

TERMS AND CONDITIONS

1. **Goods and Services.** The recipient hereof (“**Seller**”) agrees to perform the service(s) (“**Services**”) and/or provide the goods (“**Goods**”) in accordance with the applicable purchase order or scope of work (in either case, a “**P.O.**”) and with these Terms and Conditions (“**Agreement**”), in each case, for or to American Fruits and Flavors, LLC (“**Company**”). Upon acceptance of a P.O., shipment of Goods or commencement of any Services, Seller shall be bound by the provisions of this Agreement, as well as all provisions set forth on the face of any applicable P.O. provided by the Company, whether Seller acknowledges or otherwise signs this Agreement or the P.O., unless Seller objects to such terms in writing prior to shipping Goods or commencing Services.

This Agreement does not constitute a firm offer within the meaning of Section 2205 of the California Commercial Code, and may be revoked at any time prior to acceptance. This Agreement may not be modified except in a writing signed by an authorized Company representative. Any terms or conditions contained in any acknowledgment, invoice or other communication of Seller, which are inconsistent with, or in addition to, the terms and conditions herein, are hereby rejected. To the extent that this Agreement might be treated as an acceptance of Seller's prior offer, such acceptance is expressly made on condition of assent by Seller to the terms of this Agreement and shipment of the Goods or beginning performance of any Services by Seller shall constitute such assent. Company hereby reserves the right to reschedule any delivery and/or cancel any P.O. issued at any time prior to shipment of the Goods or commencement of any Services. Company shall not be subject to any charges or fees as a result of such cancellation.

2. **Delivery.** Time is of the essence. Delivery of Goods shall be made as specified on the face of the applicable P.O., and only to Company or other such party or location that Company specifies in writing. Company reserves the right to return, shipping charges collect, all Goods received in advance of the delivery schedule. If no delivery schedule is specified, the P.O. shall be filled promptly and delivery will be made by the most expeditious form of land transportation. If no method of shipment is specified in the P.O., Seller shall use the least expensive carrier. In the event Seller fails to deliver the Goods within the time specified, Company may, at its option, decline to accept the Goods and terminate this Agreement or may demand its allocable fair share of Seller's available Goods and terminate the balance of this Agreement.

Seller shall package all items in suitable containers to permit safe transportation and handling. Each delivered container must be labeled and marked to identify its contents without having to open it and all boxes and packages must contain packing sheets listing their contents. Company's P.O. number must appear on all shipping containers, packing sheets, delivery tickets and bills of lading.

3. **Identification, Risk of Loss and Destruction of Goods.** Identification of the Goods shall occur in accordance with Section 2501 of the California Commercial Code. Seller assumes all risk of loss until receipt of the Goods by Company. Title to the Goods shall pass to Company upon receipt by Company of the Goods at the designated destination. If the Goods ordered are destroyed prior to title passing to Company, Company may at its option cancel this Agreement or require delivery of substitute Goods of equal quantity and quality. Such delivery will be made as soon as commercially practicable. If loss of Goods is partial, Company shall have the right to require delivery of the Goods not destroyed.

4. **Payment/Invoicing.** As full consideration for the performance of the Services, delivery of the Goods and the assignment of rights to Company as provided herein, Company shall pay Seller (a) the amount agreed upon and specified in the P.O., if applicable; or (b) Seller's quoted price on the date of shipment (for Goods), or the date Services were started (for Services), whichever is lower. Applicable taxes and other charges such as shipping costs, duties, customs, tariffs, imposts and government imposed surcharges shall be stated separately on Seller's invoice. Payment shall be deemed made when the Company's check is mailed. Payment shall not constitute acceptance of Goods or Services. All personal property taxes assessable upon Goods prior to receipt by Company of Goods conforming to the P.O. shall be borne by Seller. Seller shall invoice Company for all Goods delivered and all Services actually performed. Each invoice submitted by Seller must be provided to Company within thirty (30) calendar days of completion of the Services or delivery of Goods and must reference the applicable P.O., and Company reserves the right to return all incorrect invoices. Unless otherwise specified on the face of a P.O., Company shall pay the invoiced amount within thirty calendar (30) days after receipt of a correct invoice. Seller will receive no royalty or other remuneration on the production or distribution of any products developed by Company or Seller in connection with or based on Goods or

Services developed for Company and provided for herein.

