

Master Services Agreement

This Master Services Agreement (this "**Agreement**"), dated as of January 29, 2021 (the "**Effective Date**"), is entered into by and between Secure Fit Testing LLC, a California limited liability company ("**Service Provider**") and [Legal Name of Client], a [Jurisdiction of company] ("**Customer**"; and together with Service Provider, the "**Parties**", and each a "**Party**").

RECITALS

WHEREAS, the Occupational Safety and Health Administration of the United States Department of Labor, formed by the Occupational Safety and Health Act of 1970 ("**OSHA**") generally requires that (a) respirators be used in workplaces in which workers are exposed to hazardous airborne contaminants; (b) when respiratory protection is required, employers must have a respirator protection program as specified in OSHA's Respiratory Protection standard (29 CFR 1910.134); (c) Fit Testing (as defined below) must be performed (i) before an employee is required to wear a respirator in the workplace and/or (ii) whenever respirator design or facial changes occur that could affect the proper fit of such respirator; and (d) before wearing a respirator, an individual must first be medically evaluated (each, a "**Medical Evaluation**"). "**Fit Test**" means the use of a protocol to qualitatively or quantitatively evaluate the fit of a respirator on an individual;

WHEREAS, Service Provider has the capability and capacity to provide certain Medical Evaluation and Fit Testing services; and

WHEREAS, Customer desires to engage Service Provider to provide the said services, and Service Provider is willing to perform such services under the terms and conditions hereinafter set forth;

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Service Provider and Customer agree as follows:

1. **Services**. Service Provider shall provide to Customer the services (the "**Services**") set out in one or more statements of work to be issued by Customer and accepted by Service Provider (each, a "**Statement of Work**") from time to time. The initial accepted Statement of Work is attached hereto as Exhibit A. Additional Statements of Work shall be deemed issued and accepted only if signed by the Service Provider Contract Manager and the Customer Contract Manager, appointed pursuant to Section 2.1(a) and Section 3.1, respectively. The details of the method and manner for performance of the Services by the Service Provider shall be under its own control, Customer being interested only in the results thereof.

2. **Service Provider Obligations**. Service Provider shall:

2.1 Designate employees or contractors that it determines, in its sole discretion, to be capable of filling the following positions:

(a) A primary contact to act as its authorized representative with respect to all matters pertaining to this Agreement (the "**Service Provider Contract Manager**"); and

(b) A number of employees or contractors that it deems sufficient to perform the Services set forth in each Statement of Work (collectively, with the Service Provider Contract Manager, "**Provider Representatives**").

2.2 Make no changes in Provider Representatives except:

(a) Following written notice to Customer;

(b) Upon the resignation, termination, death, or disability of an existing Provider Representative; and/or

(c) At the reasonable request of Customer, in which case Service Provider shall use reasonable efforts to appoint a replacement at the earliest time it determines to be commercially viable.

2.3 Maintain complete and accurate records relating to the provision of the Services under this Agreement. During the Term (as defined below) and for a period of two years thereafter, upon Customer's written request, Service Provider shall allow Customer or Customer's representative to inspect and make copies of such records to the extent permitted by applicable laws and regulations; provided that Customer provides Service Provider with at least 14 days advance written notice of the planned inspection, and any such inspection shall take place during regular business hours.

3. Customer Obligations. Customer shall:

3.1 Designate one of its employees or agents to serve as its primary contact with respect to this Agreement and to act as its authorized representative with respect to matters pertaining to this Agreement (the "**Customer Contract Manager**"), with such designation to remain in force unless and until a successor Customer Contract Manager is duly appointed.

3.2 Require that the Customer Contract Manager respond promptly to any reasonable requests from Service Provider for instructions, information, or approvals required by Service Provider to provide the Services.

3.3 Cooperate with Service Provider in its performance of the Services and provide access to Customer's premises, employees, contractors, and equipment as required to enable Service Provider to provide the Services.

3.4 Take all steps necessary, including obtaining any required licenses or consents, to prevent Customer-caused delays in Service Provider's provision of the Services.

4. Fees and Expenses.

4.1 In consideration of Service Provider's provision of the Services, Customer shall pay the fees set forth in the applicable Statement of Work. Payment to Service Provider of such fees and the reimbursement of expenses pursuant to this Section 4 shall constitute payment in full for the performance of the Services. Unless otherwise provided in the

applicable Statement of Work, said fee will be payable within 30 days of receipt by the Customer of an invoice from Service Provider.

4.2 Customer shall reimburse Service Provider for all reasonable expenses incurred in accordance with the Statement of Work if such expenses have been pre-approved, in writing by the Customer Contract Manager, within 30 days of receipt by the Customer of an invoice from Service Provider accompanied by receipts and reasonable supporting documentation.

