

## **CONFIDENTIALITY AGREEMENT**

**THIS CONFIDENTIALITY AGREEMENT** (“**Agreement**”) is made and entered into this date \_\_\_\_\_, by and between **One Source Clinical and Management** (“**Consultant**”) located at 296 H Street, Suite 304, Chula Vista, CA 91910 and \_\_\_\_\_ (the “**Company**”) located at \_\_\_\_\_.

### **RECITALS:**

**WHEREAS,** Consultant has special talent and experience of Consulting and Management.

**WHEREAS,** Company wishes to have the benefits of that talent and experience and wishes to contract for the services of the Consultant, as an independent Contractor.

**WHEREAS** Consultant wishes to make available to Company said talent and experience as Company may need on non-exclusive basis.

**NOW THEREFORE,** in consideration of the foregoing, and the mutual promises and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

### **1. Confidential Information.**

A. The term “Confidential Information” means any information or material which is proprietary to Company, whether or not owned or developed by Company, which is not generally known other than by Company, and which the Consultant may obtain through any direct or indirect contact with Company. The determination of what information is “generally known” will be at the reasonable discretion and decision of Company, and the mere knowledge of the same or similar information to Confidential Information of Company by a third party does not by itself render otherwise Confidential Information “generally known.”

B. Confidential Information includes, without limitation: business records and plans, financial statements, customer lists and records, trade secrets, technical information, products, inventions, product design information and configuration, pricing structures, discounts, costs, computer programs and listings, source code and/or object code, copyrights, and other intellectual property and proprietary information identified as confidential pursuant to Section 1.A.

C. Confidential Information does not include: (i) matters of public record or knowledge that results from disclosure by Company to a person other than Consultant and such person is not subject to a confidentiality obligation to the Company, and (ii) information independently developed by the Consultant without using any of the Confidential Information and without violation of any other confidentiality obligation to the Company.

### **2. Protection of Confidential Information.**

A. The Consultant understands and acknowledges that the Confidential Information has been developed or obtained by Company by the investment of significant time, resources and expenses, and that the Confidential Information is a valuable, special and unique asset of

Company which has provided Company with a significant competitive advantage. Therefore, the Consultant agrees to hold in confidence and to not disclose the Confidential Information to any person or entity without the prior written consent of Company. At such time as the Consultant determines that it has no further interest in a transaction with the Company, it will either return all such confidential information to the company, retaining no copies in any form whatsoever, or certify to the Company that all such information has been destroyed and no copies retained.

B. For a period of three years, Consultant agrees not to disclose or allow disclosure to others of any Confidential Information, except that Consultant may disclose Confidential Information to its directors, officers, agents or advisors (collectively, but only if such persons receive Confidential Information, the "Representatives") to the extent necessary to permit such Representatives to assist Consultant in connection with the Transaction; provided, however, that Consultant shall instruct each such Representative to comply with the terms of this Agreement applicable to them. The Consultant shall not, without written consent of Company, retain any original or copies of memoranda, notes, plans, sketches, data or other documentation, papers or records of any kind related to the research, development, products or business of Company or any of its related entities delivered by Company to Consultant in connection with this Agreement.

C. Consultant will not use any Confidential Information disclosed hereunder for any purpose other than in connection with the business relationship contemplated by this Agreement or in carrying out its rights and obligations under any other agreement it has with the Company.

D. Upon the written request of Company, the Consultant shall destroy, without reservation, all written materials containing the Confidential Information delivered by Company to Consultant in connection with this Agreement, including, without limitation, all related notes. Within ten (10) business days of receipt of the request, the Consultant shall also deliver to Company a written statement signed by a corporate officer, certifying that all such materials have been destroyed.

E. Consultant shall comply with any reasonable rules established from time to time by Company as protection of the confidentiality of any Confidential Information, including the obtaining of a confidentiality agreement from any third party to whom such Confidential Information is to be disclosed.

**3. Relationship of the Parties.** Neither party hereto has an obligation under this Agreement to enter into the Transaction. This Agreement does not create any agency, partnership or joint venture between the Parties.

**4. Remedies.**

A. Consultant agrees that money damages will not be a sufficient remedy for any breach of this Agreement by Consultant or its Representatives, and that in addition to all other remedies the Company shall be entitled to seek specific performance and injunctive or other equitable relief as a remedy for any such breach. In the event of litigation relating to this Agreement, if a court of competent jurisdiction determines that Consultant or any of their Representatives have breached this Agreement, Consultant shall be liable and pay to the

Company the reasonable legal fees incurred by the Company in connection with such litigation, including any appeal therefrom.

B. This Confidentiality Agreement shall be governed exclusively by the law of the State of California, without giving effect to California provisions for conflict of laws. Consultant hereby irrevocably and unconditionally submits to the exclusive jurisdiction of any State or Federal court in Orange county, California over any suit, action or proceeding arising out of or relating to this letter. Consultant hereby irrevocably and unconditionally waives any objection to the laying of venue of any such suit, action or proceeding brought in any such court and any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. Consultant agrees that a final judgment in any such suit, action or proceeding brought in any such court shall be conclusive and binding upon Receiving Party, subject to Receiving Party's appeal rights, and may be enforced in any other courts to whose jurisdiction Consultant is or may be subject, by suit upon such judgment.

5. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one document.

6. **Modification.** This Agreement may be modified only by a contract in writing executed by both parties to this Agreement. No failure or delay by the Company in exercising any right, power or privilege under this Agreement shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise of any right, power or privilege hereunder.

7. **Prior Understanding.** This Agreement contains the entire agreement between the parties to the Agreement with respect to the subject matter of this Agreement. It is intended as a final expression of the parties' agreement with respect to such terms as are included in this Agreement, is intended as a complete and exclusive statement of the terms of such agreement, and supersedes all negotiations, stipulations, understandings, agreements, representations, and warranties, if any, with respect to such subject matter.

8. **Interpretation.** Whenever the context so requires in this Agreement, all words used in the singular shall be construed to have been used in the plural (and vice versa), each gender shall be construed to include any other gender, and the word "party" shall be construed to include a natural person, a corporation, a limited liability company, a firm, a partnership, a joint-venture, a trust, an estate, or any other entity.

9. **Partial Invalidity.** Each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of the Agreement or the application of such provision to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such provision shall not be affected by such invalidity or unenforceability, unless such provision or such application is essential to this Agreement.

10. **Successors-In-Interest and Assigns.** The Agreement shall be binding upon and shall inure to the benefit of the successors-in-interest and assigns of each party to this Agreement. Nothing in this paragraph shall create any rights enforceable by any person not a

party to this Agreement, except for the rights of the successors-in-interest and assigns, unless such rights are expressly granted.

**11. Notices.** All notices or other communications required or permitted to be given to a party to this Agreement shall be in writing and shall be personally delivered, sent by certified mail, return receipt requested, or sent by overnight courier service that provides written confirmation of delivery.

**12. Waiver.** Any waiver of a default under this Agreement must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement. No delay or omission in the exercise of any right or remedy shall impair such right or remedy or be construed as a waiver. A consent to or approval of any act shall not be deemed to waive or render unnecessary consent to or approval of any other or subsequent act.

**13. Drafting Ambiguities.** The parties to this Agreement have reviewed and revised this Agreement. Each party to this Agreement has had the opportunity to have such party's legal counsel review and revise this Agreement. The rule of construction that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or of any amendments or exhibits to this Agreement.

**IN CONSIDERATION OF THE ABOVE**, the parties have executed this Agreement as of the date first above written.

Consultant:

Company:

Name: One Source Consulting & Management

Name:

By: \_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_