5. **Warranties.**

As to Services: Seller represents and warrants that all Services shall be completed in a professional, workmanlike manner, with the degree of skill and care that is required by current, good and sound professional procedures and shall be completed in compliance with all applicable laws and regulations (including Seller holding and maintaining all business and professional licenses, permits, and registrations required to perform the Services as an independent contractor), and Company policies as provided to Seller from time to time. Further, Seller represents and warrants that Services shall be completed in accordance with applicable specifications and shall be correct and appropriate for the purposes contemplated in this Agreement. Seller additionally represents and warrants that the performance of Services under this Agreement will not conflict with, or be prohibited in any way by, any other agreement, law, regulation, and/or statutory restriction to which Seller is bound.

As to Goods: Seller warrants that it will manufacture the Goods only for Company only in the quantities as set forth in the relevant P.O., and all Goods provided will be new and will not have been previously rejected or condemned by another purchaser. Seller warrants that the manufacture, storage, transportation, sale, purchase, and use of the Goods shall fully comply with all applicable local and destination's laws, regulations, and standards (including, but not limited to, those relating to, the environment, health, safety, employment, labor and human rights). Seller warrants that all Goods delivered shall be free from defects in materials, design, performance, workmanship, or otherwise, and shall conform to all applicable specifications and be suitable for their intended purpose for a period of twelve (12) months from the date of delivery to Company or for the period provided in Seller's standard warranty covering Goods, whichever is longer. In the event Seller manufactures Goods of second quality or Goods that are damaged prior to their delivery, Seller shall destroy all such Goods and provide Company with written documentation confirming such destruction. Seller hereby agrees that it will make spare parts for the Goods available to Company for a period of five (5) years from the date of shipment at Seller's then current price, less applicable discounts. Additionally, Goods purchased shall be subject to all express warranties made by Seller and Seller's Agents (as defined below), and to all warranties provided for by the California Commercial Code. All warranties shall

be construed as conditions as well as warranties and shall not be exclusive. Seller shall furnish to Company Seller's standard warranty and service guaranty applicable to Goods. All warranties and Service guaranties shall run both to Company and to its customers.

If Company identifies a warranty problem with Goods during the warranty period, Company will promptly notify Seller of such problems and will return such Goods to Seller, at Seller's sole cost and expense. Within five (5) business days of receipt of the returned Goods, Seller shall, at Company's option, either repair or replace such Goods, or credit Company's account for the same. Replacement and repaired Goods shall be warranted for the remainder of the warranty period or six (6) months, whichever is longer.

6. **Inspection Rights.** Company shall have a reasonable time after receipt of Goods or Service deliverables to inspect them for conformity hereto, and Goods received prior to inspection shall not be deemed accepted until Company has run an adequate test to determine whether such Goods conform to the specifications hereof. Use of a portion of Goods for the purpose of testing shall not constitute an acceptance of such Goods. If Goods tendered do not wholly conform to the provisions hereof, Company shall have the right to reject such Goods. Nonconforming Goods will be returned to Seller at Seller's expense. All of the representations, warranties, covenants, and other agreements of the Seller under any P.O. or this Agreement shall survive inspection, testing, and payment by Company (whether before or after delivery) and any such inspection, testing, and payment shall not constitute a waiver by Company.

7. **Trademarks.** Seller acknowledges that Company is the sole and lawful owner of certain trade/service names or marks (collectively, the "**Company Trademarks**"). Seller is authorized by Company to use the Company Trademarks in connection with the Services or Goods solely to the extent as specified (if at all) by Company in writing for purposes of execution of the Services or the manufacture of the Goods, and at all times in accordance with the relevant P.O. and this Agreement. Seller shall not manufacture, promote, sell, and/or distribute any goods which bear the Company Trademarks, other than Goods specifically requested by the Company in a P.O. Nor shall Seller use any Goods bearing the Company Trademarks for or in connection with any promotional, advertising, or marketing purposes – including but not limited to, on Seller's website or in Seller's brochures. Seller shall have no right to assign, license, display, market, advertise, or use

the Company Trademarks or any image or derivative thereof for any other purpose nor shall Seller have any right, title, or interest in or to the Company Marks, including without limitation, all copyright and distribution rights. Any goodwill and rights under trademark and copyright law, and all other intellectual property rights, that arise in the Company Trademarks shall inure to the sole and exclusive benefit of Company. Seller shall not do anything which could in any way conflict with Company's use or ownership of the Company Trademarks and shall not attack, dispute, or challenge Company's right, title, and interest in the Company Trademarks or assist others in doing so.