4.3 Customer shall be responsible for all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, or local governmental entity on any amounts payable by Customer hereunder; provided, that, in no event shall Customer pay or be responsible for any taxes imposed on, or with respect to, Service Provider's income, revenues, gross receipts, personnel, or real or personal property, or other assets.

4.4 In addition to all other remedies available under this Agreement or at law (which Service Provider does not waive by the exercise of any rights hereunder), Service Provider shall be entitled to suspend the provision of any Services if the Customer fails to pay any undisputed amounts when due hereunder and such failure continues for 30 days following written notice thereof.

5. Limited Warranty and Limitation of Liability.

5.1 Service Provider warrants that it shall perform the Services:

(a) In accordance with the terms and subject to the conditions set forth in the applicable Statement of Work and this Agreement.

(b) Using personnel of commercially reasonable skill, experience, and qualifications.

(c) In a timely, workmanlike, and professional manner in accordance with generally recognized industry standards for similar services.

5.2 Service Provider's sole and exclusive liability and Customer's sole and exclusive remedy for breach of this warranty shall be as follows:

(a) Service Provider shall use reasonable commercial efforts to promptly cure any such breach; provided, that if Service Provider cannot cure such breach within a reasonable time (but no more than 30 days) after Customer's written notice of such breach, Customer may, at its option, terminate the Agreement by serving written notice of termination in accordance with Section 8.2.

(b) In the event the Agreement is terminated pursuant to Section (a) above, Service Provider shall within 30 days after the effective date of termination, refund to Customer any fees paid by the Customer as of the date of termination for any unrendered Services.

(c) The foregoing remedy shall not be available unless Customer provides written notice of such breach within 30 days after acceptance of such Service by Customer.

5.3 SERVICE PROVIDER MAKES NO WARRANTIES EXCEPT FOR THAT PROVIDED IN SECTION 5.1, ABOVE. ALL OTHER WARRANTIES, EXPRESS AND/OR IMPLIED, ARE EXPRESSLY DISCLAIMED.

6. Intellectual Property. All intellectual property rights, including copyrights, patents, patent disclosures, and inventions (whether patentable or not), trademarks, service marks, trade secrets, know-how, and other confidential information, trade dress, trade names, logos, corporate names, and domain names, together with all of the goodwill associated therewith, derivative works, and all other rights in and to all documents, work product, and other materials that are delivered to Customer under this Agreement or prepared by or on behalf of the Service Provider in the course of performing the Services, including any items identified as such in any applicable Statement of Work, except for any Confidential Information of Customer or customer materials, shall be owned by Service Provider.

7. Confidentiality. From time to time during the Term of this Agreement, either Party (as the "**Disclosing Party**") may disclose or make available to the other Party (as the "**Receiving Party**"), non-public, proprietary, and confidential information of the Disclosing Party (such information, "**Confidential Information**"); provided, however, that Confidential Information does not include any information that: (a) is or becomes generally available to the public other than as a result of Receiving Party's breach of this Section 7; (b) is or becomes available to the Receiving Party on a non-confidential basis from a third-party source, provided that such third party is not and was not prohibited from disclosing such Confidential Information; (c) was in Receiving Party's possession prior to Disclosing Party's disclosure hereunder; or (d) was or is independently developed by Receiving Party without using any Confidential Information. The Receiving Party shall: (i) protect and safeguard the confidentiality of the Disclosing Party's Confidential Information with at least the same degree of care as the Receiving Party would use to protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care; (ii) not use the Disclosing Party's Confidential Information, or permit it to be accessed or used, for any purpose other than to exercise its rights or perform its obligations under this Agreement; and (iii) not disclose any such Confidential Information to any person or entity, except to the Receiving Party's Group (as defined below) who need to know the Confidential Information to assist the Receiving Party, or act on its behalf, to exercise its rights or perform its obligations under this Agreement.

If the Receiving Party is required by applicable law or legal process to disclose any Confidential Information, it shall, prior to making such disclosure, use commercially reasonable efforts to notify the Disclosing Party of such requirements to afford the Disclosing Party the opportunity to seek, at Disclosing Party's sole cost and expense, a protective order or other remedy. For purposes of this Section 7 and Section 8.4 only, "**Receiving Party's Group**" shall mean the Receiving Party's affiliates and its or their employees, officers, directors, shareholders, partners, members, managers, agents, independent contractors, service providers, sublicensees, subcontractors, attorneys, accountants, and financial advisors.

8. Term, Termination, and Survival.

8.1 This Agreement shall commence as of the Effective Date and shall continue thereafter until the completion of the Services under all Statements of Work (the “**Term**”), unless sooner terminated pursuant to Section 8.2 or Section 8.3.

