

## VENDOR AGREEMENT

THIS AGREEMENT is made by and between EN Rx, Inc., a Texas corporation (hereinafter "Company"), and the undersigned \_\_\_\_\_, a \_\_\_\_\_ (hereinafter "Vendor") with an effective date of \_\_\_\_\_, \_\_\_\_ 20\_\_\_\_.

WHEREAS, Company has been investing considerable capital, time and effort in establishing a proprietary position with respect to knowledge systems, intellectual property, and other products and has confidential and Proprietary Materials relating thereto; and

WHEREAS, Company at times receives information from its customers or others which Company is obligated to treat as confidential or proprietary; and

WHEREAS, Vendor wishes to establish a business association with Company and in the course of Vendor's association with Company, Vendor will have access to certain intellectual property of the Company, including, but not limited to, intellectual property, granted and pending patents and patent applications, trade secrets, and other confidential or Proprietary Materials pertaining to knowledge systems or other products or to the business affairs of Company; and

WHEREAS, Company is willing to establish a business association with Vendor only if Vendor will protect Company's intellectual property and confidential and Proprietary Materials.

NOW, THEREFORE, in consideration of the mutual covenants and conditions herein contained, and the association with Company of Vendor, the parties hereto agree as follows:

**Definitions.** "Proprietary Materials" shall mean inventions including, but not limited to, the Company's current or future patents pending or granted, information relating to knowledge systems or other products or the business affairs of Company of a proprietary or confidential nature, including any and all trade secrets, trade dresses, customer lists, whether communicated orally or in writing, including by way of illustration and not limitation, (a) information concerning research and development activities, (b) manufacturing, product development, processing techniques and know-how, (c) designs, drawings and formulae, (e) cost, profit and market information, (f) financial and other business information with respect to Company that Company has not made publicly available, (g) customer business information, including products of Company ordered, prices and delivery schedules, and (h) any information disclosed to Company by any third party which Company has agreed, or is otherwise obligated, to treat as confidential or proprietary.

"Term" shall mean a mutually agreed upon period Company and Vendor agree this Vendor Agreement shall be in force from the effective date noted above.

***Non-Disclosure.*** Vendor acknowledges that irreparable injury and damage will result from disclosure to third parties, or utilization for purposes other than those connected with Vendor's association with Company, of the Proprietary Materials.

Vendor shall not without the prior written consent of Company, disclose any Proprietary Materials to any third party and shall not use any Proprietary Materials except pursuant to and in the course of Vendor's association with Company; provided, however, that Vendor shall have no liability to Company under this Agreement with respect to the disclosure and/or use of any such Proprietary Materials and Materials as Vendor can establish for such disclosure that it was:

- (a) previously known to Vendor, as evidenced by its records;
- (b) subsequently otherwise acquired by Vendor from a third party having an independent right to disclose the information;
- (c) has become publicly known through no fault of Vendor; or
- (d) is required by law or regulation to be disclosed.

Vendor agrees that any disclosure of Proprietary Materials within Vendor's own company shall be only such as is necessary to accomplish the purpose of Vendor's association with Company. Vendor shall take all such security precautions to protect from disclosure and to keep confidential the Proprietary Materials as may be necessary, including without limitation, protection of inventions and documents from theft, unauthorized duplication and discovery of contents, and restrictions on access by other persons to Proprietary Materials.

***No Reverse Engineering or Derivation of Intellectual Property.*** Vendor shall not analyze, deconstruct, decompile, or reverse engineer or cause a third party to analyze, deconstruct, decompile or reverse engineer any Proprietary Materials for any purpose at any time including any current or future patents that are pending or granted and owned at least in part by the Company. Further, Vendor shall not analyze, derive, or cause a third party to analyze or derive any new intellectual property derived from Company Proprietary Materials, including but not limited to, new patent applications and/or trade secrets.

***Non-competition and No License.*** Vendor agrees that during the Term and thereafter for four (4) years, Vendor will not use the Proprietary Materials in any manner that could directly or indirectly compete with the business of the Company, e.g., horizontally oriented well systems that are segmented, which can be used for sampling and/or assessment and/or remediation purposes. For purposes of the foregoing, Vendor shall not, directly or indirectly, be engaged by or invest in any entity involved with the Business, whether by way of becoming an agent, employee, director, officer, partner, stockholder, consultant or otherwise; provided, however, that the foregoing shall not prohibit Vendor from merely investing in any entity competitive with the Company whose securities are listed on a national securities exchange, or traded in any established over-the-counter securities market. At no times does Vendor have a license, either express or implied, to make, use, or sell any Company Proprietary Materials or products thereto after the Term.

