

## PURCHASE ORDER TERMS AND CONDITIONS

Akorn, Inc. and its subsidiaries and affiliates (collectively “Akorn”) hereby retains the supplier and its subsidiaries and affiliates (collectively “Supplier”) set forth in the order form (including attachments thereto, the “Order Form”) on the terms and conditions hereinafter stated (the “Purchase Order Terms and Conditions,” and together with the Order Form, the “Purchase Order”) to supply the materials, supplies, items or equipment (the “Products”) and/or perform the services (the “Services”) described in the Order Form. Nothing in this Purchase Order shall be interpreted to prevent Akorn from obtaining Products or Services from itself or any other third party or from ceasing to use Supplier to provide Products or Services.

In the event of a conflict or inconsistency between any of the provisions of this Purchase Order and any of the provisions of a written agreement between Akorn and Supplier (“Agreement”) the provisions of the Agreement shall govern. In the absence of an Agreement, this Purchase Order constitutes the entire agreement of the parties with regard to the subject matter. In the event of a conflict or inconsistency between any of the provisions of the Purchase Order Terms and Conditions and any provisions of the Order Form, the provisions of the Purchase Order Terms and Conditions shall govern.

Supplier’s acceptance of this Purchase Order may be in writing, email, fax, EDI or other manifestation of acceptance such as, but not limited to, Supplier’s initiation of performance or through Supplier’s acceptance of any payment made pursuant to this Purchase Order, whichever occurs first. Except to the extent expressly accepted in writing by Akorn, Akorn hereby affirmatively rejects any different or additional terms and conditions proposed by Supplier.

### 1. PRICE; INVOICING; PAYMENT

(a) **Price.** The price for the Products shall, as applicable, cover the net weight of the Products, and no extra charge of any kind, including charges for boxing, packaging or crating, shall be allowed unless specifically agreed to in advance in writing by Akorn. The price for Services shall cover all activities required to perform the Services as contemplated in this Purchase Order.

(b) **Invoice; Payment; Billing Disputes.** Unless otherwise specified by Akorn, Supplier shall invoice Akorn for the Products or Services only after the Products or Services are received by Akorn. Unless otherwise specified by Akorn on the applicable Order Form, payment terms shall be net forty-five (45) days after Akorn’s receipt of the applicable invoice. Akorn may set off any amount owing from Supplier to Akorn against any amount payable by Akorn. Akorn may withhold payment of any invoiced amounts that it disputes in good faith and the parties shall work in good faith to resolve any such billing disputes. Any such billing disputes shall not be cause for Supplier’s nonperformance. Payment by Akorn shall not result in a waiver of its rights under this Purchase Order.

### 2. DELIVERY; CANCELLATION; INSPECTION; ACCEPTANCE

(a) **Product Delivery.** Supplier shall be responsible for packaging, loading and shipping the Products in accordance with any packaging specifications, shipping methods and other related requirements set forth in this Purchase Order or otherwise communicated in writing to Supplier by Akorn. If no such specifications, methods or requirements are so specified, Supplier shall be responsible for packaging, loading and shipping the Products in a manner sufficient to prevent damage and loss to the Products during shipment. Unless otherwise agreed to in writing by Akorn, Supplier shall be responsible for freight and delivery to the destination specified on the applicable Order Form. Supplier shall bear all risks of loss and damage to the Products until final acceptance or rejection by Akorn.

(b) **Customs Clearance.** For shipment of Products imported into the United States, Supplier shall promptly provide Akorn with a commercial invoice that includes the information required by 19 CFR 141.86. Supplier shall remain fully responsible for its compliance obligations under this Purchase Order.

(c) **Cancellation.** The delivery of Products and/or Services shall strictly comply with the delivery date or delivery schedule, if any, specified by Akorn. If at any time it appears that Supplier will not meet such delivery date or schedule, Supplier shall promptly notify Akorn in writing of reasons for, and the estimated duration of, the delay. If requested by Akorn, Supplier shall ship delayed Products and any added cost to be borne by Supplier. Akorn

reserves the right to cancel any Purchase Order in whole or in part for the undelivered Products or unperformed Services.

**(d) Inspection: Acceptance of Products and Services.** All Products or Services delivered or performed shall be subject to final review, inspection and acceptance by Akorn. Acceptance of Products and Services shall occur when the Products or Services delivered have been inspected by Akorn and determined to meet the requirements specified in this Purchase Order. Akorn shall make such inspection within a reasonable period of time (not to exceed ninety (90) days) after delivery of Products or completion of Services. Akorn shall provide Supplier notice of rejection of any Product with respect to any latent defects within thirty (30) days of discovery. If the Products or Services do not meet such requirements, Supplier shall promptly (and in any event within thirty (30) days) upon Akorn's instruction and choice: (i) repair, replace or re-perform the deficient or non-conforming Products or Services; and/or (ii) cease all Supplier activities related to Products or Services; and/or (iii) refund to Akorn all fees paid by Akorn (to Supplier or Third Parties) for the deficient or non-conforming Products or Services and any other products or services that are dependent on such deficient or non-conforming Products or Services. The foregoing shall not be construed to limit or exclude any other rights or remedies of Akorn at law or in equity.

### **3. AUDIT**

After Akorn provides reasonable notice, Supplier shall provide and shall cause Supplier's contractors, subcontractors and agents (collectively "Personnel") to provide to Akorn or its representatives, including its external auditors, access to any facility of Supplier (and Supplier's Personnel) and to data and records relating to the Products and/or Services for the purposes of: (a) verifying the integrity and security of Akorn data ; (b) observing Supplier's performance of its obligations under this Purchase Order; and (c) enabling Akorn to comply with all applicable Laws. If any such audit reveals that Supplier has overcharged Akorn, Supplier shall promptly reimburse Akorn for such overcharge, and in the event that any such overcharge exceeds five percent (5%) of the amount that should have been charged Supplier shall promptly reimburse Akorn for all reasonable costs and expenses incurred in the conduct of the audit.