8.2 Either Party may terminate this Agreement, effective upon written notice to the other Party (the “**Defaulting Party**”), if the Defaulting Party:

(a) Materially breaches this Agreement, and such breach is incapable of cure, or with respect to a material breach capable of cure, the Defaulting Party does not cure such breach within 30 days after receipt of written notice of such breach.

(b) Becomes insolvent or admits its inability to pay its debts generally as they become due.

(c) Becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law, which is not fully stayed within 10 business days or is not dismissed or vacated within 45 business days after filing.

(d) Is dissolved or liquidated or takes any corporate action for such purpose.

(e) Makes a general assignment for the benefit of creditors.

(f) Has a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

8.3 Notwithstanding anything to the contrary in Section 8.2(a), Service Provider may terminate this Agreement before the expiration date of the Term on written notice if Customer fails to pay any amount when due hereunder: (a) and such failure continues for 30 days after Customer's receipt of written notice of nonpayment; or (b) more than 3 times in any 12-month period.

8.4 The rights and obligations of the Parties set forth in this Section 8 and in Sections 6, 7, 9, 10, 12, 20 and 21, and any right or obligation of the Parties in this Agreement which, by its nature, should survive termination or expiration of this Agreement, will survive any such termination or expiration of this Agreement, and with respect to Confidential Information that constitutes a trade secret under applicable law, the rights and obligations set forth in Section 7 hereof will survive such termination or expiration of this Agreement until, if ever, such Confidential Information loses its trade secret protection other than due to an act or omission of the Receiving Party or the Receiving Party's Group.

9. Limitation of Liability.

9.1 IN NO EVENT SHALL SERVICE PROVIDER BE LIABLE TO CUSTOMER OR TO ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE, OR PROFIT OR LOSS OF DATA OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL,

INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE AND WHETHER OR NOT SERVICE PROVIDER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

9.2 IN NO EVENT SHALL SERVICE PROVIDER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT OR ANY STATEMENT OF WORK, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED TWO (2) TIMES THE AGGREGATE AMOUNTS PAID OR PAYABLE TO SERVICE PROVIDER PURSUANT TO THE APPLICABLE STATEMENT OF WORK.

10. Insurance. During the Term, Service Provider shall, at its own expense, maintain and carry insurance with financially sound and reputable insurers, in full force and effect, that includes general and professional liability coverage in a sum no less than \$1,000,000 per claim and \$2,000,000 in the aggregate, and shall provide Customer with 30 days' advance written notice in the event of a cancellation or material change in Service Provider's insurance policy.

11. Entire Agreement. This Agreement, including and together with any related Statements of Work, exhibits, schedules, attachments, and appendices, constitutes the sole and entire agreement of the Parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, regarding such subject matter. The Parties acknowledge and agree that if there is any conflict between the terms and conditions of this Agreement and the terms and conditions of any Statement of Work, the terms and conditions of this Agreement shall supersede and control.

12. Notices. All notices, requests, consents, claims, demands, waivers, and other communications under this Agreement (each, a "Notice", and with the correlative meaning "Notify") must be in writing and addressed to the other Party at its address set forth below (or to such other address that the receiving Party may designate from time to time in accordance with this Section). Unless otherwise agreed herein, all Notices must be delivered by personal delivery, nationally recognized overnight courier, or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) on receipt by the receiving Party; and (b) if the Party giving the Notice has complied with the requirements of this Section 12.

Notice to Customer:

[CUSTOMER ADDRESS]

Attention: [TITLE OF OFFICER TO
RECEIVE NOTICES]

Notice to Service Provider:

Attention:

13. Severability. If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon a determination that any term or provision is invalid, illegal, or unenforceable, the Parties shall negotiate in good faith to modify this Agreement to effect the original intent of the Parties as closely as possible in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

14. Amendments. No amendment to, or modification of, this Agreement or any Statement of Work is effective unless it is in writing and signed by an authorized representative of each Party.

15. Waiver. No waiver by any Party of any of the provisions of this Agreement shall be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

16. Assignment. A Party may not assign, transfer, delegate, or subcontract any of its rights or delegate any of its obligations under this Agreement, without the prior written consent of the other Party. Any purported assignment or delegation in violation of this Section 16 shall be null and void. No assignment or delegation shall relieve the Customer of any of its obligations under this Agreement. Service Provider may assign any of its rights or delegate any of its obligations to any affiliate or to any person acquiring all or substantially all of Service Provider's assets without Customer's consent.

17. Successors and Assigns. This Agreement is binding on and inures to the benefit of the Parties to this Agreement and their respective permitted successors and permitted assigns.