8. **Independent Contractor.** Seller is an independent contractor for all purposes, without express or implied authority to bind Company by contract or otherwise. Neither Seller nor its employees, agents or subcontractors (collectively, "**Seller's Agents**") are agents or employees of Company and are not entitled to any employee benefits of Company including, but not limited to, any type of insurance. Seller shall be responsible for all costs and expenses incident to performing its obligations under this Agreement and shall provide Seller's own supplies and equipment.

9. **Taxes and Records.** Seller shall be solely responsible for filing the appropriate federal, state and local tax forms, and paying all such taxes or fees, including estimated taxes and employment taxes, due with respect to Seller's receipt of payment under this Agreement. Seller further agrees to provide Company with reasonable assistance in the event of a government audit. Company shall have no responsibility to pay or withhold from any payment to Seller under this Agreement, any federal, state or local taxes or fees. Company will report amounts paid to Seller by filing Form 1099-MISC with the Internal Revenue Service.

10. **Insurance.** Seller shall maintain and require Seller's Agents to maintain: (a) Commercial General Liability insurance with limits of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate for Bodily Injury & Property Damage Liability, Products & Completed Operations Liability and Personal & Advertising Injury; (b) if Seller and/or Seller's Agents will drive on behalf of Company or on to Company property, Commercial Automobile Liability with a combined single limit of not less than \$1,000,000 for Bodily Injury & Property Damage Liability for all Owned, Non-Owned and Hired Autos; and (c) Workers' Compensation Insurance for Category A as required in accordance with the laws of each State in which Seller conducts any activities under this

Agreement, and Workers' Compensation Insurance for Category B in amounts not less than (i) \$1,000,000 per accident for bodily injury by accident; \$1,000,000 policy limit for bodily injury by disease, and (iii) a \$1,000,000 policy limit per employee. Such insurance shall name Company as an additional insured under the insurance policy and shall specifically state that coverage as it pertains to Company shall be primary regardless of any other coverage which may be available to Company. Seller shall also provide adequate coverage for any Company property under the care, custody or control of Seller or Seller's Agents.

The insurance obligations stated in this section are independent of, and shall not be affected by the scope or validity of, any other indemnity or insurance provisions in other sections of this Agreement.

11. **Indemnity.** Seller shall protect, indemnify, hold harmless, and at Company's request, defend Company, its parent, subsidiary, and affiliated corporations, and the officers, directors, attorneys, affiliates, customers, agents and employees of each (collectively, the "**Company Parties**"), against any and all claims, liabilities, damages, losses and expenses, including attorneys' fees and cost of suit arising out of or in any way connected with the Goods or Services provided under this Agreement including, without limitation, (a) any claim based on the death or bodily injury to any person, destruction or damage to property, or contamination of the environment and any associated clean up costs, product seizures, and/or product recalls; (b) Seller failing to satisfy the Internal Revenue Service's guidelines for an independent contractor; (c) any claim based on the negligence, omissions or willful misconduct of Seller or any of Seller's Agents, including but not limited to, claims of defect in design or manufacture of the Goods or Services; and (d) any claim by a third party against Company alleging that the Goods or Services, the results of such Services, or any other products or processes provided under this Agreement, infringe any patent, copyright, moral right, trademark, trade secret or other proprietary right of a third party, whether such are provided alone or in combination with other products, software or processes; and in the event of such a claim described in (d) above, Seller will further, at its expense and sole option, either: (i) obtain the rights for Company Parties to use the Goods or Services; or (ii) modify the Goods or Services so they are non-infringing, or provide non-infringing replacement Goods or Services, either of which shall comply with the specifications in the original P.O. with no material reduction in any utility, aesthetic design, feature, functionality, or

performance; or, if none of the foregoing is possible, refund all amounts paid for the infringing Goods or Services to the Company Parties.

Seller shall not settle any such suit or claim without Company's prior written approval. Seller agrees to pay or reimburse all costs that may be incurred by Company in enforcing this indemnity, including attorneys' fees.

