

**Fill in this information to identify the case:**

Debtor Akorn, Inc.

United States Bankruptcy Court for the: \_\_\_\_\_ District of Delaware  
(State)

Case number 20-11177

Official Form 410  
**Proof of Claim**

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

**Part 1: Identify the Claim**

<b>1. Who is the current creditor?</b>	<u>ALKU, LLC</u> Name of the current creditor (the person or entity to be paid for this claim)	
	Other names the creditor used with the debtor _____	
<b>2. Has this claim been acquired from someone else?</b>	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. From whom? _____	
<b>3. Where should notices and payments to the creditor be sent?</b>  Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)	<b>Where should notices to the creditor be sent?</b>	<b>Where should payments to the creditor be sent? (if different)</b>
	ALKU, LLC John C. La Liberte Sherin and Lodgen LLP 101 Federal Street Boston, MA 02110	
	Contact phone <u>617-646-2173</u>	Contact phone _____
	Contact email <u>jclaliberte@sherin.com</u>	Contact email _____
	Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____	
<b>4. Does this claim amend one already filed?</b>	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY	
<b>5. Do you know if anyone else has filed a proof of claim for this claim?</b>	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Who made the earlier filing? _____	



**Part 2: Give Information About the Claim as of the Date the Case Was Filed**

6. Do you have any number you use to identify the debtor?  No  
 Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: \_\_\_ \_\_\_ \_\_\_ \_\_\_

7. How much is the claim? \$ 2294.00. Does this amount include interest or other charges?  
 No  
 Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.  
Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).  
Limit disclosing information that is entitled to privacy, such as health care information.  
Services performed

9. Is all or part of the claim secured?  No  
 Yes. The claim is secured by a lien on property.  
**Nature or property:**  
 Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.  
 Motor vehicle  
 Other. Describe: \_\_\_\_\_  
**Basis for perfection:** \_\_\_\_\_  
Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)  
**Value of property:** \$ \_\_\_\_\_  
**Amount of the claim that is secured:** \$ \_\_\_\_\_  
**Amount of the claim that is unsecured:** \$ \_\_\_\_\_ (The sum of the secured and unsecured amount should match the amount in line 7.)  
**Amount necessary to cure any default as of the date of the petition:** \$ \_\_\_\_\_  
**Annual Interest Rate** (when case was filed) \_\_\_\_\_ %  
 Fixed  
 Variable

10. Is this claim based on a lease?  No  
 Yes. Amount necessary to cure any default as of the date of the petition. \$ \_\_\_\_\_

11. Is this claim subject to a right of setoff?  No  
 Yes. Identify the property: \_\_\_\_\_



12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

<input type="checkbox"/> No		
<input checked="" type="checkbox"/> Yes. Check all that apply:		<b>Amount entitled to priority</b>
<input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).		\$ _____
<input type="checkbox"/> Up to \$3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).		\$ _____
<input checked="" type="checkbox"/> Wages, salaries, or commissions (up to \$13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).		\$ <u>2294.00</u>
<input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).		\$ _____
<input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).		\$ _____
<input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)(____) that applies.		\$ _____

\* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?

No

Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

\$ \_\_\_\_\_

**Part 3: Sign Below**

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

- I am the creditor.
- I am the creditor's attorney or authorized agent.
- I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
- I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 08/03/2020  
MM / DD / YYYY

/s/John Charles La Liberte  
Signature

Print the name of the person who is completing and signing this claim:

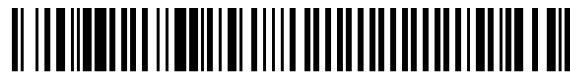
Name John Charles La Liberte  
First name Middle name Last name

Title Partner

Company Sherin and Lodgen LLP  
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address \_\_\_\_\_

Contact phone \_\_\_\_\_ Email \_\_\_\_\_



# KCC ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (877) 725-7539 | International (424) 236-7247

<b>Debtor:</b> 20-11177 - Akorn, Inc.		
<b>District:</b> District of Delaware		
<b>Creditor:</b> ALKU, LLC John C. La Liberte Sherin and Lodgen LLP 101 Federal Street Boston, MA, 02110  <b>Phone:</b> 617-646-2173 <b>Phone 2:</b>  <b>Fax:</b> 617-646-2000 <b>Email:</b> jclaliberte@sherin.com	<b>Has Supporting Documentation:</b> Yes, supporting documentation successfully uploaded	
	<b>Related Document Statement:</b>	
	<b>Has Related Claim:</b> No <b>Related Claim Filed By:</b>	
		<b>Filing Party:</b> Authorized agent
<b>Other Names Used with Debtor:</b>		<b>Amends Claim:</b> No <b>Acquired Claim:</b> No
<b>Basis of Claim:</b> Services performed	<b>Last 4 Digits:</b> No	<b>Uniform Claim Identifier:</b>
<b>Total Amount of Claim:</b> 2294.00	<b>Includes Interest or Charges:</b> No	
<b>Has Priority Claim:</b> Yes	<b>Priority Under:</b> 11 U.S.C. §507(a)(4): 2294.00	
<b>Has Secured Claim:</b> No  <b>Amount of 503(b)(9):</b> No  <b>Based on Lease:</b> No  <b>Subject to Right of Setoff:</b> No	<b>Nature of Secured Amount:</b> <b>Value of Property:</b>  <b>Annual Interest Rate:</b>  <b>Arrearage Amount:</b>  <b>Basis for Perfection:</b>  <b>Amount Unsecured:</b>	
<b>Submitted By:</b> John Charles La Liberte on 03-Aug-2020 1:22:38 p.m. Eastern Time  <b>Title:</b> Partner  <b>Company:</b> Sherin and Lodgen LLP		



## **EXHIBIT A**



**Invoice**

<b>DATE</b>	<b>INVOICE #</b>
04/05/2020	149956
<b>TERMS</b>	<b>DUE DATE</b>
Net 45	05/20/2020

<b>BILL TO</b>
Akorn Inc AP Akorn Pharmaceuticals 1925 W Field Ct #300 Lake Forest, IL 60045

<b>AMOUNT DUE</b>	<b>PO Number</b>
\$2,294.00	

<b>MAKE PAYABLE TO</b>
ALKU P.O. Box 844649 Boston, MA 02284-4649

Please detach top portion and return with your payment.

Date Ending	Description	Quantity	Rate	Amount
04/05/2020	Patrick Morton - 4/5/20	18.5	\$124.00	\$2,294.00
Subtotal				\$2,294.00
ALKU.com				
			<b>TOTAL</b>	<b>\$2,294.00</b>

User: Morton, Patrick (Remote Timesheet)  
 Client: Akorn Pharmaceuticals (Sanchez, Richard)  
 Period: 03/30/2020 - 04/05/2020



	Mon 03/30/2020	Tue 03/31/2020	Wed 04/01/2020	Thu 04/02/2020	Fri 04/03/2020	Sat 04/04/2020	Sun 04/05/2020
HOURS	7.5	2	1.5	3	4.5	0	0
TOTAL	7.5	2	1.5	3	4.5	0	0

**Hours Summary**

Regular	18.50
Overtime	0.00
Doubletime	0.00

**Notes**

**Expense Summary**

Amount	\$0.00
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You agree that you have entered the correct hours worked, and that all hours and expenses are accurate to the best of your knowledge.

User Signature: Electronically Submitted by Morton, Patrick on (04/06/2020 10:22 am) at 174.252.158.106, 23.46.238.71, 23.48.94.62

By clicking YES, you agree that all hours reported are accurate, as well as any expenses associated with these timesheets.

Please note: As the designated client timecard approver you have been given the responsibility of approving time records. (including, but not limited to, labor hours, costs of any applicable overtime rates, travel, per diem and other costs stated therein) Your approval will then signify acceptance on behalf of your organization that the work done during the time period is done to your organizations satisfaction. Your firm will be obligated to pay for the invoiced hours during this period once said time has been approved. Acceptance will negate the ability to unreasonably withhold payment or dispute work done to your dissatisfaction. We recommend that you thoroughly review any work and/or documentation to ensure that expectations have been met. If for any reason expectations are not met or there are any issues you find, DO NOT APPROVE THE TIME ENTRY until any and all matters are resolved to your satisfaction. It is our expectation that the work done on our behalf during this assignment will be done in a timely and acceptable manner. With that said, we want to ensure that you feel the same. Failure to address any issues prior to approval will negate the ability to refute issues after approval and payment will then be expected in the terms agreed upon in the MSA/SOW. You will not be obligated to pay for any services provided during the course of an unapproved time period. If you should have any questions on this, please contact the appropriate Account Manager for further explanation.

We appreciate your attention on this matter and we look forward to a long and successful working relationship!