### **4. CONFIDENTIAL INFORMATION**

Akorn's non-public, confidential or proprietary information (including but not limited to specifications, samples, plans, documents, data, business operations, customer lists, pricing, and financial information) disclosed by Akorn to Supplier, whether disclosed orally or in writing or accessed electronically, and whether or not identified as "confidential," in connection with the Order is confidential and may not be disclosed or copied unless authorized by Akorn in writing. Upon Akorn's request, Supplier shall promptly return all documents and other materials received from Akorn. Akorn shall be entitled to injunctive relief for any violation of this Section. This Section shall not apply to information that is: (a) in the public domain; (b) known to the Supplier at the time of disclosure; or (c) rightfully obtained by the Supplier on a non-confidential basis from a third party.

### **5. ADDITIONAL REPRESENTATIONS, WARRANTIES AND COVENANTS**

**(a) Permits and Compliance with Laws.** Supplier shall maintain in effect all licenses, permissions, authorizations, consents and permits needed to carry out its obligations under the Purchase Order. Supplier shall comply with all applicable laws, rules, regulations and ordinances and applicable policies of Akorn, including security procedures. Supplier shall comply with all export and import laws of all countries involved in the sale of Products or Services. Supplier assumes all responsibility for shipments of Products requiring any government import clearance. Additionally, Supplier shall comply with the *Anti-Bribery and Anti-Corruption Terms and Conditions for Akorn's Third Party Intermediaries* set forth in Schedule A

**(b) Products and Services.** Supplier warrants it and its Personnel have the adequate infrastructure (including properly equipped facilities sufficient in size) and trained qualified employees necessary to supply Products and/or perform Services. Supplier represents, warrants and covenants, that its performance and all Products and Services provided shall, for eighteen (18) months after delivery (or performance): (i) be free from defects in design, workmanship and materials; (ii) be of the kind, quantity and quality described in, and conform with, the requirements specified in this Purchase Order; (iii) be fit for the purpose intended; (iv) perform in the manner specified; (v) be free of any claim of misappropriation or infringement by a third party; (vi) if the Products are software, be the

most current releases generally available to third parties at the time of delivery; and (vii) comply with all other requirements of this Purchase Order. Supplier represents, warrants and covenants, that its performance and all Products and Services provided shall, for a perpetual duration be free and clear of all liens, claims and encumbrances by the date delivered to Akorn.

Without limiting the generality of the preceding provisions of this section, Supplier represents, warrants, and covenants that every chemical substance and/or mixture as defined under the TSC Act, contained in the Products or utilized in their manufacture, has been properly reported to the United States Environmental Protection Agency in accordance with the provisions of the TSC Act and the regulations issued thereunder (each as supplemented and/or amended from time to time). Supplier further represents, warrants, and covenants that all color additives covered under this Purchase Order shall be manufactured by Supplier and (where color additive regulations require certification) are from batches certified in accordance with the applicable regulation promulgated under the FDC Act or TSC Act, as applicable.

(c) **No Debarment**. Supplier represents, warrants, and covenants that Supplier: (i) has not been debarred by any governmental authority; (ii) is not subject to debarment by a governmental authority; or (iii) shall not use, in any capacity, in connection with performance under this Purchase Order, any person or entity that has been debarred, or is the subject of debarment proceedings by any governmental authority. If Supplier learns that a person or entity performing on its behalf under this Purchase Order has been debarred, or has become the subject of debarment proceedings, Supplier shall so promptly notify Akorn and shall prohibit such person or entity from performing under this Purchase Order.

(d) **Anti-Bribery/Anti-Corruption Breach**. Supplier has not and will not directly or indirectly offer or pay, or authorize such offer or payment of, any money or anything of value in an effort to influence any government official or any other person in order for Akorn to improperly obtain or retain business or to gain an improper business advantage. Conversely, Supplier has not and shall not accept such a payment from any person or entity.

(e) **Authority**. The execution, delivery and performance of this Purchase Order have been duly authorized by all necessary action on the part of Supplier, its officers and directors. This Purchase Order constitutes a valid and binding obligation of Supplier

## **6. INDEMNIFICATION**

To the fullest extent permitted by applicable law, Supplier shall defend, indemnify and hold harmless Akorn and its representatives (collectively, "Indemnitees") against any and all loss, injury, death, damage, liability, claim, deficiency, action, judgment, interest, award, penalty, fine, cost or expense, including reasonable attorney and professional fees and costs, and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers (collectively, "Losses") arising out of or occurring in connection with (i) Products or Services that do not conform to agreed-upon specifications, and/or (ii) Supplier's negligence, willful misconduct or breach of the Terms.

Supplier shall keep the Indemnitee fully informed concerning the status of any such litigation, negotiations or settlements of any claim, demand or action. The Indemnified Party shall be entitled, at its own expense, to participate in any such litigation, negotiations and settlements with counsel of its own choosing. Supplier shall not have the right to settle any claim without the prior written consent of the Indemnitee.

## **7. INSURANCE**

During the term of the Purchase Order and for a period of eighteen (18) months thereafter, Seller shall, at its own expense, maintain and carry insurance in full force and effect in an amount sufficient to protect Supplier and Akorn from all claims which may arise out of or result from Supplier's performance under this Purchase Order. Such insurance shall include, but is not limited to, commercial general liability (including product liability), workers' compensation, and automobile and truck liability. Upon Akorn's request, Supplier shall provide Akorn with a certificate of insurance from evidencing the insurance coverage specified in this Purchase Order. Akorn's acceptance of any insurance certificate shall not constitute acceptance of the adequacy of coverage.

## 8. LIMITATION OF LIABILITIES

Notwithstanding the form (e.g., contract, tort or otherwise) in which any legal or equitable action may be brought, under no circumstances shall Akorn or its affiliates be liable for consequential, indirect, special, punitive, or incidental damages or lost profits, whether foreseeable or unforeseeable, based on claims of Supplier or any other party arising out of breach or failure of express or implied warranty, breach of contract, misrepresentation, negligence, strict liability in tort, failure of any remedy to achieve its essential purpose, or otherwise. Notwithstanding the form (e.g., contract, tort or otherwise) in which any legal or equitable action may be brought, in no event shall Akorn or its affiliates be liable for any damages or losses that exceed, in the aggregate, the amount of fees paid and payable by Akorn for the Products or Services that gave rise to such damages or losses for each respective breach or series of related breaches. This section shall not apply only when and to the extent applicable Law specifically requires liability despite the foregoing disclaimer, exclusion and limitation.