12. **Confidentiality.** Seller may acquire knowledge of Company Confidential Information (as defined below) in connection with its performance hereunder and agrees to keep such Company Confidential Information in confidence during and following termination or expiration of this Agreement. "**Company Confidential Information**" includes, but is not limited to, all information, whether written or oral, in any form including, without limitation, information relating to the research, development, products, methods of manufacture, trade secrets, business plans, customers, vendors, finances, personnel data, Work Product (as defined herein) and other material or information considered proprietary by Company relating to the past, current or anticipated business or affairs of Company which may be disclosed directly or indirectly to Seller. In addition, Company Confidential Information means any third party's proprietary or confidential information disclosed to Seller in the course of providing Services or Goods to Company. Company Confidential Information does not include any information (a) which Seller lawfully knew without restriction on disclosure before Company disclosed it to Seller; (b) which is now or becomes publicly known through no wrongful act or failure to act of Seller; or (c) which Seller developed independently without use of Company Confidential Information, in each case as evidenced by appropriate documentation. In addition, Seller may disclose Company Confidential Information which is required to be disclosed pursuant to a requirement of a government agency or law so long as Seller provides prompt notice to Company of such requirement prior to disclosure so as to afford Company the opportunity to try to enjoin or limit such disclosure.

Seller agrees not to copy, alter or directly or indirectly disclose any Company Confidential Information. Additionally, Seller agrees to limit its internal distribution of Company Confidential Information to Seller's Agents who have a need to know, and to take steps to ensure that the dissemination is so limited including, without limitation, if necessary, the execution by Seller's Agents of nondisclosure agreements with provisions substantially similar to those set forth

herein. In no event will Seller use less than the degree of care and means that it uses to protect its own information of like kind, but in any event not less than reasonable care to prevent the unauthorized use of Company Confidential Information.

Seller further agrees not to use Company Confidential Information except in the course of performing hereunder and will not use such Company Confidential Information for its own benefit or for the benefit of any third party. The mingling of Company Confidential Information with information of Seller shall not affect the confidential nature or ownership of the same as stated hereunder. Except for Company, Seller agrees not to design or manufacture any products which incorporate Company Confidential Information. All Company Confidential Information is and shall remain the property of Company. Upon Company's written request or the termination of this Agreement, Seller shall return, transfer or assign to Company all Company Confidential Information, including all Work Product, and all copies thereof.

13. **Ownership of Work Product.** For purposes of this Agreement, "**Work Product**" shall include, without limitation, all designs, discoveries, creations, works, devices, masks, models, work in progress, Services deliverables, inventions, products, computer programs, procedures, improvements, developments, drawings, notes, documents, business processes, information and materials made, conceived or developed by Seller alone or with others which result from or relate to the Services performed hereunder. Standard Goods manufactured by Seller and sold to Company without having been designed, customized or modified for Company do not constitute Work Product. All Work Product shall at all times be and remain the sole and exclusive property of Company. Seller hereby agrees to irrevocably assign and transfer to Company and does hereby assign and transfer to Company (and agrees that it shall be deemed to have assigned and transferred) all of its worldwide right, title and interest in and to the Work Product including all associated intellectual property rights. Company will have the sole right to determine the treatment of any Work Product including, without limitation, the right to keep it as a trade secret, execute and file patent applications on it, to use and disclose it without prior patent application, to file registrations for copyright or trademark in its own name or to follow any other procedure that Company deems appropriate. Seller agrees: (a) to disclose promptly in writing to Company all Work Product in its possession, (b) to assist Company in every

reasonable way, at Company's expense, to secure, perfect, register, apply for, maintain, and defend for Company's benefit all copyrights, patent rights, mask work rights, trade secret rights, and all other proprietary rights or statutory protections in and to the Work Product in Company's name as Company deems appropriate, and (c) to otherwise treat all Work Product as Company Confidential Information as described above. These obligations to disclose, assist, execute and keep confidential survive the expiration or termination of this Agreement. All tools and equipment supplied by Company to Seller shall remain the sole property of Company.

Seller will ensure that Seller's Agents appropriately waive any and all claims and assign to Company any and all rights and interests in any Work Product and original works created in connection with this Agreement. Seller irrevocably agrees not to assert against Company or its direct or indirect customers, assignees or licensees any claim of any intellectual property rights of Seller affecting the Work Product.

Company will not have rights to any works conceived or reduced to practice by Seller which were developed entirely on Seller's own time without using equipment, supplies, facilities or trade secrets or Company Confidential Information, unless (i) such works relate to Company's business, or Company's actual or demonstrably anticipated research or development; or (ii) such works result from any Services performed by Seller for Company.

14. **Non-interference.** During and for a period of two (2) years immediately after the termination or expiration of this Agreement, Seller agrees not to intentionally interfere with the business of Company in any manner, and further agrees not to intentionally solicit or induce any employee or independent contractor to terminate or breach an employment contract or other contractual relationship with Company.