**Stipulation.** Vendor hereby specifically acknowledges, agrees, stipulates and represents to Company that:

a. Vendor has received adequate and sufficient consideration for entering into this Agreement, including but not limited to the restrictions on competitive activity and Proprietary Materials provided herein, and the above-referenced business relationship provided for herein is intended to and does include consideration for the entire Agreement including Vendor's agreement to refrain from competitive activity as provided herein;

b. without the covenants of Vendor contained in this Agreement, Company would not have entered into this Agreement, and such covenants are consideration for the promise of Company to provide Proprietary Materials to Vendor and are necessary to protect Company's interests in such Proprietary Materials, as well as Company's business, goodwill, and other business interests;

c. Company will suffer great loss and irreparable harm if Vendor violates this Agreement;

d. Company currently provides products and services in the continental United States and will expand its business to other geographic areas. Vendor specifically acknowledges, agrees, stipulates and represents to Company that it is reasonable in all respects and necessary to protect the business goodwill, Proprietary Materials, trade secrets, and other business interests of Company, that no geographic restrictions are contained in this Agreement;

e. that particularly in light of the nature of Company's business, the temporal restrictions contained in this Agreement are in all respects reasonable and necessary to protect the business goodwill, Proprietary Materials, trade secrets, and other business interest of Company; and

f. enforcement of this Agreement will not work an undue or unfair hardship on Vendor or otherwise be oppressive to it.

**Patent Marking and Materials.** Vendor shall give notice of the Company's patents interests by markings placed on each advertisement or other notification to third parties customers that concern the Proprietary Materials of the Company that may be used in such transactions.

Vendor shall return all written material, photographs and all other documentation made available or supplied by Company to Vendor, and all copies and reproductions thereof, on request.

Vendor shall not make or use any copies, synopses or summaries of oral or written material, photographs or any other documentation or information made available or supplied by Company to Vendor except such as are necessary for Vendor's internal communications in connection with the purpose of Vendor's association with Company or as are necessary to accomplish the purpose of Vendor's association with Company.

**Indemnification by Vendor.** Vendor agrees to indemnify, hold harmless, and defend Company (and its directors, officers, employees, and agents) against claims for death, illness, personal

injury, property damage, and improper business practices arising out of the manufacture, use, sale, or other disposition of Proprietary Materials by Vendor or its Affiliates or its customers. However, the foregoing undertaking by Vendor shall not apply to any claims resulting from Company's willful misconduct or sole negligence. As a condition to such defense and indemnification, Company will provide Vendor with prompt written notice of the claim and permit Vendor to control the defense, settlement, adjustment or compromise of any such claim. Company may employ counsel at its own expense to assist it with respect to any such claim; provided; however, that if such counsel is necessary because of a conflict of interest of either Vendor or its counsel or because Vendor does not assume control, Vendor will bear the expense of such counsel. Company shall have no authority to settle any claim on behalf of Vendor.

***No Remedies Waived.*** Company retains all rights and remedies afforded it under the patent and other laws of the United States and the States thereof, including without limitation any laws designed to protect proprietary or confidential information.

***Entire Agreement.*** This Agreement sets forth the entire agreement and understanding of the parties and merges all prior discussions between them as to Proprietary Materials. Neither party may be bound by any definition, condition, representation or waiver other than as expressly stated in this Agreement or as subsequently set forth in writing signed by the parties hereto.

***Governing Law.*** **ANY LAWSUIT ARISING UNDER THIS AGREEMENT OR BETWEEN THE PARTIES FOR SUBSEQUENT TRANSACTION UNLESS OTHERWISE AGREED TO SHALL BE GOVERNED BY THE LAWS OF THE STATE OF TEXAS AS APPLIED TO CONTRACTS ENTERED INTO AND TO BE PERFORMED ENTIRELY WITHIN THE STATE OF TEXAS. ANY LAWSUIT ARISING UNDER THIS AGREEMENT OR BETWEEN THE PARTIES FOR SUBSEQUENT TRANSACTIONS SHALL BE BROUGHT IN DENTON COUNTY TEXAS.** Each party agrees that service of process may be made upon it wherever it can be located or by certified mail, return receipt requested, directed to its address for notices under this Agreement. This provision is permissive, not mandatory, and each party reserves the right to bring any action, proceeding, or other matter arising directly or indirectly hereunder against the other party wherever they might be found or might otherwise be subject to jurisdiction.

***Attorney Fees.*** If any suit or action arising out of or related to this Agreement is brought by either party, the prevailing party shall be entitled to recover the costs and fees (including without limitation reasonable attorney fees, the fees and costs of experts and consultants, copying, courier and telecommunication costs, and deposition costs and all other costs of discovery) incurred by such party in such suit or action, including without limitation any post-trial or appellate proceeding.

***Successors.*** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, administrators, executors, successors and assigns. There is no right of third party use of or no third party license, either express or implied, to the Company's Proprietary Materials under this Agreement unless specifically agreed to in writing by the Company.

*(signature page follows below)*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

**COMPANY:**

EN Rx, Inc.

Erik R. Piatt, President

\_\_\_\_\_

Address:

\_\_\_\_\_

\_\_\_\_\_

**VENDOR:**

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

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

\_\_\_\_\_

Address:

\_\_\_\_\_

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