## 9. TERM AND TERMINATION

(a) **Term.** This Purchase Order shall commence upon Supplier's acceptance of this Purchase Order and shall continue through Akorn's acceptance of such Services or Products, as may be further specified in this Purchase Order and subject to latent defects.

(b) **Termination.** Akorn reserves the right to cancel orders, reduce quantities and/or change delivery dates to a later date upon not less than 90 days' notice prior to stated delivery date without incurring any penalties, fees, expenses or other liabilities.

## 10. INTELLECTUAL PROPERTY

For all work products and deliverables created under this Purchase Order through the performance of Services that may qualify as "work made for hire" as defined in 17 U.S.C. §101 (hereinafter "Works"), Supplier and Supplier's Personnel hereby assign and transfer, to the extent permissible under applicable law, to Akorn all rights to possession of, and all right, title, and interest, including all patent, copyright, trademark, trade secret and other proprietary and intellectual property rights ("Intellectual Property Rights") in and to such work products and deliverables. Supplier shall promptly disclose to Akorn any Works known to Supplier, and Akorn shall have sole ownership of such Works and the sole right to obtain and to hold in its own name any Intellectual Property Rights therein and thereto. Notwithstanding the foregoing provisions, Akorn's ownership rights do not apply or extend to any of the following (collectively, the "Supplier Property"): (i) any methodologies, methods of analysis, ideas, concepts, know-how, models, tools, techniques, skills, knowledge and experience or other materials or property owned or licensed by Supplier before initiating Services; (ii) any improvements or other modifications to any of the foregoing that Supplier creates during the performance of the Services without the use of any of Akorn's Confidential Information or Intellectual Property Rights; or (iii) any of the Intellectual Property Rights in or to any of the items described in the preceding clauses (i) and (ii). All right, title, and interest in and to the Supplier Property is and shall remain in Supplier, and Supplier shall not be restricted in any way with respect to the Supplier Property. However, to the extent that any Supplier Property is incorporated into or embodied in any of the Works, Supplier hereby grants to Akorn and its affiliates a perpetual, irrevocable, worldwide, royalty-free, non-exclusive license, with the right to grant sublicenses, to (A) use such Supplier Property solely as part of or in connection with such Works or any derivative work based upon such Works, and (B) to modify such Supplier Property, solely to the extent such modification is necessary in connection with the creation of a derivative work based upon such Works.

## 11. MISCELLANEOUS

(a) **Use of Akorn Trademark/Name; Publicity.** Unless otherwise required by law, Supplier shall not issue any press release or other publicity materials, or make any presentation with respect to the existence of this Purchase Order or the terms and conditions hereof without Akorn's prior written consent. Supplier shall not publicize or use any name, trade name, service marks, trademarks, trade dress or logos of Akorn nor identify Akorn as a customer without Akorn's prior written consent.

(b) **Governing Law; Venue.** All matters arising out of or relating to this Purchase Order shall be governed by and construed in accordance with New York Law, without regard to conflicts-of-law principle. All actions and proceedings under this Purchase Order shall be brought in a state or federal court in the State of New York.

(c) **Relationship of the Parties.** Supplier shall not be considered a partner, co-venturer, agent, employee, or

representative of Akorn, but shall remain in all respects an independent contractor, including for purposes of the Occupational Safety and Health Act or state equivalent. Neither Party's employees shall be deemed "leased" employees of the other for any purpose.

**(d) Assignment; Subcontracting.** This Purchase Order or any right or obligation arising therefrom shall not be assigned or transferred by Supplier in the absence of Akorn's prior written consent thereto. Supplier shall not delegate or subcontract any of its obligations or responsibilities under this Purchase Order to any third party without Akorn's prior written permission. Delegating such responsibilities shall not relieve Supplier of its obligation under this Purchase Order.

**(e) Force Majeure.** No Party shall be liable for any failure to perform or any delays in performance if such failure or delay is due to any causes that are beyond its reasonable control, including, without limitation, such causes as acts of God, natural disasters, flood, severe storm, earthquake, civil disturbance, lockout, riot, order of any court or administrative body, embargo, acts of government, war (whether or not declared), acts of terrorism, or other similar causes ("Force Majeure Event"). For clarity, raw material price increases and unavailability of raw materials shall not be deemed a Force Majeure Event. In the event of a Force Majeure Event, the Party prevented from or delayed in performing shall promptly give notice to the other Party and the affected Party may elect to: (a) suspend performance and extend the time for performance, or (b) cancel all or any part of the unperformed part of this Purchase Order.

**(f) Severability.** If and solely to the extent that any court or tribunal of competent jurisdiction holds any provision of this Purchase Order to be unenforceable in a final non-appealable order, such unenforceable provision shall be stricken and the remainder of this Purchase Order shall not be affected thereby. In such event, the parties shall in good faith attempt to replace any unenforceable provision of this Purchase Order with a provision that is enforceable and that comes as close as possible to expressing the intention of the original provision.

**(g) Waiver; Partial Invalidity.** The failure of Akorn to insist in any instance upon strict performance by Supplier of any provision of this Purchase Order shall not be construed as a continuing waiver of such item, or waiver of any other provision of this Purchase Order or any corresponding Agreement. If any provision of this Purchase Order shall be held illegal or unenforceable by any governmental authority having jurisdiction over this Purchase Order, the validity of the remaining portions shall not be affected thereby.

**(h) Headings.** Headings are included herein for convenience of reference only, and shall not constitute a part of this Purchase Order or change the meaning of this Purchase Order.

[End of Purchase Order Terms and Conditions]

## SCHEDULE A

### Anti-Bribery and Anti-Corruption Terms and Conditions For Akorn's Third Party Intermediaries

This Exhibit is attached to, and hereby incorporated into and made part of, the Terms and Conditions. To the extent the terms of this Exhibit conflict with the terms of the Terms and Conditions, the terms of this Exhibit shall govern.