15. **Termination.** Company may terminate this Agreement upon written notice to Seller if Seller fails to perform or otherwise breaches this Agreement, files a petition in bankruptcy, becomes insolvent, or dissolves. In the event of such termination, Company shall pay Seller for the portion of the Services satisfactorily performed and those conforming Goods delivered to Company through the date of termination, less appropriate offsets, including any additional costs to be incurred by Company in completing the Services and/or delivering the Goods.

Company may terminate this Agreement, or any Goods and/or Service(s), for any other reason upon ten (10) calendar days' prior written notice to Seller. Seller shall cease to perform Services and/or provide Goods under this Agreement on the date specified in such notice. In the event of such termination, Company shall be liable to Seller only for those Services satisfactorily performed and those conforming Goods delivered to Company through the date of termination, less appropriate offsets.

Seller may terminate this Agreement upon written notice to Company if Company fails to pay Seller within thirty (30) calendar days after Seller notifies Company in writing that payment is past due.

Upon the expiration or termination of this Agreement for any reason: (a) each party shall be released from all obligations to the other arising after the date of expiration or termination, except for those obligations which by their terms survive such termination or expiration, and (b) Seller shall promptly notify Company of all Company Confidential Information or any Work Product in Seller's possession and, at the expense of Seller and in accordance with Company's instructions, shall promptly deliver to Company all such Company Confidential Information and/or Work Product.

16. **Supplier Code of Conduct.** At all times, this Agreement will be subject to, and Seller will adhere to, the Supplier Code of Conduct of Company's parent company, as amended from time to time and available at: <https://www.monsterbevcorp.com/sc-conduct.php>.

17. **Remedies.** If Seller breaches this Agreement, Company shall have all remedies available by law and at equity. For the purchase of Goods, Seller's sole remedy in the event of breach of this Agreement by Company shall be the right to recover damages in the amount equal to the difference between market price at the time of breach and the purchase price specified in the P.O. No alternate method of measuring damages shall apply to this transaction. Seller shall have no right to resell Goods for Company's account in the event of wrongful rejection, revocation of acceptance, failure to make payment or repudiation by Company and any resale so made shall be for the account of Seller.

18. **Force Majeure.** Company shall not be liable for any failure to perform under this Agreement including, without limitation, failure to (a) accept performance of Services; or (b) take delivery of Goods as provided, in each case caused

by circumstances beyond its control which make such performance commercially impracticable including, but not limited to, acts of God, fire, flood, acts of war, government action, accident, labor difficulties or shortage, or inability to obtain materials, equipment or transportation. In the event Company is so excused, either party may terminate this Agreement and Company shall at its expense and risk, return any Goods received to the place of shipment.

19. **Severability.** If any term or provision of this Agreement shall be found to be void or contrary to law or unenforceable, such term or provision shall, but only to the extent necessary to bring this Agreement within the requirements of law, be deemed to be severable from the other terms and provisions hereof, and the remainder of this Agreement shall be given effect as if the parties had not included the severed term herein.

20. **LIMITATION OF LIABILITY.** IN NO EVENT SHALL COMPANY OR ANY OTHER PERSONS OR ENTITIES CONTROLLED BY, CONTROLLING OR UNDER COMMON CONTROL WITH COMPANY, BE LIABLE TO SELLER OR SELLER'S AGENTS, OR ANY THIRD PARTY FOR ANY INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES INCLUDING BUT NOT LIMITED TO LOST PROFITS, REVENUE, OR USE ARISING OUT OF, OR IN CONNECTION WITH, THIS AGREEMENT, WHETHER BASED UPON CONTRACT, TORT, NEGLIGENCE, WARRANTY, PRODUCT LIABILITY, STRICT LIABILITY, MISAPPROPRIATION, PRIVACY, OR PUBLICITY RIGHTS, AND/OR OTHERWISE, AND WHETHER OR NOT COMPANY OR COMPANY AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

21. **Assignment; Waiver.** Seller may not assign this Agreement or any of its rights or obligations under this Agreement, without the prior written consent of Company. Any assignment or transfer without such written consent shall be null and void. This Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of Company without restriction. In furtherance, but not in limitation, of the foregoing, the parties hereby acknowledge and agree that Company may without Seller's consent: (1) perform its obligations under this Agreement either itself or through an affiliate; and/or (2) assign or transfer any of its rights or benefits under this Agreement to an affiliate, provided always that where Company delegates the performance of its obligations under

this Agreement to an affiliate, Company shall remain liable for the actions, omissions and performance of such affiliate with respect to the obligations so delegated. A waiver of any default hereunder or of any term or condition of this Agreement shall not be deemed to be a continuing waiver or a waiver of any other default or any other term or condition.