Approval Signature: Electronically Approved by Sanchez, Richard on (04/06/2020 12:20 pm) at 208.87.236.201, 165.254.123.76, 23.48.94.62

## MASTER PROFESSIONAL SERVICES AGREEMENT

**THIS MASTER PROFESSIONAL SERVICES AGREEMENT** is made this 8<sup>th</sup> day of February, 2017 (the "Effective Date") by and between Akorn, Inc. ("Akorn") with its principal place of business located at 1925 West Field Court, Suite 300, Lake Forest, Illinois 60045 and [ALKU] ("Supplier") with its principal place of business at:

Street Address: 200 Brickstone Square, Suite 503

City, State, Zip: Andover, MA 01810

### ARTICLE 1 - DEFINITIONS

Unless otherwise defined, capitalized terms have the meaning set forth below.

"Acceptance Criteria" means the acceptance criteria set forth in the applicable SOW (as defined below).

"Agreement" means this Master Professional Services Agreement, together with all schedules, exhibits, and other attachments hereto, all of which are incorporated into this Agreement by reference, as the same may be modified, amended, or supplemented from time to time.

"Affiliate" means any corporation, partnership or other entity that is owned or controlled, directly or indirectly, more than fifty percent (50%) by a Party.

"Business Day" means any calendar day Monday through Friday, inclusive, on which state banks are open for business in the State of Illinois.

"Confidential Information" means any information disclosed by or on behalf of the Discloser to the Recipient during the term of this Agreement, regardless of whether such information is labeled or otherwise identified as being confidential. Without limiting the generality of the foregoing, Confidential Information shall include Discloser's product plans, designs, schematics, development know-how, trade secrets, techniques, processes, procedures, algorithms, formulae, costs, prices, finances, marketing plans, business opportunities, research, contracts and customer information. Confidential Information shall not include data or information which (i) was in the public domain at the time it was disclosed or falls within the public domain, except through the fault of Recipient; (ii) was known to Recipient at the time of disclosure without an obligation of confidentiality, as evidenced by Recipient's written records; (iii) was disclosed after written approval of Discloser; or (iv) becomes known to Recipient from a source other than Discloser without an obligation of confidentiality.

"Change Order" means a written request or proposal which sets forth any modifications needed to complete the applicable SOW (defined below,) including changes to the Specifications, rates, assumptions, scope, scheduling or other terms. The parties shall negotiate the terms of the modification in good faith and upon agreement the modification and its impact on price and schedule shall be set forth in writing and signed by the parties. Neither party is obligated to execute a Change Order but both parties agree to use reasonable commercial efforts to address and resolve any requests for Change Orders. An executed Change Order or other

written agreement approved and signed by both parties is the only means of modifying the Statement of Work. The Change Order will modify and take precedence over any inconsistent terms of either the Statement of Work or any previous Change Orders.

“Deliverables” means the activities, design, development, testing, integration, implementation, including, but not limited to, providing any services, related results or product of the work, as agreed upon by the Parties and set forth in the SOW.

“Discloser” means the Party disclosing Confidential Information hereunder.

“Akorn Networks” means collectively, computers, computer systems and networks of Akorn.

“Intellectual Property Rights” means any and all Patents, trademarks, copyrights, trade secrets, Know-How, moral rights and any other intellectual property rights arising by operation of law, contract, license or otherwise.

“Know-How” means any proprietary technology, information, methods of use, processes, techniques, ideas or innovations other than patents.

“Milestones” means the dates that Supplier expects to complete certain Deliverables as set forth in the applicable SOW.

“Patents” means issued patents, patent applications, continuations, continuation-in-parts, divisions, reexaminations, reissues, and any foreign counterparts thereof.

“Party” means Akorn or Supplier individually, and collectively they are referred to herein as “Parties.”

“Personnel” means Supplier’s employees and, as and if permitted and approved by Akorn pursuant to an applicable SOW, Supplier’s subcontractors, agents and representatives.

“Recipient” means the Party receiving Confidential Information hereunder.

“Specifications” means the functional and technical requirements of the Deliverables mutually agreed upon by the Parties and set forth in the SOW.

“SOW” means a transactional document (which may be entitled “Work Order”, “Statement of Work” or “Scope of Work,” which in all cases shall be deemed an “SOW” for purposes under this Agreement) that is entered into pursuant to this Agreement by and between Supplier and Akorn. Each SOW, a sample template of which is attached hereto as Exhibit A, shall be substantially in the form of Exhibit A hereof and shall incorporate by reference the provisions of this Agreement as though such provisions were set forth therein in their entirety and subsequently attached as a uniquely numbered SOW under this Agreement.

## **ARTICLE 2 - SERVICES**

2.1 Consulting and Professional Services. Subject to the terms and conditions of this Agreement, Supplier hereby agrees to provide the Services as defined in any SOW, and Akorn hereby retains the Supplier to provide the Services defined in any SOW, executed from time to

time by the parties hereto, in accordance with the Specifications and on the terms and conditions set forth in the applicable SOW. Akorn is entering into this Agreement in consideration of and in reliance upon the talent, skill, expertise and experience of Supplier in performing the professional services required by each project undertaken hereunder. Supplier's performance shall include, without limitation, the Deliverables set forth in each SOW executed by the Parties.

2.2 Scope of Services. Each SOW shall set forth, among any other terms and conditions agreed to by the Parties: (i) scope of the project, including a detailed description of the work and explanation of the Deliverables to be provided; (ii) list of applicable documents which are incorporated into the SOW; (iii) performance requirements; (iv) Supplier's and Akorn's responsibilities, including the name and contact information for an individual designated by each Party who shall serve as the "contact" for all communications to and from such Party; (v) a schedule for the project including Milestones; (vi) Acceptance Criteria; (vii) location of services; (viii) Akorn's and Supplier's project contacts; (ix) price and payment schedule; (x) the process for management of change orders; and (xi) a reference to this Agreement. In each instance Supplier shall provide the Deliverables hereunder only upon Akorn's request and only after the scope of such Deliverables have been approved by Akorn in writing in the form of a fully executed SOW.

2.3 Controlling Documents. In the event the terms of any SOW or purchase order issued by any party are inconsistent with, or are in conflict with, the terms of this Agreement, the terms of this Agreement shall control, unless an SOW makes specific reference to the section of this Agreement that is to be amended in the SOW. Any such exceptions expressly agreed upon in writing by Akorn and Supplier pursuant to a particular SOW will apply only for purposes of that SOW, and will not be deemed in any way to amend, modify, cancel, or waive the provisions of this Agreement for any other SOW. None of the Supplier's standard terms or any terms of any Supplier proposal, acceptance, acknowledgment, or purchase order shall apply.

2.4 Conduct of Supplier Personnel: Whenever present at Akorn premises, Supplier shall comply and shall cause its Personnel to comply with all applicable Akorn on-site policies, procedures, and reasonable instructions and directions as directly provided by Akorn to Supplier personnel. Supplier Personnel shall conduct themselves in a businesslike manner. In the event that Akorn requests Supplier to remove any of its Personnel for any reason from the work being provided under any SOW (including, without limitation, lack of competence or conduct that interferes with Akorn's operations), Supplier shall promptly cause such individual to be removed and replaced at no cost to Akorn; provided, however, except as otherwise provided herein, Supplier retains the sole right to hire and fire its Personnel, and shall be solely responsible for oversight of its Personnel and any decision to fire its Personnel.

### **ARTICLE 3 - COMPENSATION**

3.1 Compensation. In consideration for Supplier's Deliverables hereunder, Akorn shall pay Supplier in accordance with the fees and discount tiers as set forth in the rate cards in Exhibit B (the "Rate Card"), as well as the applicable SOW. In no event shall the fees invoiced by a Supplier for a particular SOW exceed the amount set forth in that SOW, unless previously agreed to by the Parties in a signed Change Order. Each SOW shall specify whether the Deliverables are to be provided on a fixed-price or a time-and-material basis and which expenses, if any, are to be reimbursed by Akorn. Supplier shall not require or submit requests for advanced

billing, down payments, or other up-front fees for work that has not been delivered, nor will Supplier invoice Akorn for work that has not been delivered.

3.2 Rate Increases. Supplier's rates for Deliverables provided on an hourly basis are set forth in the Rate Card. These rates shall not be increased during the initial twelve (12) months of this Agreement. Thereafter, Supplier may increase its hourly rates upon sixty (60) days prior written notice to Akorn, but it shall not increase its rates more than once in any twelve (12) month period and such increase shall not exceed two percent (2%). In addition, Supplier shall provide Akorn with incremental annual discounts or rebates based upon total annual payments made by Akorn to Supplier for Deliverables provided under this Agreement. Such billing targets and discount/rebate rates are set forth in the Rate Card.

3.3 Due Date. Except as set forth in the applicable SOW, payments shall be made within forty five (45) days after Akorn's receipt of a documented, correct and undisputed invoice detailing Supplier's Deliverables. In the event the Deliverables under any SOW are provided on a time-and-materials basis, a copy of individual Supplier Personnel time slips, each time slip setting forth the individual's name, as well as date(s) and time(s) worked, shall accompany each invoice submitted.