SUPPLIER hereby acknowledges this *Anti-Bribery and Anti-Corruption Terms and Conditions for Akorn's Third Party Intermediaries* and agrees to comply in its entirety.

1. Anti-Bribery Compliance. SUPPLIER shall comply with all applicable anti-bribery and anti-corruption laws and regulations, including without limitation the US Foreign Corrupt Practices Act and the UK Bribery Act 2010 (if applicable) (collectively, the "**Anti-Bribery Laws**").
2. Representatives. SUPPLIER shall ensure that all of its subcontractors (if applicable), shareholders (if applicable), officers, directors, employees, consultants, advisors, agents and any other persons or entities acting on its behalf in connection with the Terms and Conditions (collectively, the "**Representatives**") do so only in compliance with the terms of this Exhibit (the "**Anti-Bribery Terms**"). SUPPLIER shall be responsible for the observance and performance by the Representatives of the Anti-Bribery Terms, and shall be directly liable to AKORN for any breach by the Representatives of any of the Anti-Bribery Terms.
3. Improper Conduct. SUPPLIER shall not make, directly or indirectly, in connection with the Terms and Conditions or in connection with any other business transaction related to AKORN, a payment or gift of, or an offer, promise or authorization to give money or anything of value or any other improper inducement or undue advantage to any:
  - i. Government Official or Close Family Member of a Government official;
  - ii. person or entity; or
  - iii. other person or entity while knowing or having reason to believe that some portion or all of the payment or thing of value will be offered, given or promised, directly or indirectly, to a Government Official or another person or entity;

for the purpose of:

- i. influencing any act or decision of such Government Official or such person or entity in his/her or its official capacity, including a decision to do or omit to do any act in violation of his/her or its lawful duties or proper performance of functions or within such person's discretion; or
- ii. inducing such Government Official or such person or entity to use his/her or its influence or position with any Government Entity or other person or entity to influence any act or decision;

in order to obtain or retain business for, direct business to, or secure an improper advantage for AKORN or SUPPLIER.

SUPPLIER shall also not solicit, request or accept any bribes, undue advantages or similar improper inducement for itself or for a third party in order that it or such third party carries out or fails to carry out an act in connection with its official activities which is contrary to its duties or dependent on its discretion.

4. Policies and Procedures. SUPPLIER shall have and maintain throughout the term of the Terms and Conditions adequate policies, procedures and controls to ensure compliance with these Anti-Bribery Terms, including at a minimum policies and procedures relating to prevention of bribery, accounting for financial transactions, due diligence on third parties and training of personnel. SUPPLIER shall enforce such policies and procedures where appropriate.

5. Training. SUPPLIER shall participate in anti-bribery compliance training, if so requested by AKORN. AKORN shall have the right to provide such training or designate a third party to provide such training to SUPPLIER.
6. Certification. When requested by AKORN from time to time, but not more than once per year, SUPPLIER shall provide a certification in form substantially similar to the certification attached hereto as ATTACHMENT 1. Such Certification shall be signed by an authorized representative of SUPPLIER, certifying that SUPPLIER is, and all of its Representatives are, in compliance with all Anti-Bribery Terms.
7. Audit. SUPPLIER shall maintain books and records that describe in accurate and reasonable detail all expenditures incurred by it in connection with the Terms and Conditions. AKORN may take reasonable steps to verify SUPPLIER's compliance with any Anti-Bribery Terms. AKORN shall have the right to audit or retain a third party to audit, at its sole discretion and expense, all of SUPPLIER's books and records that pertain to compliance with the Anti-Bribery Terms not more than once per year. Such documentation includes, without limitation: (i) documentation pertaining to services under the Terms and Conditions, (ii) invoices and requests for expense reimbursement, and (iii) payments made to or benefits conferred by SUPPLIER on third parties in the course of SUPPLIER's performance of services under the Terms and Conditions.
8. Breach. SUPPLIER shall promptly report to AKORN any developments that cause the statements in this Exhibit to be inaccurate or incomplete. SUPPLIER shall promptly report to AKORN any request or demand for any undue or suspicious payment or other advantage of any kind received by SUPPLIER in connection with the performance of the Terms and Conditions. If AKORN reasonably determines, at any time, that there is credible evidence that SUPPLIER or any of its Representatives has violated any Anti-Bribery Terms, AKORN shall have the right to suspend all payments due under the Terms and Conditions while it investigates the credible evidence. Upon a good faith request by AKORN, SUPPLIER shall cooperate with AKORN's investigation to determine if such a violation has occurred. If AKORN determines reasonably and in good faith that there has been such a violation, it shall have the right to terminate the Terms and Conditions with immediate effect and without payment due of any kind except for services lawfully and properly rendered under the Terms and Conditions.
9. Indemnification. SUPPLIER shall indemnify and hold harmless AKORN and its officers, directors, employees, agents, affiliates, successors and permitted assigns (collectively, "**Indemnified Party**") against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys' fees, that are incurred by Indemnified Party arising out of the violation of any Anti-Bribery Terms by SUPPLIER or any of its Representatives.
10. Definitions. For purposes of the Terms and Conditions:
  - a. "**Close Family Member**" means (i) the individual's spouse; (ii) the individual's and the spouse's grandparents, parents, siblings, children, nieces, nephews, aunts, uncles, and first cousins; (iii) the spouse of any persons listed in subcategories (i) and (ii); and (iv) any other person who shares the same household with the individual.
  - b. "**Government Entity**" means (i) any national, state, regional or local government or judicial authority (including, in each case, any agency, department or subdivision of such government), and any government agency or department; (ii) any political party; (iii) any entity or business that is owned or controlled by any of those bodies listed in subcategory (i) or (ii) (including without limitation officially-appointed experts, translators or interpreters as well arbitrators); or (iv) any international organization, such as the United Nations or the World Bank.
  - c. "**Government Official**" means (i) any director, officer, employee, agent or representative (including anyone elected, nominated, or appointed to be a director, officer, employee, agent or representative) of any Government Entity, or anyone otherwise acting in an official capacity on behalf of a Government Entity; (ii) any political party, political party official or political party employee; (iii) any candidate for public or political office; (iv) any royal or ruling family member; or (v) any agent or representative of any of those persons listed in subcategories (i) through (iv).

