURING, COMPILING, COLLECTING, INTERPRETING, REPORTING, COMMUNICATING OR DELIVERING THE FACIS INFORMATION. NEITHER INTELICORP NOR ITS THIRD PARTY S PROVIDERS SHALL HAVE ANY LIABILITY FOR CONCLUSIONS REACHED FROM USE OF FACIS INFORMATION.**

4. LIMITATION OF LIABILITY AND INDEMNIFICATION

- a. Neither Intellicorp or its third party providers shall be liable for any loss, injury, claim, liability or damage of any kind resulting in any way from (a) errors in or omissions from FACIS, or information available or not included therein, (b) the unavailability or interruption of access to FACIS, (c) use of FACIS information (regardless of whether Customer received any assistance from Intellicorp or any third party provider in using FACIS, (d) Customer's use of any equipment in connection with FACIS, (e) the FACIS content, (f) any delay or failure in performance beyond the reasonable control of Intellicorp or any third party provider, (g) use of FACIS by an authorized individual, user or organization, authorized user or other third parties.
- b. NEITHER INTELICORP NOR THE THIRD PARTY PROVIDER SHALL BE LIABLE FOR ANY LOSS OR DAMAGE OF ANY KIND, INCLUDING WITHOUT LIMITATION, SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL OR EXEMPLARY DAMAGES, LOSSES OR EXPENSES, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, FAILURE TO REALIZE EXPECTED SAVINGS OR ANY OTHER COMMERCIAL OR ECONOMIC LOSS (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES) WITH RESPECT TO FACIS OR THE INFORMATION DELIVERED OR THE MEDIUM OF DISTRIBUTION, REGARDLESS OF WHETHER SUCH LIABILITY

IS BASED IN TORT, CONTRACT OR OTHERWISE OR IN ANY WAY DUE TO OR RESULTING FROM OR ARISING IN CONNECTION WITH THE FACIS OR MATERIALS.

- c. If, notwithstanding the foregoing, liability can be imposed on a Intellicorp or a third party provider, then Customer agrees, that the aggregate liability for any and all losses or injuries arising out of any act or omission of Intellicorp or a third-party data provider in connection with anything to be done or furnished under this agreement, regardless of the cause of the loss or injury shall consist of a duty to refund amounts paid by Customer during the year preceding such loss, claim, damage or liability. Customer agrees that it will not seek punitive damages in any suit against Intellicorp or a third-party data provider. In no event shall a third-party data provider or Intellicorp be liable for any direct, incidental or consequential damages, however arising, incurred by Customer's receipt or use of information delivered hereunder, or the unavailability thereof.
- d. Customer agrees to indemnify, defend and hold harmless Intellicorp and the third party providers from and against any and all claims, liabilities, judgments, penalties, losses, costs, damages and expenses, including reasonable attorneys' fees, of whatsoever kind or nature, arising by reason of or in connection with any act under or in violation of this agreement, resulting from the use, disclosure, sale or transfer of the FACIS or by virtue of Customer's use of the information obtained from FACIS or through use of FACIS, either directly or indirectly.
- e. As referred to in this Agreement third party provider means (a) the provider of the FACIS service, its affiliates and any owner, officer, director, employee, subcontractor, agent, successor or assign of the provider of FACIS or its affiliates; and (b) each third party provider of the information contained in FACIS, their affiliates and any owner, officer, director, employee, subcontractor, agent, successor or assignee of any third party supplier of Materials or any of their affiliates.

5. PROPERTY:

- a. All rights, including but not limited to educational material on FACIS, use, search routines, title, and interest in FACIS, including all copyrights and other intellectual property rights in FACIS belong to the third party provider of FACIS. Customer acquires no proprietary interest in FACIS the information contained therein or copies thereof. Nothing contained herein shall be construed as conferring upon Customer or any user any license or right under any patent, copyright or trademark of Intellicorp or any third party provider. Except as specifically provided herein, you may not use FACIS in any fashion that infringes the copyrights or proprietary interests therein. Customer may not tamper with, alter or change any records or information obtained from FACIS.
- b. Customer is prohibited from using FACIS in any fashion that infringes the copyrights or proprietary interest of the third party providers of FACIS. Customer may not remove or obscure any copyright notice or other notice contained on materials retrieved from FACIS. Customer agrees that third party providers/suppliers are third party beneficiaries of this Agreement and are entitled to enforce their rights hereunder against Customer. Customer acknowledges that the third-party data providers shall retain all right, title, and interest in and to the data and information provided by FACIS under applicable contractual, copyright, and related laws, and Customer shall use such information and FACIS consistent with the third-party data providers' interests and notify them of any threatened or actual infringement of their rights. Customer agrees that it will take all steps necessary to preserve and protect the interests of Intellicorp and its third party providers and to secure and protect FACIS, Intellicorp.net and the information contained therein in a manner consistent with the preservation of the rights of Intellicorp and any

third party, and to take appropriate action by instruction or agreement with all those permitted access thereto to satisfy these obligations.

6. MISCELLANEOUS

- a. Customer may terminate access to the FACIS or Materials upon prior written notice to Intellicorp of its intent to terminate. Intellicorp or its suppliers may suspend, disrupt, terminate or discontinue providing the FACIS or Materials to Customer with or without notice.
- b. Except as otherwise provided herein, all notices and other communications hereunder may be in writing or displayed electronically in the FACIS by Intellicorp or its third party providers. Notices shall be deemed to have been properly given on the date deposited in the U.S. mails, if mailed; on the date first made available, if displayed in the FACIS; or on the date received, if delivered in any other manner.
- c. The failure of Intellicorp or any third party provider of the services to enforce any provision hereof shall not constitute or be construed as a waiver of such provision or of the right to enforce it at a later date.
- d. Customer may not assign its rights or delegate its duties under this agreement without the prior written consent of Intellicorp.
- e. These General Terms and Conditions and the Additional Terms shall be governed by and construed in accordance with the laws of the State of New York.
- f. Customer hereby agrees that upon reasonable notice and at a mutually agreeable time Intellicorp may audit Customer's books and records relevant to the use of FACIS in order to ensure compliance with the terms of this Agreement. Customer agrees to provide full cooperation and will be responsible for assuring full cooperation by its employees in connection with such audits. Customer agrees to provide Intellicorp with access to such properties, records and personnel as Intellicorp may reasonable require for such purpose. The third-party providers may also investigate all legitimate reports of abuse or misuse of their services. Violations discovered in any review will be subject to immediate action including, but not limited to, termination of Customer's right to use FACIS. Intellicorp will have the right to audit Customer to assure compliance with the terms of this Agreement. Customer must maintain all records related to its order, purchase and use of FACIS[®] for a period of five (5) years from the date the information is requested. The information retained and reports pursuant to this Section shall include, but not be limited to: the request date, requested individual, requestor, and purpose.
- g. This Agreement may be executed in separate counterparts, each such counterpart being deemed to be an original instrument, and all such counterparts shall together constitute the same agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their authorized representatives as of the day and year first written above.

on behalf of itself, its subsidiaries and affiliates (Customer)

Signed: _____

Name: _____

Title: _____

Date: _____

Intellicorp Records, Inc.

Signed: _____

Name: William F. Hauswirth

Title: President

Date: _____