3.4 Expenses. Except as set forth in the applicable SOW, Akorn shall reimburse Supplier for all reasonable actual expenses incurred by Supplier and Supplier Personnel for travel-related expenditures identified in the SOW that both Parties agree are required to successfully deliver against the obligations under this Agreement. Except as set forth in the applicable SOW, expenses incurred shall conform to Akorn's Travel, Entertainment & General Reimbursement Policy for Akorn Consultants and Vendors (Exhibit D):

3.5 Expenses – Actual Out of Pocket. All expense charges shall be based on actual out-of-pocket expenses. No "service" charge shall be applied. Supplier shall provide copies of all original receipts for expenses for all individual expenditures of \$25 or more. Except as otherwise specifically stated in this Agreement or applicable SOW, all other expenses are included in the hourly fees set forth in the Rate Card.

3.6 Invoice Details. All invoices submitted by Supplier shall set forth the following information:

- (a) SOW number;
- (b) Akorn's purchase order number;
- (c) Supplier's project manager's name; and
- (d) the amount billed in an itemized list.

Supplier shall submit all of Supplier's invoices for each SOW to the Akorn address shown on the face of the Purchase Order. Invoices must be submitted on a weekly or monthly basis as agreed by the Akorn primary contact or no later than five (5) Business Days after the completion of the Scope of Work as defined in the SOW.



3.7 Maintenance of Records. Supplier shall maintain, at no additional charge to Akorn, in accordance with generally accepted accounting principles, complete and accurate records related to: (i) amounts billed to and payments made by Akorn hereunder and (ii) expenses incurred on behalf of and reimbursed by Akorn hereunder. Supplier shall provide Akorn supporting documentation concerning any disputed invoice or payment within thirty (30) days after Akorn advises Supplier of a dispute. Payments made under this Agreement shall be subject to final adjustment as determined by such review. Supplier shall retain such records for a period of two (2) years from the expiration of this Agreement or the length of time as may be required by any federal, state or local law, ordinance or regulation, whichever is longer.

3.8 Premature Termination. In the event of premature termination of the Agreement, Akorn shall pay Supplier for Deliverables performed, on a prorated basis, and shall pay Supplier for any and all travel, lodging and out of pocket expenses incurred by Supplier in accordance with the SOW through the date of termination. In no event shall such amount exceed the amount that would have been payable to Supplier, had the SOW not been terminated. Notwithstanding the foregoing, in the event such termination is due to a breach by Supplier, Akorn shall only pay for Deliverables received and accepted by Akorn prior to the date of termination

#### **ARTICLE 4 - TERM AND TERMINATION**

4.1 Term. The term of this Agreement shall commence on the Effective Date and terminate three (3) years thereafter, unless terminated sooner by either Party pursuant to this Article 4. The Parties may extend this Agreement by mutual written agreement.

4.2 Suspension of Deliverables. Akorn may suspend all or any portion of the Deliverables associated with an SOW without cause, upon twenty-four (24) hours prior written notice to Supplier, upon receipt of which Supplier shall immediately stop all work and expenditure of all amounts on or insurance of all expenses with respect to those Deliverables. Supplier will resume the suspended work within three (3) days of receipt of written notice that the suspension has been lifted by Akorn.

4.3 Termination without Cause. Except for the continuing obligations set forth in Section 4.7 below, Akorn may terminate this Agreement or a particular SOW without cause upon giving thirty (30) days prior written notice to Supplier. Unless otherwise indicated to the contrary by Akorn in the notice of termination, delivery of such notice shall be deemed to be a notice of suspension of all Deliverables associated with all outstanding SOWs pursuant to Section 4.2 above.

4.4 Termination. Except for the continuing obligations set forth in Section 4.7 below, either Party may terminate this Agreement or any SOW or any part thereof as follows:

4.4.1 upon written notice to the defaulting Party, if the defaulting Party breaches any of the representations, warranties, or covenants or other terms of this Agreement and does not cure such failure within ten (10) Business Days after the non-defaulting Party provides notice reasonably detailing such failure. If the party giving notice deems that the breach is not one that is curable, then the termination shall be effective immediately upon delivery of such notice;



4.4.2 upon written notice if the other Party becomes the subject of a voluntary petition in bankruptcy or any similar proceeding relating to insolvency, receivership or reorganization;

4.4.3 immediately in the event of a statutory, judicial, regulatory or administrative ruling or interpretation by the U.S. Food and Drug Administration ("FDA") or any other governmental or regulatory authority which makes it impossible or commercially impracticable to continue a SOW as determined in Akorn's sole discretion; or

4.4.4 as otherwise expressly provided in this Agreement.

4.5 Accrued Rights and Nonexclusivity of Remedies. Termination or expiration of this Agreement shall not affect any rights or obligations, which have accrued prior thereto in connection herewith. Termination is not an election of remedies. All rights and remedies of the parties provided under this Agreement are not exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

4.6 Extension of Term. If the term of any SOW extends beyond the termination or expiration date of this Agreement, the applicable terms and conditions of this Agreement shall extend automatically for such SOW until such SOW's termination or expiration date.

4.7 Survival. The following provisions of this Agreement shall survive the termination or expiration of this Agreement: Sections 4.4, 4.5, and 4.6 and Articles 7 through 16 inclusive.

## **ARTICLE 5 - ACCEPTANCE PROCEDURES**

Akorn will have a period of thirty (30) Business Days ("Acceptance Period") beginning on the date Akorn receives the Deliverable to examine the Deliverable and to determine whether it is in accordance with the applicable requirements, Specifications and Acceptance Criteria specified in the applicable SOW. During the Acceptance Period, Akorn shall either: (a) notify Supplier of its acceptance of the Deliverable ("Notice of Acceptance"); or (b) provide Supplier with notice of any defects that cause the Deliverable not to be in substantial accordance with the requirements, performance specifications and Acceptance Criteria. Supplier shall use its best efforts to cure any defects described in such notification within ten (10) Business Days of receipt of Akorn's notice. Upon receipt of the corrected Deliverable, Akorn shall have a new Acceptance Period to retest the Deliverable to determine whether Supplier has cured the defects listed in Akorn's notice. In the event the Deliverable is not cured within this time period, Akorn, at its sole discretion, shall either extend the cure period for such defective Deliverable or terminate the SOW and receive a refund of all payments made for such SOW.

## **ARTICLE 6 - SCHEDULING**

An SOW will indicate deadlines for achieving specified Milestones. If Supplier fails (or appears likely to fail) to meet a deadline for any reason not attributable to Akorn, Supplier shall immediately notify Akorn and shall provide additional persons or other resources, as requested by Akorn and at no additional charge to Akorn, to complete the task(s) involved in as timely a manner as possible. In the event that Supplier fails to deliver any products or services on a timely basis, at Akorn's option, Supplier shall reimburse and pay to Akorn, or Akorn shall be

entitled to deduct from any amounts owed to Supplier, an amount equal to 1% of the total purchase price under the SOW for each 7 day period that any such products or services are late (as liquidated damages and not as a penalty). Such remedy shall apply to each instance of late delivery and the total amount of such remedy hereunder shall not exceed 10% of the Price.

## **ARTICLE 7 - REPRESENTATIONS AND WARRANTIES**

7.1 Deliverables. Supplier warrants and represents that it shall perform all Deliverables in a good and workmanlike manner using reasonable skill and care. Supplier warrants and represents that for a period of one (1) year after the date of Akorn's acceptance of the Deliverables provided under this Agreement, such Deliverables will materially conform to the requirements set forth in the project specific SOW.

7.2 Conflicting Agreements. Supplier warrants and represents that as of the Effective Date it is not a party to any contract with any third party, which prohibits Supplier from performing its obligations under this Agreement and/or limits Supplier's ability to fulfill the terms of this Agreement.

7.3 Non-Infringement. Supplier warrants that the Deliverables and every element thereof, and the use of such goods in a manner suggested by, recommended by, or reasonably foreseeable to Supplier or in a manner intended by Akorn and that is known to Supplier, do not violate the industrial or intellectual proprietary rights of any third party, including, but not limited to, infringement of any third party's patent, trademark, copyright, contractual, employment or confidentiality rights.

7.4 No Harmful Code. Supplier warrants and represents that at time of delivery to Akorn, no Deliverables will contain any computer virus or other similar harmful, malicious or hidden program, code or data.

7.5 Compliance with Laws. Supplier warrants and represents that the Deliverables shall comply with, and that in providing the Deliverables it shall comply with, all applicable federal, state and local laws, regulations and guidelines, including any licenses, permits or registrations applicable to the Deliverables or necessary for Supplier to be able to provide the Deliverables, which shall include but is not limited to all privacy laws, regulations and guidelines.

7.6 Compliance with Policies. Supplier warrants and represents that it shall comply with Akorn policies and security requirements while on Akorn's premises. Supplier represents and warrants that, except as otherwise disclosed in writing to Akorn, no payment, gift or thing of value (other than nominal value in the aggregate) has been made, given or promised to obtain this or any other agreement between the Parties.