**SCHEDULE A – ATTACHMENT 1**

**ANTI-BRIBERY COMPLIANCE CERTIFICATE**

Pursuant to Schedule A of the Terms and Conditions between **Akorn, Inc.** and \_\_\_\_\_ dated \_\_\_\_\_, the undersigned hereby certifies that:

1. SUPPLIER is familiar with and understands the requirements and prohibitions of applicable Anti-Bribery Laws and the *Anti-Bribery and Anti-Corruption Terms and Conditions for Akorn's Third Party Intermediaries* (Schedule A).
2. SUPPLIER and its Representatives have been, and continue to be, in full compliance with the Anti-Bribery Laws and the Anti-Bribery Terms of the *Anti-Bribery and Anti-Corruption Terms and Conditions for Akorn's Third Party Intermediaries* (Schedule A).
3. After due inquiry of its Representatives, neither SUPPLIER nor any of its Representatives (a) is a Government Official; or (b) has a personal, business or other relationship or association with any Government Official or Close Family Member of any Government Official who may have responsibility for or oversight of any business activities of AKORN or Third-Party Intermediary, other than any relationships or associations that have been disclosed in writing to AKORN.
4. SUPPLIER understands and agrees that any false certification is grounds for AKORN to immediately terminate the Terms and Conditions and any other business relationship or agreement with SUPPLIER. SUPPLIER shall immediately advise AKORN if (a) subsequent developments cause the statements herein to be inaccurate or incomplete; or (b) it learns of, has reason to know of, or suspects any violation of the Anti-Bribery Terms and/or any Anti-Bribery Laws involving the Terms and Conditions or AKORN.

IN WITNESS WHEREOF, the undersigned has executed this Anti-Bribery Compliance Certificate on behalf of Third-Party Intermediary as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ .

\_\_\_\_\_

By: \_\_\_\_\_  
Name:  
Title:



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**(d) Inspection: Acceptance of Products and Services.** All Products or Services delivered or performed shall be subject to final review, inspection and acceptance by Akorn. Acceptance of Products and Services shall occur when the Products or Services delivered have been inspected by Akorn and determined to meet the requirements specified in this Purchase Order. Akorn shall make such inspection within a reasonable period of time (not to exceed ninety (90) days) after delivery of Products or completion of Services. Akorn shall provide Supplier notice of rejection of any Product with respect to any latent defects within thirty (30) days of discovery. If the Products or Services do not meet such requirements, Supplier shall promptly (and in any event within thirty (30) days) upon Akorn's instruction and choice: (i) repair, replace or re-perform the deficient or non-conforming Products or Services; and/or (ii) cease all Supplier activities related to Products or Services; and/or (iii) refund to Akorn all fees paid by Akorn (to Supplier or Third Parties) for the deficient or non-conforming Products or Services and any other products or services that are dependent on such deficient or non-conforming Products or Services. The foregoing shall not be construed to limit or exclude any other rights or remedies of Akorn at law or in equity.

### **3. AUDIT**

After Akorn provides reasonable notice, Supplier shall provide and shall cause Supplier's contractors, subcontractors and agents (collectively "Personnel") to provide to Akorn or its representatives, including its external auditors, access to any facility of Supplier (and Supplier's Personnel) and to data and records relating to the Products and/or Services for the purposes of: (a) verifying the integrity and security of Akorn data ; (b) observing Supplier's performance of its obligations under this Purchase Order; and (c) enabling Akorn to comply with all applicable Laws. If any such audit reveals that Supplier has overcharged Akorn, Supplier shall promptly reimburse Akorn for such overcharge, and in the event that any such overcharge exceeds five percent (5%) of the amount that should have been charged Supplier shall promptly reimburse Akorn for all reasonable costs and expenses incurred in the conduct of the audit.

### **4. CONFIDENTIAL INFORMATION**

Akorn's non-public, confidential or proprietary information (including but not limited to specifications, samples, plans, documents, data, business operations, customer lists, pricing, and financial information) disclosed by Akorn to Supplier, whether disclosed orally or in writing or accessed electronically, and whether or not identified as "confidential," in connection with the Order is confidential and may not be disclosed or copied unless authorized by Akorn in writing. Upon Akorn's request, Supplier shall promptly return all documents and other materials received from Akorn. Akorn shall be entitled to injunctive relief for any violation of this Section. This Section shall not apply to information that is: (a) in the public domain; (b) known to the Supplier at the time of disclosure; or (c) rightfully obtained by the Supplier on a non-confidential basis from a third party.

### **5. ADDITIONAL REPRESENTATIONS, WARRANTIES AND COVENANTS**

**(a) Permits and Compliance with Laws.** Supplier shall maintain in effect all licenses, permissions, authorizations, consents and permits needed to carry out its obligations under the Purchase Order. Supplier shall comply with all applicable laws, rules, regulations and ordinances and applicable policies of Akorn, including security procedures. Supplier shall comply with all export and import laws of all countries involved in the sale of Products or Services. Supplier assumes all responsibility for shipments of Products requiring any government import clearance. Additionally, Supplier shall comply with the *Anti-Bribery and Anti-Corruption Terms and Conditions for Akorn's Third Party Intermediaries* set forth in Schedule A

**(b) Products and Services.** Supplier warrants it and its Personnel have the adequate infrastructure (including properly equipped facilities sufficient in size) and trained qualified employees necessary to supply Products and/or perform Services. Supplier represents, warrants and covenants, that its performance and all Products and Services provided shall, for eighteen (18) months after delivery (or performance): (i) be free from defects in design, workmanship and materials; (ii) be of the kind, quantity and quality described in, and conform with, the requirements specified in this Purchase Order; (iii) be fit for the purpose intended; (iv) perform in the manner specified; (v) be free of any claim of misappropriation or infringement by a third party; (vi) if the Products are software, be the most current releases generally available to third parties at the time of delivery; and (vii) comply with all other requirements of this Purchase Order. Supplier represents, warrants and covenants, that its performance and

all Products and Services provided shall, for a perpetual duration be free and clear of all liens, claims and encumbrances by the date delivered to Akorn.