22. **Non-Exclusive Agreement.** This Agreement is a non exclusive agreement. Company is free to engage others to perform Services or provide Goods the same as or similar to Seller's. Seller is free to, and is encouraged to, advertise, offer and provide Seller's Services and/or Goods to others; provided however, that Seller does not breach this Agreement.

23. **Notices.** Except for P.O.s which may be sent by local mail, facsimile transmission, or electronically transmitted, all notices, and other communications hereunder shall be in writing, and shall be addressed to Seller or to an authorized Company representative, and shall be considered given when (a) delivered personally; (b) sent by confirmed facsimile; or (c) sent by commercial overnight courier with written verification receipt.

24. **Survival of Obligations.** Any obligations and duties which by their nature extend beyond the expiration or termination of this Agreement shall survive the expiration or termination of this Agreement.

25. **Governing Law; Injunctive Relief.** This Agreement shall be construed in accordance with, and disputes shall be governed by, the laws of the State of California, excluding its conflict of law rules. Subject to Section 28 below, the Superior Court of Orange County or the United States District Court for the Central District of California shall have jurisdiction and venue over all controversies arising out of, or relating to, this Agreement. The applicability of the UN Convention on Contracts for the International Sale of Goods is hereby expressly waived/disclaimed by the parties and it shall not apply to the terms and conditions of this Agreement. Seller acknowledges and agrees that the obligations and promises of Seller under this Agreement are of a unique, intellectual nature giving them particular value. Seller's breach of any of the promises contained in this Agreement will result in irreparable and continuing damage to Company for which there will be no adequate remedy at law and, in the event of such breach, Company will be entitled to seek injunctive relief, or a decree of specific performance.

26. **Entire Agreement; Modification.**

The provisions contained herein constitute the entire agreement between the parties hereto with respect to the subject matter hereof. This Agreement may not be varied, modified, altered, or amended except in writing, including a P.O. or a change order issued by Company, signed by the parties. The terms and conditions of this Agreement shall prevail notwithstanding any variance with the terms and conditions of any acknowledgment or other document submitted by Seller. Notwithstanding the foregoing, this Agreement will not supersede or take the place of any written agreement which is signed by both parties and covers the same subject matter as this Agreement or its related P.O.s.

27. **Compliance with Laws; Customs.**

Seller shall comply fully with all applicable federal, state and local laws in the performance of this Agreement including, but not limited to, all applicable employment, tax, export control and environmental laws. Upon Company's request, Seller will promptly provide Company with a statement of origin for all Goods and United States Customs documentation for Goods wholly or partially manufactured outside of the United States.

28. **Arbitration.**

Any dispute, controversy or claim arising out of or relating to this Agreement or the breach or termination hereof shall be settled by binding arbitration conducted by

JAMS in accordance with JAMS Comprehensive Arbitration Rules and Procedures (the “**Rules**” ”), and to the extent applicable, the United States Federal Arbitration Act. The arbitration shall be heard by one arbitrator to be selected in accordance with the Rules, in Orange County, California. Judgment upon any award rendered may be entered in any court having jurisdiction thereof. Within seven (7) calendar days after appointment, the arbitrator shall set the hearing date, which shall be within ninety (90) calendar days after the filing date of the demand for arbitration unless a later date is required for good cause shown and shall order a mutual exchange of what the arbitrator determines to be relevant documents and the dates thereafter for the taking of up to a maximum of five (5) depositions by each party to last no more than two (2) calendar days in aggregate for each party. Both parties waive the right, if any, to obtain any award for exemplary or punitive damages or any other amount for the purpose of imposing a penalty on the other in any arbitration or judicial proceeding or other adjudication arising out of or with respect to this Agreement, or any breach hereof, including any claim that this Agreement, or any part hereof, is invalid, illegal or otherwise voidable or void. In addition to all other relief, the arbitrator shall have the power to award reasonable attorneys’ fees to the prevailing party. The arbitrator shall make an award no later than seven (7) calendar days after the close of evidence or the submission of final briefs, whichever occurs later.