7.7 Performance. Supplier represents and warrants that: (i) all of its employees, agents, representatives, or independent contractors who will provide any Deliverables (a) are qualified to provide such Deliverables and have been have appropriately trained by Supplier, (b) have passed appropriate background checks and have no history of criminal activity, and (c) will provide the Deliverables in accordance with the highest industry standards that may be applicable to such Deliverables; and (ii) Supplier shall follow Akorn's internal safety policies and instructions, cGMP standards (if applicable) and all applicable rules, laws and regulations.

7.8 No Liens. Supplier warrants and represents that the Deliverables shall be delivered free from any security interest or other lien, claims, charges or encumbrance.

7.9 Payroll Employees. Supplier warrants and represents that all individuals providing services to Akorn pursuant to an SOW either (i) are payroll (Form W-2) employees of Supplier or (ii) are independent contractors to the Supplier, and in either case those individuals are not employees of or independent contractors to Akorn. Supplier warrants and represents that it has and will meet all federal and state laws regarding the determination of the employee independent contractor classification for the individuals. Furthermore, Supplier warrants and represents that Akorn has the right and authority to audit Supplier's records relating to the determination of the individual(s) worker classification and compliance with all laws and regulations relating thereto

## **ARTICLE 8 - CONFIDENTIAL INFORMATION**

8.1 Confidentiality. Akorn retains all right, title and interest in its Confidential Information. During the term of this Agreement and for a period of seven (7) years thereafter, Supplier shall not (i) disclose to any third party any Akorn Confidential Information or (ii) use the Akorn Confidential Information for any purpose not specified in this Agreement. Supplier agrees to notify Akorn promptly of any unauthorized disclosure of the Akorn Confidential Information and to assist Akorn in remedying any such unauthorized disclosure. Supplier agrees that all persons having access to the Akorn Confidential Information under this Agreement will abide by the confidentiality obligations set forth in this Agreement and shall be liable for any breach thereof by any person gaining access to the Akorn Confidential Information through Supplier. Nothing in this Agreement shall be construed to restrict the Parties from disclosing Confidential Information as required by law or court order or other governmental order or request, provided in each case the Party requested to make such disclosure shall timely inform the other Party and use all reasonable efforts to limit the disclosure and maintain the confidentiality of such Confidential Information to the extent possible. In addition, the disclosing Party shall permit the other Party to attempt to limit such disclosure by appropriate legal means.

8.2 Prior Approval. To the extent that, in the course of providing Deliverables hereunder, it is required that Supplier contact Akorn competitors or customers for Supplier to provide the Deliverables hereunder, Supplier shall first obtain approval from Akorn's legal department regarding the nature and extent of such contact. All Supplier meetings and/or discussions with the Akorn legal department shall be conducted in the presence of Akorn business project owners or members.

8.3 Return of Confidential Information. Upon completion of Supplier's Deliverables under this Agreement, or the termination or expiration of this Agreement, Supplier shall ensure the return to Akorn of all Confidential Information, data and materials including but not limited to computer hardware and software, marketing and sales data, customer lists, points of contact, financial data, project lists, training materials, detail bags, reports, memoranda, notes, plans, and all other data owned by Akorn, regardless of the method of storage or retrieval, which were provided to Supplier by Akorn, or developed by Supplier as a result of Supplier's Deliverables hereunder.

8.4 Injunctive Relief. Each Party acknowledges that disclosure of the other Party's Confidential Information by it, or breach of the provisions contained herein may give rise to

irreparable injury to the other Party and such breach or disclosure may be inadequately compensable in money damages. Accordingly each Party may seek injunctive relief against the breach or threatened breach of the foregoing undertakings. Such remedy will not be deemed to be the exclusive remedy for any such breach but will be in addition to all other remedies available at law or equity.

## **ARTICLE 9 - OWNERSHIP OF WORK PRODUCT**

9.1 Akorn. Title to and ownership of any and all Deliverables (whether copyrightable or not), inventions, discoveries and innovations, documents, materials, software (including source code), and information, directly and/or proximately conceived or developed by Supplier in connection with its Deliverables hereunder and any improved, updated, upgraded, modified, customized or additional parts thereof, and all Intellectual Property Rights embodied therein, shall at all times remain the property of Akorn (separately and collectively, "Work Product") and Supplier hereby irrevocably assigns to Akorn any and all right, title or interest it may have in the same. To the extent Supplier cannot assign to Akorn any right, title and interest in and to the same, Supplier grants to Akorn an exclusive, perpetual, royalty-free, transferable, irrevocable, worldwide license (with rights to sublicense through multiple tiers of sublicenses) to utilize such non-assignable rights, title and interest. To the extent Supplier cannot assign or license to Akorn any such right, title or interest to Akorn, Supplier irrevocably waives and agrees never to assert a claim against Akorn for such non assignable and non licensable right, title and interest.

Work Product shall be promptly disclosed to Akorn and shall not be copied, reproduced or otherwise used by Supplier except as permitted in this Agreement or in writing by Akorn. At Akorn's request and expense, Supplier shall execute such documents and take such other steps as Akorn deems necessary or appropriate to obtain, vest, confirm or record ownership of all right, title and interest in the foregoing in Akorn's name, including without limitation patent, trademark and copyright ownership.

Supplier expressly acknowledges and agrees that all of its development work and contributions hereunder with regard to the Work Product constitutes "work made for hire" under the Federal copyright laws and is owned exclusively by Akorn. In furtherance thereof, to the extent that any Work Product may not automatically be considered works made for hire by Supplier for Akorn, Supplier hereby irrevocably assigns (and upon its creation, automatically and irrevocably assigns) to Akorn, without any further consideration, all right, title and interest in and to such Work Product to Akorn. Supplier shall execute and deliver, (and shall cause any of the "inventors" of such Work Product made available by Supplier to execute and deliver), at no additional cost or expense to Akorn, such assignments, licenses and transfers as Akorn deems reasonably appropriate to assure and perfect its rights hereunder in the Work Product as provided herein.

9.2 Supplier. Title to and ownership of materials previously developed or copyrighted by Supplier and not originated or developed under this Agreement ("Pre-Existing Materials") shall at all times remain the property of Supplier and/or its licensors. If any Work Product includes Pre-Existing Materials, Supplier shall provide written notice thereof at the time such Work Product is delivered or transferred to Akorn and Supplier grants to Akorn a nonexclusive, perpetual, royalty-free, irrevocable, transferrable, sublicensable, worldwide license to use, copy and distribute such Pre-Existing Materials as incorporated in the Work Product.



## **ARTICLE 10 - INDEMNIFICATION**

10.1 **Indemnity.** Each of Akorn and Supplier respectively (the “**Indemnifying Party**”) agrees to indemnify, defend and hold the other and their respective its Affiliates and their respective employees, directors, officers and agents (the “**Indemnified Parties**”) harmless against any claim, liability, damages, losses, judgment, and other expense (including but not limited to reasonable attorney’s fees and court costs) (“**Liability**”) arising out of or resulting from any third party claims made or proceedings brought against the Indemnified Parties to the extent such Liability arises in the execution or performance of this Agreement and/or results from the negligence or willful misconduct of the Indemnifying Party or any of their respective Affiliates, employees, directors, officers and agents.

10.2 **Procedures.** To receive the indemnities set forth in this Agreement, the Indemnified Party shall promptly notify the Indemnifying Party in writing of a claim or suit that could lead to indemnification and shall provide reasonable cooperation (at the expense of the Indemnified Party) to the defense of the claim or suit. No settlement or compromise shall be binding on a Party hereto without its prior written consent, which consent shall not be unreasonably withheld.

## **ARTICLE 11 - INTELLECTUAL PROPERTY INDEMNIFICATION**

11.1 **Indemnity.** Supplier agrees to indemnify, defend and hold Akorn and its Affiliates and their respective employees, directors, officers and agents harmless against any claim, liability, damages, losses, judgment, and other expense (including but not limited to reasonable attorney’s fees and court costs) awarded against Akorn by a court of competent jurisdiction pursuant to a final judgment in favor of the owner of any patent, copyright, trademark, or trade secret, as a direct result of any claim of infringement of any such patent, copyright, trademark or misappropriation of any trade secret related to the Deliverables provided by Supplier under any SOW.

11.2 **Infringement Remedies.** In the event an infringement or misappropriation claim as described in Section 11.1 above arises, or if Supplier reasonably believes that a claim is likely to be made, Supplier, at its option and in lieu of indemnification, may: (i) modify the applicable Deliverables so that they become non-infringing but still comply with the applicable Specifications set forth in the SOW; or (ii) replace the applicable Deliverables with non-infringing functional equivalents; or (iii) obtain for Akorn the right to use such Deliverables upon commercially reasonable terms at Supplier’s sole expense; or only if the three preceding remedies prove impractical or commercially impracticable, then (iv) remove the infringing or violative Deliverables and refund to Akorn the fees paid for such Deliverables that are the subject of such a claim. This Article 11 sets forth the exclusive remedy and entire liability and obligation of each Party with respect to intellectual property infringement or misappropriation claims, including patent, copyright or trademark infringement claims and trade secret misappropriation.