Without limiting the generality of the preceding provisions of this section, Supplier represents, warrants, and covenants that every chemical substance and/or mixture as defined under the Swiss Chemicals Act (*Chemikaliengesetz*), contained in the Products or utilized in their manufacture, has been properly reported to the competent authorities in accordance with the provisions of the Swiss Chemicals Act (*Chemikaliengesetz*) and the regulations issued thereunder (each as supplemented and/or amended from time to time). Supplier further represents, warrants, and covenants that all color additives covered under this Purchase Order shall be manufactured by Supplier and (where color additive regulations require certification) are from batches certified in accordance with the applicable regulation under the applicable law, as applicable.

(c) **No Debarment**. Supplier represents, warrants, and covenants that Supplier: (i) has not been debarred by any governmental authority; (ii) is not subject to debarment by a governmental authority; or (iii) shall not use, in any capacity, in connection with performance under this Purchase Order, any person or entity that has been debarred, or is the subject of debarment proceedings by any governmental authority. If Supplier learns that a person or entity performing on its behalf under this Purchase Order has been debarred, or has become the subject of debarment proceedings, Supplier shall so promptly notify Akorn and shall prohibit such person or entity from performing under this Purchase Order.

(d) **Anti-Bribery/Anti-Corruption Breach**. Supplier has not and will not directly or indirectly offer or pay, or authorize such offer or payment of, any money or anything of value in an effort to influence any government official or any other person in order for Akorn to improperly obtain or retain business or to gain an improper business advantage. Conversely, Supplier has not and shall not accept such a payment from any person or entity.

(e) **Authority**. The execution, delivery and performance of this Purchase Order have been duly authorized by all necessary action on the part of Supplier, its officers and directors. This Purchase Order constitutes a valid and binding obligation of Supplier

## 6. INDEMNIFICATION

To the fullest extent permitted by applicable law, Supplier shall defend, indemnify and hold harmless Akorn and its representatives (collectively, "Indemnitees") against any and all loss, injury, death, damage, liability, claim, deficiency, action, judgment, interest, award, penalty, fine, cost or expense, including reasonable attorney and professional fees and costs, and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers (collectively, "Losses") arising out of or occurring in connection with (i) Products or Services that do not conform to agreed-upon specifications, and/or (ii) Supplier's negligence, willful misconduct or breach of the Terms.

Supplier shall keep the Indemnitee fully informed concerning the status of any such litigation, negotiations or settlements of any claim, demand or action. The Indemnified Party shall be entitled, at its own expense, to participate in any such litigation, negotiations and settlements with counsel of its own choosing. Supplier shall not have the right to settle any claim without the prior written consent of the Indemnitee.

## 7. INSURANCE

During the term of the Purchase Order and for a period of eighteen (18) months thereafter, Seller shall, at its own expense, maintain and carry insurance in full force and effect in an amount sufficient to protect Supplier and Akorn from all claims which may arise out of or result from Supplier's performance under this Purchase Order. Such insurance shall include, but is not limited to, commercial general liability (including product liability), workers' compensation, and automobile and truck liability. Upon Akorn's request, Supplier shall provide Akorn with a certificate of insurance from evidencing the insurance coverage specified in this Purchase Order. Akorn's acceptance of any insurance certificate shall not constitute acceptance of the adequacy of coverage.

## 8. LIMITATION OF LIABILITIES

Notwithstanding the form (e.g., contract, tort or otherwise) in which any legal or equitable action may be brought, under no circumstances shall Akorn or its affiliates be liable for consequential, indirect, special, punitive, or incidental damages or lost profits, whether foreseeable or unforeseeable, based on claims of Supplier or any other party arising out of breach or failure of express or implied warranty, breach of contract, misrepresentation, negligence, strict liability in tort, failure of any remedy to achieve its essential purpose, or otherwise. Notwithstanding the form (e.g., contract, tort or otherwise) in which any legal or equitable action may be brought, in no event shall Akorn or its affiliates be liable for any damages or losses that exceed, in the aggregate, the amount of fees paid and payable by Akorn for the Products or Services that gave rise to such damages or losses for each respective breach or series of related breaches. This section shall not apply only when and to the extent applicable Law specifically requires liability despite the foregoing disclaimer, exclusion and limitation.

## 9. TERM AND TERMINATION

(a) **Term.** This Purchase Order shall commence upon Supplier's acceptance of this Purchase Order and shall continue through Akorn's acceptance of such Services or Products, as may be further specified in this Purchase Order and subject to latent defects.

(b) **Termination.** Akorn reserves the right to cancel orders, reduce quantities and/or change delivery dates to a later date upon not less than 90 days' notice prior to stated delivery date without incurring any penalties, fees, expenses or other liabilities.

## 10. INTELLECTUAL PROPERTY

For all work products and deliverables created under this Purchase Order through the performance of Services (hereinafter "Works"), Supplier and Supplier's Personnel hereby assign and transfer, to the extent permissible under applicable law, to Akorn all rights to possession of, and all right, title, and interest, including all patent, copyright, trademark, trade secret and other proprietary and intellectual property rights ("Intellectual Property Rights") in and to such work products and deliverables. Supplier shall promptly disclose to Akorn any Works known to Supplier, and Akorn shall have sole ownership of such Works and the sole right to obtain and to hold in its own name any Intellectual Property Rights therein and thereto. Notwithstanding the foregoing provisions, Akorn's ownership rights do not apply or extend to any of the following (collectively, the "Supplier Property"): (i) any methodologies, methods of analysis, ideas, concepts, know-how, models, tools, techniques, skills, knowledge and experience or other materials or property owned or licensed by Supplier before initiating Services; (ii) any improvements or other modifications to any of the foregoing that Supplier creates during the performance of the Services without the use of any of Akorn's Confidential Information or Intellectual Property Rights; or (iii) any of the Intellectual Property Rights in or to any of the items described in the preceding clauses (i) and (ii). All right, title, and interest in and to the Supplier Property is and shall remain in Supplier, and Supplier shall not be restricted in any way with respect to the Supplier Property. However, to the extent that any Supplier Property is incorporated into or embodied in any of the Works, Supplier hereby grants to Akorn and its affiliates a perpetual, irrevocable, worldwide, royalty-free, non-exclusive license, with the right to grant sublicenses, to (A) use such Supplier Property solely as part of or in connection with such Works or any derivative work based upon such Works, and (B) to modify such Supplier Property, solely to the extent such modification is necessary in connection with the creation of a derivative work based upon such Works.