18. Relationship of the Parties. The relationship between the Parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the Parties, and neither Party shall have authority to contract for or bind the other Party in any manner whatsoever.

19. No Third-Party Beneficiaries. This Agreement benefits solely the Parties to this Agreement and their respective permitted successors and assigns and nothing in this Agreement, express or implied, confers on any other Person any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

20. Governing Law. This Agreement and any Statement of Work shall be governed by the laws of the State of California, without reference to any conflicts of laws principles.

21. Arbitration. Any dispute (“**Dispute**”) between or among the Parties or any of their respective agents, attorneys, accountants, representatives, employees, officers, affiliates or consultants (“**Related Parties**”), arising out of this Agreement, shall be resolved as follows:

21.1 Notice and Meeting. The party desiring to resolve such Dispute shall deliver a notice of the dispute (“**Dispute Notice**”) to the other parties to such Dispute. If any party delivers a Dispute Notice pursuant to this Section 21.1 the parties involved in the Dispute (the “**Dispute Parties**”) shall meet at least twice within the 30-day period commencing with the date of the Dispute Notice and in good faith shall attempt to resolve such Dispute.

21.2 Arbitration. If any Dispute is not resolved or settled by the Dispute Parties pursuant to Section 21.1 above, within the aforesaid 30-day period, the exclusive remedy shall be to submit such Dispute to arbitration on the request of any party to any such controversy in Los Angeles, California. The arbitration shall be before a sole arbitrator in accordance with the rules of the American Arbitration Association, and not by court action except as (and if) provided by California law for judicial review of arbitration proceedings. The arbitrator shall be a retired judge or licensed attorney at law with a minimum of ten years’ experience in handling transactions of the kind represented by this Agreement, and a disclosure by such arbitrator shall reveal no conflicts of interest with respect to the Dispute or the parties thereto (and any refusal to provide such disclosure or disclosure of any other conflict of interest shall be grounds for removal of such arbitrator upon the request of any party to the Dispute). The Parties shall have the right to limited discovery as described below. No Party to any such controversy shall be entitled to any punitive or consequential damages. Each Party shall bear its own costs in connection with any such arbitration, and the costs and expenses of the arbitrators shall be born equally by the Parties to such arbitration. Any award, order, or judgment pursuant to such arbitration will be deemed final and binding and may be entered and enforced in any state or federal court of competent jurisdiction. Each party agrees to submit to the jurisdiction of any such court for purposes of the enforcement of any such award, order, or judgment.

21.3 Discovery. For discovery purposes, a Party shall be entitled to take no more than two (2) fact depositions, plus depositions of any experts designated by the other Party which shall not exceed two (2), each of seven (7) hours or less, during pre-hearing discovery. There shall be no written discovery requests except a Party may serve document requests on the other Party not to exceed twenty (20) in number, including subparts. The requests shall be served within forty-five (45) days of the appointment of the arbitrator and shall be responded to within twenty-one (21) days of service.

21.4 Restrictions. Notwithstanding the Commercial Rules of the American Arbitration Association, the powers of the arbitrator shall be limited as set forth herein. The arbitrator shall decide all issues submitted by the Parties, or either of them, and the arbitrator may not decide any issue not submitted. The arbitrator shall entertain and decide motions by either Party for summary disposition as provided by California law. Subject to the provisions of Section 21.2, the arbitrator shall be permitted to award only those remedies in law or equity which are requested by the Parties, or one of them, and allowed by law. The arbitrator shall make an award in writing that is consistent with the terms of this Agreement, that includes a reasoned decision that sets forth the essential findings and conclusions upon which the award is based and that is sufficient to allow a court to exercise that standard of judicial review, if any, then allowed by law in light of the terms of this Agreement. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute, or other matter(s) in question would be barred by the applicable statute of limitations. The arbitrator shall reject any claim not based upon a timely filed demand.

21.5 Waiver of Jury Trial. TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES ALL RIGHT OF TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTER-CLAIM, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, OR ANY STATEMENT OF WORK, OR ANY MATTER ARISING HEREUNDER.

22. Counterparts. This This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which will constitute one and the same instrument. Counterparts may be delivered via facsimile, electronic mail (including pdf or any electronic signature complying with the United States federal E-SIGN Act of 2000, e.g., www.docuSign.com) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

23. Force Majeure. The Service Provider shall not be liable or responsible to Customer, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement or applicable Statement of Work when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Service Provider including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, pandemics, epidemics, lock-outs, strikes or other labor disputes (whether or not relating to either Party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, or telecommunication breakdown or power outage, provided that, if the event in question continues for a continuous period in excess of 90 days, Customer shall be entitled to give notice in writing to Service Provider to terminate this Agreement.