11.3 **Intellectual Property Rights Exclusions.** Supplier shall have no obligation under this Article or other liability for any infringement or misappropriation claim resulting or alleged to result from: (i) use of the Deliverables in combination with any equipment or software not approved for use by Supplier; (ii) any claim arising from any instruction, information, design or other materials furnished by Akorn to Supplier hereunder; or (iii) Akorn’s continuing the

allegedly infringing activity after being notified thereof or after being informed and provided with modifications that would have avoided the alleged infringement.

## **ARTICLE 12 - PERSONNEL REQUIREMENTS**

Supplier represents and warrants that: (i) all of its employees, agents or representatives who will provide any services under the Agreement (“Supplier Personnel”) (a) are qualified to provide such services and have been have appropriately trained by Supplier, (b) have passed appropriate background checks and have no history of criminal activity, and (c) will provide the services in accordance with the highest industry standards that may be applicable to such services; (ii) Supplier shall follow Akorn’s internal safety policies and instructions, cGMP standards (if applicable) and all applicable rules, laws and regulations; and (iii) the services provided by Supplier to Akorn will not violate or infringe upon any patent, copyright, trade secret, or other contractual, employment or confidentiality right of a third party.

Supplier shall inform Akorn on a regular basis as requested by Akorn, but, no less frequently than monthly, of the Supplier Personnel currently engaged under any SOW under this Agreement. In addition, in order for Akorn to terminate security access granted to any Supplier Personnel on a timely basis, Supplier shall notify Akorn within one (1) Business Day after the occurrence of either of the following: (i) such Supplier Personnel has completed his or her assignment with Akorn; and/or (ii) such Supplier Personnel is suspended or no longer employed by Supplier.

## **ARTICLE 13 - REGULATORY MATTERS**

13.1 Inspection. Upon a request by any properly authorized officer or employee of FDA, Supplier shall permit such officer or employee, at reasonable times, to have access to and copy and verify any records and reports in Supplier’s possession or under Supplier’s custody or control relating to the project, and shall submit such records or reports (or copies thereof) upon FDA request, to the FDA. Upon notification of an impending inspection by FDA or any other governmental or regulatory authority at Supplier premises, or at any project site, Supplier shall notify Akorn immediately.

13.2 Debarment and Exclusion. Supplier warrants that neither Supplier, nor any of its affiliates, employees, agents, or independent contractors, working on Akorn’s behalf, has ever been, is currently, or is the subject of a proceeding that could lead to that party becoming, as applicable, a Debarred Entity, Debarred Individual, Excluded Individual, Excluded Entity, Convicted Individual, or Convicted Entity (as defined below). Supplier further warrants and represents that no Debarred Individual, Debarred Entity, Excluded Individual, Excluded Entity, Convicted Individual or Convicted Entity has performed or rendered, or will perform or render, any services or assistance on its behalf relating to activities taken pursuant to this Agreement. Supplier further covenants, represents and warrants that if, during the term of this Agreement, it, or any of its affiliates, employees, agents, or independent contractors working on Akorn’s behalf, becomes or is the subject of any FDA investigation or debarment proceeding that could lead to that party becoming, as applicable, a Debarred Entity, Debarred Individual, Excluded Entity, Excluded Individual, Convicted Entity, or Convicted Individual, Supplier shall immediately notify Akorn, and Akorn shall have the right to immediately terminate this Agreement pursuant to Section 4.4.3 below without opportunity to cure. This provision shall survive termination or

expiration of this Agreement. For purposes of this provision, the following definitions shall apply:

(a) A “Debarred Individual” is an individual who has been debarred by FDA pursuant to 21 U.S.C. §335a (a) or (b) from providing services in any capacity to a person that has an approved or pending drug product application, or an employer, employee or partner of a Debarred Individual.

(b) A “Debarred Entity” is a corporation, partnership or association that has been debarred by FDA pursuant to 21 U.S.C. §335a (a) or (b) from submitting or assisting in the submission of any abbreviated drug application, or an employee, partner, shareholder, member, subsidiary or Affiliate of a Debarred Entity.

(c) An “Excluded Individual” or “Excluded Entity” is (i) an individual or entity, as applicable, who has been excluded, debarred, suspended or is otherwise ineligible to participate in federal health care programs such as Medicare or Medicaid by the Office of the Inspector General (OIG/HHS) of the U.S. Department of Health and Human Services, or (ii) is an individual or entity, as applicable, who has been excluded debarred, suspended or is otherwise ineligible to participate in federal procurement and non-procurement programs, including those produced by the U.S. General Services Administration (GSA).

(d) A “Convicted Individual” or “Convicted Entity” is an individual or entity, as applicable, who has been convicted of a criminal offense that falls within the ambit of 42 U.S.C. §1320a – 7(a), but has not yet been excluded, debarred, suspended or otherwise declared ineligible.

#### **ARTICLE 14 - INSURANCE**

14.1 Maintenance. Supplier will procure and maintain, at its own expense, for the duration of the Agreement, and for three (3) years thereafter if written on a claims made or occurrence reported form, the types of insurance specified below with carriers rated A- VII or better by A. M. Best or like rating agencies:

(a) Workers’ Compensation accordance with applicable statutory requirements and shall provide a waiver of subrogation in favor of Akorn;

(b) Employer’s Liability with a limit of liability in an amount of not less than \$500,000;

(c) Commercial General Liability including premises operations, products & completed operations, blanket contractual liability, personal injury and advertising injury including fire legal liability for bodily injury and property damage in an amount not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate;

(d) Commercial Automobile Liability for owned, hired and non-owned motor vehicles with a combined single limit in an amount not less than \$1,000,000 each occurrence;

(e) Excess Liability including products liability with a combined single limit in an amount of not less than \$5,000,000 per occurrence and in the aggregate;

(f) Professional Liability with a limit of liability in an amount of not less than \$5,000,000 per claim and in the aggregate and shall remain in effect for 2 years after the expiration of said Agreement;

(g) Commercial Crime or Fidelity Bond in an amount of not less than \$1,000,000 per occurrence and in the aggregate including an endorsement for third party liability without the requirement of a conviction.

14.2 Additional Insured. Akorn and its subsidiaries, Affiliates, directors, officers, employees and agents shall be an additional insured with respect to Commercial General Liability, Commercial Automobile Liability and Excess Liability. Prior to commencement of services, and annually thereafter, Supplier shall furnish Akorn with certificates of insurance evidencing the insurance coverages stated above and shall require at least thirty (30) days written notice to Akorn prior to any cancellation, non-renewal or material change in said coverage. In the case of cancellation, non-renewal or material change in said coverage, Supplier shall promptly provide Akorn with a new certificate of insurance evidencing that the coverage meets the requirements in Section 14.1. Supplier agrees that its insurance shall act as primary and noncontributory from any other valid and collectible insurance maintained by Akorn.

#### **ARTICLE 15 - MISCELLANEOUS**

15.1 Relationship of the Parties. The relationship of the parties under this Agreement is that of independent contractors, and not of employer-employee, partners or co-venturers. If Supplier's obligations hereunder require or contemplate the providing of services by Supplier's employees, or persons under contract to or under the control of Supplier, on Akorn's property, Supplier shall provide such services only as an independent contractor and the persons providing such Services shall not be considered Akorn's employees or agents.

15.2 No Inappropriate Relationship. Supplier represents and warrants that, except as otherwise disclosed in writing to Akorn, no payment, gift or thing of value (other than nominal value in the aggregate) has been made, given or promised to obtain this or any other agreement between the parties.

15.3 Subcontracting. If subcontracting is expressly permitted in the SOW, Supplier, may enter into subcontracts to provide a portion of the Deliverables under this Agreement upon receiving Akorn's written consent to that specific subcontract. In no event shall any subcontract release Supplier from its responsibility for its obligations under this Agreement and Supplier shall indemnify Akorn to the extent provided for in Articles 10 and 11 of this Agreement. Supplier shall be responsible for the work and activities of its employees, agents and subcontractors, including compliance with the terms of this Agreement. Supplier shall be responsible for all payment to its employees, agents and subcontractors. Supplier shall promptly pay for all services, material, equipment and labor used by Supplier in providing the Services and Supplier shall keep Akorn's premises, and any Deliverables from Supplier to Akorn, free of all liens.



15.4 No Third Party Beneficiaries. This Agreement has been entered into for the sole benefit of Supplier and Akorn and in no event will any third party benefits or obligations be created thereby.

15.5 No Presentations and Publications. Supplier shall not present or publish, nor submit for publication, any work resulting from Supplier's services without Akorn's prior written approval, which may be withheld for any reason or for no reason.

15.6 No Publicity. Supplier shall not, without Akorn's written consent, in any manner advertise or publish the fact that Supplier has furnished or contracted to furnish to Akorn services described in this Agreement or any SOW and Supplier shall not use the name, trade name or trademarks of Akorn in any manner in any of its advertising or marketing literature, customer lists, web sites, press releases or any other document or communication (in electronic or paper form.)