## 11. MISCELLANEOUS

(a) **Use of Akorn Trademark/Name; Publicity.** Unless otherwise required by law, Supplier shall not issue any press release or other publicity materials, or make any presentation with respect to the existence of this Purchase Order or the terms and conditions hereof without Akorn's prior written consent. Supplier shall not publicize or use any name, trade name, service marks, trademarks, trade dress or logos of Akorn nor identify Akorn as a customer without Akorn's prior written consent.

**Governing Law; Jurisdiction.** All matters arising out of or relating to this Purchase Order shall be governed by and construed in accordance with Swiss Law, without regard to conflicts-of-law provisions. The competent courts of Zurich 1, Switzerland, shall have exclusive jurisdiction for all disputes arising out of or in connection with this Agreement, subject to appeal, if any.

(b) **Relationship of the Parties.** Supplier shall not be considered a partner, co-venturer, agent, employee, or representative of Akorn, but shall remain in all respects an independent contractor. Neither Party's employees shall be deemed "leased" employees of the other for any purpose.

(c) **Assignment: Subcontracting.** This Purchase Order or any right or obligation arising therefrom shall not be assigned or transferred by Supplier in the absence of Akorn's prior written consent thereto. Supplier shall not delegate or subcontract any of its obligations or responsibilities under this Purchase Order to any third party without Akorn's prior written permission. Delegating such responsibilities shall not relieve Supplier of its obligation under this Purchase Order.

(d) **Force Majeure.** No Party shall be liable for any failure to perform or any delays in performance if such failure or delay is due to any causes that are beyond its reasonable control, including, without limitation, such causes as acts of God, natural disasters, flood, severe storm, earthquake, civil disturbance, lockout, riot, order of any court or administrative body, embargo, acts of government, war (whether or not declared), acts of terrorism, or other similar causes ("Force Majeure Event"). For clarity, raw material price increases and unavailability of raw materials shall not be deemed a Force Majeure Event. In the event of a Force Majeure Event, the Party prevented from or delayed in performing shall promptly give notice to the other Party and the affected Party may elect to: (a) suspend performance and extend the time for performance, or (b) cancel all or any part of the unperformed part of this Purchase Order.

(e) **Severability.** If and solely to the extent that any court or tribunal of competent jurisdiction holds any provision of this Purchase Order to be unenforceable in a final non-appealable order, such unenforceable provision shall be stricken and the remainder of this Purchase Order shall not be affected thereby. In such event, the parties shall in good faith attempt to replace any unenforceable provision of this Purchase Order with a provision that is enforceable and that comes as close as possible to expressing the intention of the original provision.

(f) **Waiver: Partial Invalidity.** The failure of Akorn to insist in any instance upon strict performance by Supplier of any provision of this Purchase Order shall not be construed as a continuing waiver of such item, or waiver of any other provision of this Purchase Order or any corresponding Agreement. If any provision of this Purchase Order shall be held illegal or unenforceable by any governmental authority having jurisdiction over this Purchase Order, the validity of the remaining portions shall not be affected thereby.

(g) **Headings.** Headings are included herein for convenience of reference only, and shall not constitute a part of this Purchase Order or change the meaning of this Purchase Order.

[End of Purchase Order Terms and Conditions]

## SCHEDULE A

### Anti-Bribery and Anti-Corruption Terms and Conditions For Akorn's Third Party Intermediaries

This Exhibit is attached to, and hereby incorporated into and made part of, the Terms and Conditions. To the extent the terms of this Exhibit conflict with the terms of the Terms and Conditions, the terms of this Exhibit shall govern.

SUPPLIER hereby acknowledges this *Anti-Bribery and Anti-Corruption Terms and Conditions for Akorn's Third Party Intermediaries* and agrees to comply in its entirety.

1. Anti-Bribery Compliance. SUPPLIER shall comply with all applicable anti-bribery and anti-corruption laws and regulations, including without limitation the US Foreign Corrupt Practices Act and the UK Bribery Act 2010 (if applicable) (collectively, the "**Anti-Bribery Laws**").
2. Representatives. SUPPLIER shall ensure that all of its subcontractors (if applicable), shareholders (if applicable), officers, directors, employees, consultants, advisors, agents and any other persons or entities acting on its behalf in connection with the Terms and Conditions (collectively, the "**Representatives**") do so only in compliance with the terms of this Exhibit (the "**Anti-Bribery Terms**"). SUPPLIER shall be responsible for the observance and performance by the Representatives of the Anti-Bribery Terms, and shall be directly liable to AKORN for any breach by the Representatives of any of the Anti-Bribery Terms.
3. Improper Conduct. SUPPLIER shall not make, directly or indirectly, in connection with the Terms and Conditions or in connection with any other business transaction related to AKORN, a payment or gift of, or an offer, promise or authorization to give money or anything of value or any other improper inducement or undue advantage to any:
  - i. Government Official or Close Family Member of a Government official;
  - ii. person or entity; or
  - iii. other person or entity while knowing or having reason to believe that some portion or all of the payment or thing of value will be offered, given or promised, directly or indirectly, to a Government Official or another person or entity;

for the purpose of:

- i. influencing any act or decision of such Government Official or such person or entity in his/her or its official capacity, including a decision to do or omit to do any act in violation of his/her or its lawful duties or proper performance of functions or within such person's discretion; or
- ii. inducing such Government Official or such person or entity to use his/her or its influence or position with any Government Entity or other person or entity to influence any act or decision;

in order to obtain or retain business for, direct business to, or secure an improper advantage for AKORN or SUPPLIER.

