

SERVICE AGREEMENT FOR NPDB-HIPDB 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 National Practitioner Data Bank and the Healthcare Integrity and Protection Data Bank (“NPDB-HIPDB”) a national data collection program for the reporting and disclosure of certain final adverse actions taken against health care practitioners, providers, and suppliers.

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 NPDB-HIPDB and use NPDB-HIPDB and its information solely for internal business purposes. Customer may not access or use the information provided by NPDB-HIPDB for the benefit of other parties, to determine an individual’s eligibility for credit, insurance, for personal, family or household purposes, or as the sole source for making adverse employment decisions or for the purpose of selling or offering to sell property or service to any person or entity whose name is obtained through NPDB-HIPDB. Customer agrees to restrict access to the NPDB-HIPDB 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 or permitted by NPDB-HIPDB, neither Customer nor its employees shall sell, transfer, distribute, publish, disclose, display or otherwise make NPDB-HIPDB 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 NPDB-HIPDB to develop its own source or database. The above notwithstanding, information obtained from NPDB-HIPDB may be used in conjunction with information from other sources when granting clinical privileges or in employment, affiliation, or licensure decisions. Information obtained from NPDB-HIPDB 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 NPDB-HIPDB. Only Customers who have executed this agreement will be provided access to use NPDB-HIPDB. An individual’s ID and Password may not be transferred, shared or otherwise provided to any other individuals. Access to and use of the NPDB-HIPDB must be discontinued simultaneously: with the termination of employment. Materials and features may be added to, withdrawn from, changed or restricted from NPDB-HIPDB without notice.
- c. Customer is responsible for registering with the NPDB-HIPDB to become an Eligible Entity and designating Intellicorp as its authorized agent to query or report on its behalf. (For more

information on registration, authorized agents and guidelines, see the NPDB-HIPDB website npdb-hipdb.com).

2. FEES

Customer is responsible for and shall pay all charges and usage fees associated with the use of NPDB-HIPDB. Customer authorizes Intellicorp to charge all Fees as they are incurred or become due. For accounts that are invoiced, Customer agrees to pay Intellicorp all charges and usage fees invoiced within thirty (30) days of date of the invoice. Customer shall pay Intellicorp interest on all charges and fees not paid within thirty (30) days at the rate of (1%) per month or the maximum interest permitted by law, whichever is less. Intellicorp may suspend, disrupt or terminate Customer's account and any ID issued to Customer if payments to Intellicorp for the NPDB-HIPDB 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 NPDB-HIPDB, INFORMATION CONTAINED IN NPDB-HIPDB 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 NPDB-HIPDB INFORMATION. NEITHER INTELICORP NOR ITS THIRD PARTY PROVIDERS SHALL HAVE ANY LIABILITY FOR CONCLUSIONS REACHED FROM USE OF NPDB-HIPDB 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 NPDB-HIPDB, or information available or not included therein, (b) the unavailability or interruption of access to NPDB-HIPDB, (c) use of NPDB-HIPDB information (regardless of whether Customer received any assistance from Intellicorp or any third party provider in using NPDB-HIPDB, (d) Customer's use of any equipment in connection with NPDB-HIPDB, (e) the NPDB-HIPDB content, (f) any delay or failure in performance beyond the reasonable control of Intellicorp or any third party provider, (g) use of NPDB-HIPDB 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 NPDB-HIPDB 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 NPDB-HIPDB 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 NPDB-HIPDB or by virtue of Customer's use of the information obtained from NPDB-HIPDB or through use of NPDB-HIPDB, either directly or indirectly.
- e. As referred to in this Agreement third party provider means (a) the provider of the NPDB-HIPDB service, its affiliates and any owner, officer, director, employee, subcontractor, agent, successor or assign of the provider of NPDB-HIPDB or its affiliates; and (b) each third party provider of the information contained in NPDB-HIPDB, 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 NPDB-HIPDB, use, search routines, title, and interest in NPDB-HIPDB, including all copyrights and other intellectual property rights in NPDB-HIPDB belong to the third party provider of NPDB-HIPDB. Customer acquires no proprietary interest in NPDB-HIPDB 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 NPDB-HIPDB 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 NPDB-HIPDB.

- b. Customer is prohibited from using NPDB-HIPDB in any fashion that infringes the copyrights or proprietary interest of the third party providers of NPDB-HIPDB. Customer may not remove or obscure any copyright notice or other notice contained on materials retrieved from NPDB-HIPDB. 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 NPDB-HIPDB under applicable contractual, copyright, and related laws, and Customer shall use such information and NPDB-HIPDB 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 NPDB-HIPDB, 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.
- c. Customer acknowledges that the information from and report information to the NPDB-HIPDB system("NPDB-HIPDB System") contains personal information protected under the provisions of the Privacy Act of 1974, 5 USC Section 552(a). Violations of the provisions of the Privacy Act will subject the offender to criminal penalties. Information reported to the NPDB is considered confidential and shall not be disclosed except as specified in the NPDB regulations at 45 CFR Part 60. For each violation of confidentiality, a civil money penalty of up to \$11,000 can be levied under Title IV of Public Law 99-660.

6. MISCELLANEOUS

- a. Customer may terminate access to the NPDB-HIPDB 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 NPDB-HIPDB 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 NPDB-HIPDB 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 NPDB-HIPDB; 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 NPDB-HIPDB 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 NPDB-HIPDB. 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 NPDB-HIPDB 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.
- h. Services provided in the state of Nevada are conducted through Nevada licensed private investigators Acxiom Information Security Services Inc., private investigator license number 1164, (Nevada single country criminal searches and employment, education and reference verifications); and US Investigative Services, LLC, private investigator license number 825, (Nevada single county civil searches).

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)

Intellicorp Records, Inc.

Signed: _____

Signed: _____

Name: _____

Name: William F. Hauswirth

Title: _____

Title: President

Date: _____

Date: _____