15.7 Assignment. Neither party may assign its rights or obligations under this Agreement without the prior written consent of the other party; provided, however, that Akorn may assign this Agreement, in whole or in part, without such consent, to an affiliate or to any third party successor by merger or acquisition or by divestiture or spin-off of substantially all of the business to which this Agreement relates. This Agreement shall be binding upon and inure to the benefit of each of the parties and such party's successors and permitted assigns.

15.8 Governing Law. This Agreement and the legal relations between the parties hereunder shall be construed, interpreted and governed by the laws of the State of Illinois, without regard to its conflict of laws principles. Each party hereby submits to the exclusive jurisdiction of the courts in the State of Illinois with regard to any claim or dispute arising out of or related to this Agreement. Notwithstanding the provision of any services under this Agreement, the parties acknowledge and agree that this Agreement is predominately for the sale of goods and shall be subject to Article 2 of the Uniform Commercial Code as adopted by the State of Illinois. The United Nations Convention on the International Sale of Goods is hereby expressly excluded.

15.9 Dispute Resolution. The parties recognize that bona fide disputes may arise which relate to the parties' rights and obligations under this Agreement. Except as set forth in Section 8.4 above, the parties agree that any such dispute shall be resolved by Alternative Dispute Resolution in accordance with the procedures set forth on Exhibit C.

15.10 Notices. All notices and other communications which are required or may be given under this Agreement shall be in writing and shall be deemed to have been duly given: (i) when received if personally delivered; (ii) the day after being sent, if sent for next-day delivery within the United States by recognized overnight courier Service; and (iii) upon receipt, if sent by registered or certified mail, return receipt requested. In each case notice shall be sent to the following address or to such other place and with such other copies as either party may designate as to itself by notice to the other:

If to Akorn:

Akorn Inc.  
Attn: Craig Shatzer

100 North Field Drive, Suite 200  
Lake Forest, IL 60045

With a copy to:

Akorn Legal Department  
1925 West Field Court, Suite 300  
Lake Forest, IL 60045

If to Supplier:

ALKU  
200 Brickstone Square, Suite 503  
Andover, MA 01810

15.11 Force Majeure. Neither party shall be liable for any failure or delay in the performance of its obligations under this Agreement to the extent such failure or delay is caused by any of the following: acts of war, terrorism, civil riots, or rebellions; quarantines, embargoes, and other similar extraordinary governmental action; extraordinary elements of nature or acts of God; each of which could not have been prevented by the non-performing party's reasonable precautions or commercially accepted processes, or could not reasonably be circumvented by the non-performing party through the use of substitute services, alternate sources, work-around plans, or other means. Events meeting both of the above criteria are referred to as "Force Majeure Events." The parties expressly acknowledge that Force Majeure Events do not include vandalism, the regulatory acts of governmental agencies, labor strikes, or the non-performance of third parties or subcontractors relied on for the delivery of the services unless such failure or non-performance by a third party or subcontractor is itself caused by a Force Majeure Event, as defined above. Upon the occurrence of a Force Majeure Event, the non-performing party shall be excused from any further performance or observance of the affected obligation(s) for as long as such circumstances prevail and such party continues to attempt to recommence performance or observance to the greatest extent possible without delay. Notwithstanding any other provision of this Section, a Force Majeure Event shall obligate Supplier to implement any disaster recovery set forth in a "Disaster Recovery Plan" as may be specifically requested by Akorn. If a Force Majeure Event causes a material failure or delay for more than thirty (30) consecutive days, Akorn may, at its option, and in addition to any other rights Akorn may have, immediately terminate this Agreement without liability to Supplier.

15.12 Severability. If any provision of this Agreement for any reason shall be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other term or provision hereof, and this Agreement shall be interpreted and construed as if such term or provision, to the extent the same shall have been held to be invalid, illegal or unenforceable, had never been contained herein.


15.13 Interpretation. When a reference is made in this Agreement to Sections or Exhibits, such references shall be to a Section or Exhibits to this Agreement unless otherwise indicated. The words "hereof", "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. The words "include", "including" and "among other things" shall be deemed to

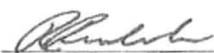
be followed by "without limitation" or "but not limited to" whether or not they are followed by such phrases or words of like import. The headings contained in this Agreement have been inserted for convenience of reference only and shall not be relied upon in construing this Agreement. Any term used in the singular shall be interpreted as including the plural and vice versa, unless the context clearly indicates otherwise.

15.14 Entire Agreement; Amendments and Waivers. This Agreement together with all exhibits and schedules hereto constitute the entire agreement between the parties pertaining to the subject matter hereof and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, of the parties with respect to such subject matter, except for any prior confidentiality or nondisclosure or similar agreement previously executed by the parties, which shall remain in full force and effect hereafter in accordance with its terms unless expressly terminated in the applicable SOW. No amendment, modification or waiver of this Agreement shall be binding unless executed in writing by the party to be bound thereby. No waiver of any of the provisions of this Agreement shall be deemed a waiver of any other provision hereof, nor shall any such waiver constitute a continuing waiver unless expressly provided in such waiver. None of the terms of any Supplier acceptance or acknowledgement of a Purchase Order shall apply.

15.15 Counterparts; Deemed Originals. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A facsimile or emailed .pdf file signature page shall be deemed an original.

**IN WITNESS WHEREOF**, the undersigned have executed this Agreement intending to be legally bound effective as of the Effective Date.

AKORN, INC  
By:   
Printed Name: Bruce Kutinsky  
Title: C.O.O.

ALKU LLC  
By:   
Printed Name: Ryan Rudich  
Title: Account Manager



## List of Exhibits

Exhibit A	Template Statement of Work
Exhibit B	Rate Card
Exhibit C	Dispute Resolution
Exhibit D	Akorn's Travel, Entertainment & General Reimbursement Policy for Consultants and Vendors

**STATEMENT OF WORK**

Statement of Work

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

**SOW #** \_\_\_\_\_

This Statement of Work is issued under the Master Professional Services Agreement dated xx,xx,xxxx between [ ENTER SUPPLIER NAME HERE] and Akorn, Inc (the "Agreement"). This Statement of Work, as amended, modified, or supplemented, includes the terms and conditions of the Agreement, which are incorporated by this reference

**Scope of Work**

*Define "why" this project is required*

*Define "what" is required*

*Indicate if this is a fixed price or time and materials SOW. In the event this is a time and materials SOW, specify a not to exceed amount in Section 6.*

**List of Applicable Documents**

*List all government or commercial standards*

*List other documents relevant to providing the Deliverables*

**Performance Requirements**

*Akorn's and Company's performance specifications*

**Responsibilities**

*Identify Akorn's and Company's responsibilities and timelines*

**Timeline**

**Acceptance Criteria**

*Acceptance criteria must match performance and acceptance requirements*

**Location of services:**

**Project Contacts:**

Akorn:

Company:

**Price and Payment:**

*Price*

*Incentives*

*Disincentives*

*Payment Schedule*

**Management of Change Orders.** The scope change request process will be the vehicle for communicating change. Either party may initiate a change request. Both parties must review the proposed change and either approve or reject such change in writing prior to proceeding with any change to this SOW. Only the following individuals are authorized to make and/or approve changes.

**AKORN OWNER.**

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

Name: \_\_\_\_\_

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

**OUR AGREEMENT:**

This Statement of Work and our existing Agreement, form the basis for our agreement. Please sign your acceptance by signing below.

**AGREED AND ACCEPTED:**

**AKORN, INC.**

**[ENTER SUPPLIER NAME HERE]**

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

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

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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

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

EXHIBIT C  
ALTERNATIVE DISPUTE RESOLUTION

The Parties recognize that from time to time a dispute may arise relating to either Party's rights or obligations under this Agreement. The Parties agree that any such dispute shall be resolved by the Alternative Dispute Resolution ("ADR") provisions set forth in this Exhibit, the result of which shall be binding upon the Parties.

To begin the ADR process, a Party first must send written notice of the dispute to the other Party for attempted resolution by good faith negotiations between their respective presidents (or their designees) of the affected subsidiaries, divisions, or business units within twenty-eight (28) days after such notice is received (all references to "days" in this ADR provision are to calendar days). If the matter has not been resolved within twenty-eight (28) days of the notice of dispute, or if the Parties fail to meet within such twenty-eight (28) days, either Party may initiate an ADR proceeding as provided herein. The Parties shall have the right to be represented by counsel in such a proceeding.

1. To begin an ADR proceeding, a Party shall provide written notice to the other Party of the issues to be resolved by ADR. Within fourteen (14) days after its receipt of such notice, the other Party may, by written notice to the Party initiating the ADR, add additional issues to be resolved within the same ADR.

2. Within twenty-one (21) days following receipt of the original ADR notice, the Parties shall select a mutually acceptable neutral to preside in the resolution of any disputes in this ADR proceeding. If the Parties are unable to agree on a mutually acceptable neutral within such period, either Party may request the President of the CPR Institute for Dispute Resolution ("CPR"), 366 Madison Avenue, 14th Floor, New York, New York 10017, to select a neutral pursuant to the following procedures:

(a) The CPR shall submit to the Parties a list of not less than five (5) candidates within fourteen (14) days after receipt of the request, along with Curriculum Vitae for each candidate. No candidate shall be an employee, director, or shareholder of either Party or any of their subsidiaries or Affiliates.

(b) Such list shall include a statement of disclosure by each candidate of any circumstances likely to affect his or her impartiality.

(c) Each Party shall number the candidates in order of preference (with the number one (1) signifying the greatest preference) and shall deliver the list to the CPR within seven (7) days following receipt of the list of candidates. If a Party believes a conflict of interest exists regarding any of the candidates, that Party shall provide a written explanation of the conflict to the CPR along with its list showing its order of preference for the candidates. Any Party failing to return a list of preferences on time shall be deemed to have no order of preference.

(d) If the Parties collectively have identified fewer than three (3) candidates deemed to have conflicts, the CPR immediately shall designate as the neutral the candidate for whom the Parties collectively have indicated the greatest preference. If a tie should result between two candidates, the CPR may designate either candidate. If the Parties collectively have identified three (3) or more candidates deemed to have conflicts, the CPR shall review the explanations regarding conflicts and, in its sole discretion, may either (i) immediately designate as the neutral the candidate for whom the Parties collectively have indicated the greatest preference, or (ii) issue a new list of not less than five (5) candidates, in which case the procedures set forth in subparagraphs 2(a) - 2(d) shall be repeated.

3. No earlier than twenty-eight (28) days or later than fifty-six (56) days after selection, the neutral shall hold a hearing to resolve each of the issues identified by the Parties. The ADR proceeding shall take place at a location agreed upon by the Parties. If the Parties cannot agree, the neutral shall designate a location other than the principal place of business of either Party or any of their Affiliates.

4. At least seven (7) days prior to the hearing, each Party shall submit the following to the other Party and the neutral:

(a) a copy of all exhibits on which such Party intends to rely in any oral or written presentation to the neutral;



(b) a list of any witnesses such Party intends to call at the hearing, and a short summary of the anticipated testimony of each witness;

(c) a proposed ruling on each issue to be resolved, together with a request for a specific damage award or other remedy for each issue. The proposed rulings and remedies shall not contain any recitation of the facts or any legal arguments and shall not exceed one (1) page per issue. The Parties agree that neither side shall seek as part of its remedy any punitive damages.

(d) a brief in support of such Party's proposed rulings and remedies, provided that the brief shall not exceed twenty (20) pages. This page limitation shall apply regardless of the number of issues raised in the ADR proceeding.

Except as expressly set forth in subparagraphs 4(a) - 4(d), no discovery shall be required or permitted by any means, including depositions, interrogatories, requests for admissions, or production of documents.

5. The hearing shall be conducted on two (2) consecutive days and shall be governed by the following rules:

(a) Each Party shall be entitled to five (5) hours of hearing time to present its case. The neutral shall determine whether each Party has had the five (5) hours to which it is entitled.

(b) Each Party shall be entitled, but not required, to make an opening statement, to present regular and rebuttal testimony, documents or other evidence, to cross-examine witnesses, and to make a closing argument. Cross-examination of witnesses shall occur immediately after their direct testimony, and cross-examination time shall be charged against the Party conducting the cross-examination.

(c) The Party initiating the ADR shall begin the hearing and, if it chooses to make an opening statement, shall address not only issues it raised but also any issues raised by the responding Party. The responding Party, if it chooses to make an opening statement, also shall address all issues raised in the ADR. Thereafter, the presentation of regular and rebuttal testimony and documents, other evidence, and closing arguments shall proceed in the same sequence.

(d) Except when testifying, witnesses shall be excluded from the hearing until closing arguments.

(e) Settlement negotiations, including any statements made therein, shall not be admissible under any circumstances. Affidavits prepared for purposes of the ADR hearing also shall not be admissible. As to all other matters, the neutral shall have sole discretion regarding the admissibility of any evidence.

6. Within seven (7) days following completion of the hearing, each Party may submit to the other Party and the neutral a post-hearing brief in support of its proposed rulings and remedies, provided that such brief shall not contain or discuss any new evidence and shall not exceed ten (10) pages. This page limitation shall apply regardless of the number of issues raised in the ADR proceeding.

7. The neutral shall rule on each disputed issue within fourteen (14) days following completion of the hearing. Such ruling shall adopt in its entirety the proposed ruling and remedy of one of the Parties on each disputed issue but may adopt one Party's proposed rulings and remedies on some issues and the other Party's proposed rulings and remedies on other issues. The neutral shall not issue any written opinion or otherwise explain the basis of the ruling.

8. The neutral shall be paid a reasonable fee plus expenses. These fees and expenses, along with the reasonable legal fees and expenses of the prevailing Party (including all expert witness fees and expenses), the fees and expenses of a court reporter, and any expenses for a hearing room, shall be paid as follows:

(a) If the neutral rules in favor of one Party on all disputed issues in the ADR, the losing Party shall pay 100% of such fees and expenses.

(b) If the neutral rules in favor of one Party on some issues and the other Party on other issues, the neutral shall issue with the rulings a written determination as to how such fees and expenses shall be allocated between



the Parties. The neutral shall allocate fees and expenses in a way that bears a reasonable relationship to the outcome of the ADR, with the Party prevailing on more issues, or on issues of greater value or gravity, recovering a relatively larger share of its legal fees and expenses.

9. The rulings of the neutral and the allocation of fees and expenses shall be binding, non-reviewable, and non-appealable, and may be entered as a final judgment in any court having jurisdiction.

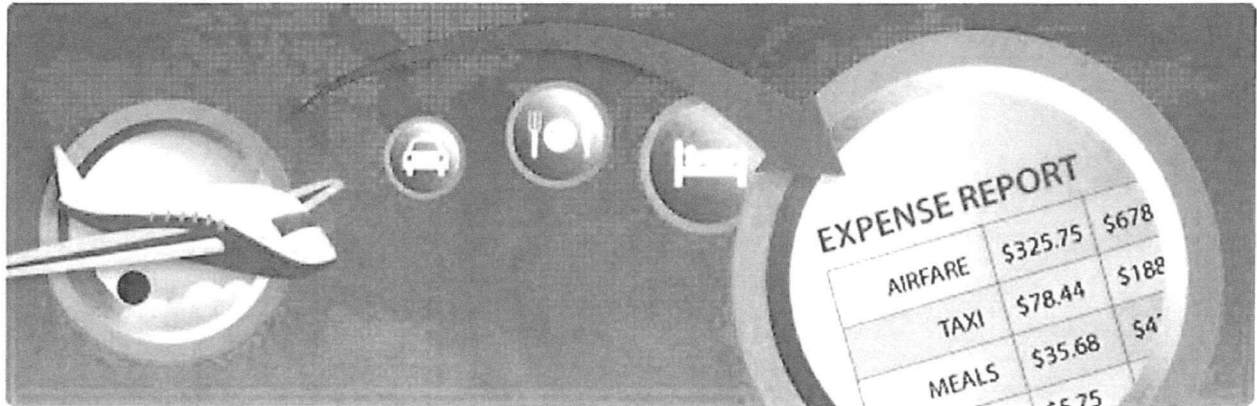
10. Except as provided in paragraph 9 or as required by law, the existence of the dispute, any settlement negotiations, the ADR hearing, any submissions (including exhibits, testimony, proposed rulings, and briefs), and the rulings shall be deemed Confidential Information. The neutral shall have the authority to impose sanctions for unauthorized disclosure of Confidential Information.

11. All ADR hearings shall be conducted in the English language.

EXHIBIT D



***TRAVEL, ENTERTAINMENT & GENERAL  
REIMBURSEMENT POLICY FOR AKORN'S  
CONSULTANT/VENDOR***



Effective Date: June 28, 2016 Policy  
Owner: Supply Chain (Sanjay Patel)

**Akorn, Inc.**

### **1.0 Purpose**

The purpose of this policy is to provide instructions and regulations for documenting and processing travel expenses incurred by Akorn's consultant/vendors in the conduct of the company's business. The procedures outlined in this policy are designed to ensure compliance with these requirements and to establish company guidelines for adherence and effective administration of these expenses.

All consultant/vendors are expected to apply these guidelines on a conservative basis, consistent with normal living standards and where the policy is silent, to exercise good business and fiscal judgment.

### **2.0 Scope**

The policy applies to all consultant/vendors of Akorn, Inc., including all domestic divisions.

### **3.0 Responsibilities and Policy Enforcement**

The consultant/vendor who is authorized to incur such expenses and incurs business related travel must be familiar with the Policy and will be governed by the guidelines included herein. The primary responsibility for the adherence to the Policy is with the consultant/vendor who incurs the expense. The consultant/vendor who incurs the expense is responsible for submitting the expense report for Akorn Sponsor's approval. The Akorn Sponsor who approves the expense report must have a full understanding of the Travel and Entertainment Policy (T&E) for consultant/vendor. The approval of the expenses signifies the Akorn Sponsor's concurrence with the accuracy and propriety of the expenses.

Akorn, Inc. assumes no obligation to reimburse expenses that are not in compliance with this policy and/or contract. All reasonable travel and other allowable expenses as defined by this policy for consultant/vendor are reimbursable. Consultant/vendors should be managed via Purchase Order or Contract Addendum, as applicable.

Expense reports submitted that are not in compliance will be returned to the consultant/vendor/contractor. It is the consultant/vendor's responsibility to comply with the contract and Akorn Sponsor's responsibility to accurately review expense reports for compliance.

Accountability is one of our values at Akorn. With regard to our T&E policies, that accountability is shared by the consultant/vendor as well.

**4.0 Expense Report Documentation**

Any individual expenses over \$25 must have an original receipt attached in order to be reimbursed. Any expenses without a receipt must be supported with a written explanation and will be subject to the compliance guidelines as noted in section 3 above.

**5.0 Expenses****5.1 Air Travel:**

1. You must include a copy of your travel itinerary showing the paid airfare when submitting your expense report.
2. Every attempt must be made to book out-of-town business trips at least two weeks in advance in order to optimize flight availability and obtain the lowest fare possible.
3. For domestic travel, economy or coach class is required for all flights. Upgrades (including with respect to preferred seating arrangements or location) are not reimbursable.
4. Unused tickets must be canceled prior to the start of the flight in order for credits/refunds to be tracked for reporting to Akorn, Inc. Travelers must request all outstanding credits be applied to subsequent airfares.
5. Any purchase of travel or luggage insurance and fees associated with excess luggage may not be reimbursed. The company will pay for (1) checked bag when travelling for business. A written justification must be submitted if excess fees have been incurred. Lost or stolen baggage is ultimately the responsibility of the airline. Akorn, Inc. will not reimburse travelers for personal items lost while traveling on business. Measures that can be taken to minimize baggage losses include:
  - Always carry valuables (i.e. jewelry, laptops and cameras) in your carry-on baggage in the passenger compartment of aircraft.
  - Always carry important and/or confidential documents in your carry-on baggage, in the passenger compartment of the aircraft.
  - Clearly tag luggage with name, address and phone number.
  - Check baggage claim receipts for proper identification of destination airport.
  - Retain baggage claim receipts for checked luggage
  - Place a copy of your travel itinerary in luggage
6. Airport parking should be less than round trip taxi/limo fare, if not, a taxi should be utilized.
7. Upgrades at Akorn's expense are NOT permitted. Upgrades are allowed at the consultant/vendor's personal expense. Business class allowed for any single leg of trip where travel time is longer than 6 hours.

**5.2 Ground Transportation:**

1. Public transportation, such as taxis (including Uber & Lyft), rail or airport shuttle services must be used when services are sufficient and cost is less than that of a rental car.
2. Economy or intermediate size cars are to be rented when one or two consultants/vendors are traveling together. A full size car may be rented when three or more consultants/vendors and/or customers are traveling together. The names of additional travelers must be noted on the rental car receipt.
3. Fines or other expenses incurred as a result of traffic violations or parking tickets are the sole responsibility of the violator and will not be reimbursed by the company.

### **5.3 Personal Car Use:**

1. The consultant/vendor is responsible for all costs incurred in traveling from their residence to work facility. When a consultant/vendor is required to use his/her personal car for business use, the consultant/vendor will be reimbursed at the rate as established by the IRS per mile, and for consultant/vendors who receive an auto allowance, the rate is \$0.35 less per mile, for the following situations:
  - a. When a consultant/vendor is required to travel between Akorn, Inc. facilities during the regular workday, reimbursement will be made for actual miles traveled between facilities.
  - b. In the event that a consultant/vendor departs from his/her residence on a non-business day (weekend or holiday), to a business related destination, the total mileage from their residence, to the business related destination, can be claimed as an expense.
2. A consultant/vendor who is required to travel locally must maintain a travel log listing dates, points of travel, reason for travel and mileage. Mileage reimbursement must be submitted on a weekly/ or per trip basis. The standard mileage reimbursement rate is inclusive of the costs of operating your vehicle for business purposes. Gas will be reimbursable only for the refueling of rental vehicles.
3. Akorn, Inc. does not provide insurance coverage on a consultant/vendor's personal car when used for business reasons. It is the responsibility of the consultant/vendor to ensure that any vehicle used for business purposes has

adequate insurance coverage for the state or country in which the vehicle is operated.

4. Consultant/vendors will not be reimbursed for any repairs to personal vehicles, even if these costs result from accidents while on business travel.

#### **5.4 Hotels:**

1. It is the traveler's responsibility to cancel reservations if plans change. Guaranteed reservations not cancelled will NOT be reimbursed.
2. Meals, beverages, phone charges, parking etc. charged to the hotel room must be individually itemized on the expense report.
3. All Mini Bar charges are purchased at your own personal cost and will not be reimbursed.
4. Access to Hotel gyms is normally included in the room rate; if not, fees will not be reimbursed.

#### **5.5 Meals:**

1. The company guideline is to reimburse meal up to \$65 in aggregate per day. This does not apply if the meal has already been paid for while attending a conference/convention or if a colleague has paid for your meal. Alcohol is not reimbursable.
3. Restaurant tear-off stubs or signature copies are not acceptable forms of a receipt.
4. Consultant/vendors will be reimbursed for reasonable tips as long as they do not exceed 20% of the total bill. Note: consultant/vendors should not provide an additional tip if gratuities are already built into the price (e.g., large groups, banquets, etc.) or where tips are not customary. Consultant/vendors should check receipts for gratuities before adding an additional tip amount. All meal gratuities should be added into the cost of the meal(s) and expensed as such.

#### **5.6 Entertainment:**

1. Consultant/vendors are not permitted to include personal friends or family as a business expense. A clear and complete explanation specifying place and location, names of those present, employer and occupation or title of non-employees, type of entertainment and business purpose or nature of business discussion. Akorn's Sponsor



must ensure that any and all entertainment is in compliance. Any entertainment expense to be reimbursed by Akorn, Inc. should be approved by Akorn Sponsor.

**5.7 Telephone / Cell phone / Internet:**

1. Consultant/vendors should not use hotel room phones to make direct dial long distance calls.
2. Airplane internet charges are at the discretion of the Akorn Department Sponsor/Manager. In extreme emergencies, if an airline air phone is used for a specific business purpose, the charge must be approved by Akorn Sponsor before submitting the charge on an expense report.

**5.8 Miscellaneous:**

1. Requests for reimbursement for local travel/expenses are to be submitted with vendor invoice.
2. Akorn, Inc. will reimburse parking, tolls, taxis, bus and/or rail used for business related charges. Receipts for all amounts must be submitted with the consultant/vendor's expense report.
3. Laundry, cleaning, etc., is only allowed when away from home for more than five continuous days.
4. Must NOT travel to countries for which a travel advisory has been issued by the state department.
5. International travelers can obtain foreign currency from any of the following locations: banks, airport foreign exchange counters, major hotels, currency exchange outlets, travel agencies.
5. When travel is outside the country of origin, the expense report must be submitted in the currency in which the consultant/vendor is normally reimbursed along with the original receipt. The cost for exchanging currency will also be reimbursed. Where an expense is paid using a credit card, a copy of the credit card statement must also accompany the original receipt to support the additional currency translation expense.

6. The extra cost of extending an consultant/vendor's business trip over a Saturday night to obtain lower airfare will be allowed (but not required) with prior approval, provided the airfare reduces the overall cost of the trip (including food and lodging costs). The company will only reimburse for additional expenses incurred to the extent of the reduction in airfare.
7. Emergency purchases of such items while traveling require the approval by Akorn Sponsor.
8. Akorn will not reimburse Consultant for any travel time that its employees, agents or representatives incur in connection with performance of services for Akorn. Any deviations from this restriction must be pre-approved by the Sponsor's Department Vice President.

**5.10 Expenses the Company Will Not Reimburse:**

The company will not reimburse certain expenses. Examples include, but are not limited to:

1. Personal and travel accident insurance.
2. Personal entertainment (i.e. movies, spas, sporting events and activities).
3. The expenses of a spouse
4. Personal purchases such as toilet articles, cigarettes, souvenirs, reading material, shoe shines, etc.
5. Alcohol, except for pre-approved business entertainment.
6. Hair care or manicurist expenses.
7. Regular or irregular travel between one's home and place of business.
8. Luggage purchases.
9. Annual credit card memberships (without approval) & interest
10. Childcare expenses. (Exceptions require approval from a VP)
11. Newspaper / magazine / book purchases.
12. Consultant/vendor Gifts.
13. Other expenses not specifically mentioned in this policy without prior approval by Akorn Sponsor.

The primary responsibility for adhering to the policies and procedures set forth in this document belongs to the respective traveler. The responsibility for enforcement of this travel and entertainment policy belongs to the vendor sponsor.

**This policy applies to all consultant/vendors of Akorn, Inc. without exception and compliance is required.**