SUPPLIER shall also not solicit, request or accept any bribes, undue advantages or similar improper inducement for itself or for a third party in order that it or such third party carries out or fails to carry out an act in connection with its official activities which is contrary to its duties or dependent on its discretion.

4. Policies and Procedures. SUPPLIER shall have and maintain throughout the term of the Terms and Conditions adequate policies, procedures and controls to ensure compliance with these Anti-Bribery Terms, including at a minimum policies and procedures relating to prevention of bribery, accounting for financial transactions, due diligence on third parties and training of personnel. SUPPLIER shall enforce such policies and procedures where appropriate.
5. Training. SUPPLIER shall participate in anti-bribery compliance training, if so requested by AKORN. AKORN shall have the right to provide such training or designate a third party to provide such training to SUPPLIER.

6. Certification. When requested by AKORN from time to time, but not more than once per year, SUPPLIER shall provide a certification in form substantially similar to the certification attached hereto as ATTACHMENT 1. Such Certification shall be signed by an authorized representative of SUPPLIER, certifying that SUPPLIER is, and all of its Representatives are, in compliance with all Anti-Bribery Terms.
7. Audit. SUPPLIER shall maintain books and records that describe in accurate and reasonable detail all expenditures incurred by it in connection with the Terms and Conditions. AKORN may take reasonable steps to verify SUPPLIER's compliance with any Anti-Bribery Terms. AKORN shall have the right to audit or retain a third party to audit, at its sole discretion and expense, all of SUPPLIER's books and records that pertain to compliance with the Anti-Bribery Terms not more than once per year. Such documentation includes, without limitation: (i) documentation pertaining to services under the Terms and Conditions, (ii) invoices and requests for expense reimbursement, and (iii) payments made to or benefits conferred by SUPPLIER on third parties in the course of SUPPLIER's performance of services under the Terms and Conditions.
8. Breach. SUPPLIER shall promptly report to AKORN any developments that cause the statements in this Exhibit to be inaccurate or incomplete. SUPPLIER shall promptly report to AKORN any request or demand for any undue or suspicious payment or other advantage of any kind received by SUPPLIER in connection with the performance of the Terms and Conditions. If AKORN reasonably determines, at any time, that there is credible evidence that SUPPLIER or any of its Representatives has violated any Anti-Bribery Terms, AKORN shall have the right to suspend all payments due under the Terms and Conditions while it investigates the credible evidence. Upon a good faith request by AKORN, SUPPLIER shall cooperate with AKORN's investigation to determine if such a violation has occurred. If AKORN determines reasonably and in good faith that there has been such a violation, it shall have the right to terminate the Terms and Conditions with immediate effect and without payment due of any kind except for services lawfully and properly rendered under the Terms and Conditions.
9. Indemnification. SUPPLIER shall indemnify and hold harmless AKORN and its officers, directors, employees, agents, affiliates, successors and permitted assigns (collectively, "**Indemnified Party**") against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys' fees, that are incurred by Indemnified Party arising out of the violation of any Anti-Bribery Terms by SUPPLIER or any of its Representatives.
10. Definitions. For purposes of the Terms and Conditions:
  - a. "**Close Family Member**" means (i) the individual's spouse; (ii) the individual's and the spouse's grandparents, parents, siblings, children, nieces, nephews, aunts, uncles, and first cousins; (iii) the spouse of any persons listed in subcategories (i) and (ii); and (iv) any other person who shares the same household with the individual.
  - b. "**Government Entity**" means (i) any national, state, regional or local government or judicial authority (including, in each case, any agency, department or subdivision of such government), and any government agency or department; (ii) any political party; (iii) any entity or business that is owned or controlled by any of those bodies listed in subcategory (i) or (ii) (including without limitation officially-appointed experts, translators or interpreters as well arbitrators); or (iv) any international organization, such as the United Nations or the World Bank.
  - c. "**Government Official**" means (i) any director, officer, employee, agent or representative (including anyone elected, nominated, or appointed to be a director, officer, employee, agent or representative) of any Government Entity, or anyone otherwise acting in an official capacity on behalf of a Government Entity; (ii) any political party, political party official or political party employee; (iii) any candidate for public or political office; (iv) any royal or ruling family member; or (v) any agent or representative of any of those persons listed in subcategories (i) through (iv).

**SCHEDULE A – ATTACHMENT 1**

**ANTI-BRIBERY COMPLIANCE CERTIFICATE**

Pursuant to Schedule A of the Terms and Conditions between **Akorn AG** and [REDACTED] dated [REDACTED], the undersigned hereby certifies that:

1. SUPPLIER is familiar with and understands the requirements and prohibitions of applicable Anti-Bribery Laws and the *Anti-Bribery and Anti-Corruption Terms and Conditions for Akorn’s Third Party Intermediaries* (Schedule A).
2. SUPPLIER and its Representatives have been, and continue to be, in full compliance with the Anti-Bribery Laws and the Anti-Bribery Terms of the *Anti-Bribery and Anti-Corruption Terms and Conditions for Akorn’s Third Party Intermediaries* (Schedule A).
3. After due inquiry of its Representatives, neither SUPPLIER nor any of its Representatives (a) is a Government Official; or (b) has a personal, business or other relationship or association with any Government Official or Close Family Member of any Government Official who may have responsibility for or oversight of any business activities of AKORN or Third-Party Intermediary, other than any relationships or associations that have been disclosed in writing to AKORN.
4. SUPPLIER understands and agrees that any false certification is grounds for AKORN to immediately terminate the Terms and Conditions and any other business relationship or agreement with SUPPLIER. SUPPLIER shall immediately advise AKORN if (a) subsequent developments cause the statements herein to be inaccurate or incomplete; or (b) it learns of, has reason to know of, or suspects any violation of the Anti-Bribery Terms and/or any Anti-Bribery Laws involving the Terms and Conditions or AKORN.

IN WITNESS WHEREOF, the undersigned has executed this Anti-Bribery Compliance Certificate on behalf of Third-Party Intermediary as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ .

[REDACTED]

By: \_\_\_\_\_  
Name:  
Title: