

GENERAL TERMS AND CONDITIONS

The terms and conditions (the “Terms”) contained herein, together with the Quote (collectively the “Agreement”) apply to the sale of products and services supplied by Allotrope. Customer acknowledges that StimSite is a subscription-based product (the “Subscription”) comprised of (1) a reusable signal box and other accessories as listed in the Quote (each a “Consigned Product”) and (2) one or more disposable activation cards as listed in the Quote (each a “Purchased Product”). Consigned Products and Purchase Products are referred herein collectively as “Products” and each as a “Product”.

1. PRICING

Prices of Products are exclusive of, and Customer will pay, all sales, use, service, value added or like taxes, unless Customer has provided Allotrope with an appropriate exemption certificate for the local jurisdiction.

Each PARTY represents and warrants that it shall comply with all applicable federal and state laws and regulations, including, without limitation, the Federal Anti-Kickback Statute, 42 U.S.C. § 1320a-7b, any applicable “exceptions” or “safe harbors” under the Federal Anti-Kickback Statute with respect to the AGREEMENT, and any state laws comparable to the Federal Anti-Kickback Statute. In particular, both PARTIES expressly acknowledge that the Federal Anti-Kickback Statute, prohibits “illegal remuneration” as defined therein, in connection with the provision of goods or services for which payment is made in whole or in part under Medicare. It is the intention of the PARTIES hereto that this AGREEMENT shall in all respects comply with the Discount Safe Harbor, 42 C.F.R. § 1001.952(h) or the Statutory Discount Exception, 42 U.S.C. § 1320a-7b(3)(A). CUSTOMER agrees that, if CUSTOMER is required to report its costs on a cost report, then (i) the discount must be based on purchases of the same good bought within a fiscal year; (ii) CUSTOMER must claim the benefit in the fiscal year in which the discount is earned or in the following year; (iii) CUSTOMER must fully and accurately report the discount in the applicable cost report; and (iv) CUSTOMER must provide, upon request, certain information required to be provided to the CUSTOMER by Allotrope Medical. Furthermore, CUSTOMER represents and warrants that it has independently determined that the PRODUCT is in the best clinical interest of CUSTOMER’s patients.

2. ORDER PLACEMENT

2.1 All orders for Products by Customer will: (a) be placed by submission of written purchase orders (each a “PO”) by Customer, referring to the Quote, and will set forth description of the Products to be purchased, quantity, requested delivery dates and delivery instructions (b) be subject to acceptance by Allotrope; and (c) not be binding until the earlier of such acceptance or shipment by Allotrope, and, in the case of acceptance by shipment, only as to the portion of the PO actually shipped. **THE TERMS OF THIS AGREEMENT WILL APPLY TO EACH PO ACCEPTED OR SHIPPED BY ALLOTROPE. EXCEPT AS EXPRESSLY PROVIDED IN THE AGREEMENT, ALLOTROPE WILL NOT BE BOUND BY ANY OF THE PROVISIONS OF CUSTOMER’S FORM OF PURCHASE ORDER OR OTHER PROPOSED AGREEMENTS, AND SUCH PROVISIONS WILL NOT APPLY TO ANY ALLOTROPE PRODUCT OR SERVICES NOTWITHSTANDING ALLOTROPE’S ACKNOWLEDGMENT OR ACCEPTANCE OF SUCH ORDER. ALL CUSTOMER PURCHASE ORDERS ARE EXPRESSLY CONDITIONED ON ASSENT TO THIS AGREEMENT AND THE EXCLUSION OF ALL OTHER TERMS UNLESS OTHERWISE AGREED UPON BY ALLOTROPE IN WRITING; CUSTOMER SHALL BE DEEMED TO HAVE ASSENTED TO THE TERMS OF THIS AGREEMENT, WHETHER OR NOT PREVIOUSLY RECEIVED, UPON PROCESSING SUCH CUSTOMER’S PURCHASE ORDER. IF THE TERMS OF THIS AGREEMENT ARE CONSIDERED AN OFFER, ACCEPTANCE IS EXPRESSLY LIMITED TO THE TERMS.**

2.2 If the Quote provides that Allotrope shall be paid in advance for Products, Allotrope may suspend its performance until such payment is made.

3. DELIVERY AND SHIPPING

3.1 Any promised delivery date is an estimate based upon current and anticipated manufacturing capabilities of when the Products will be shipped. Allotrope assumes no liability for loss, damage, or consequential damages due to delivery delays.

3.2 Customer will be responsible for, and will pay all shipping and freight charges. All risk of loss of or damage to Products will pass to Customer upon tender by Allotrope to the carrier or Customer, whichever first occurs. Customer will bear all risk of loss or damage in transit.

3.3 Failure of Customer to reject any Products shipped to it by Allotrope within thirty (30) days after receipt thereof will constitute complete and conclusive acceptance by Customer of such Products. All claims for shipping damage must be made with the carrier.

4. BILLING AND PAYMENT

4.1 Customer will be invoiced as per the pricing listed in the Quote and shall make payments in U.S. dollars. Unless otherwise stated in the applicable invoice, Customer shall pay each invoice within thirty (30) days after the invoice date. Customer shall pay all shipping charges and all taxes, including any sales or use tax, or value added tax (and any related interest or penalty), except any income tax imposed on Allotrope. Payments received after the thirty (30) days the due date will accrue interest at the lesser of 1.5% each month or the maximum rate legally permitted. Customer will be responsible for all attorneys' fees and costs of collection for amounts not paid under this Agreement. If Customer's payment status is in arrears, Allotrope may place Customer on credit hold and refuse to accept orders from Customer until Customer's account is current.

4.2 If Allotrope has granted credit approval to Customer in writing and such credit approval has not been suspended or revoked by Allotrope, then payment for all shipments of Products made to Customer under the Agreement will be due within the payment terms specified in the applicable Quote. Allotrope may change credit or payment terms or withhold shipment of a PO at any time when, in Allotrope's opinion, Customer's financial condition, previous payment history, or the nature of Customer's relationship with Allotrope so warrants. Customer's credit limit may be amended or withdrawn without prior notice from Allotrope at any time.

4.3 Customer hereby grants Allotrope a purchase money security interest in all Products shipped on credit by Allotrope, and in all proceeds there from, in order to secure payment in full to Allotrope of the purchase price for such Products (and any late charges if applicable). Customer agrees to promptly take all actions and execute all instruments requested by Allotrope to perfect such security interest.

5. CONSIGNED PRODUCTS

5.1. Notwithstanding anything to the contrary herein, Consigned Products listed in the Quote are offered solely on a consignment basis. Allotrope retains sole title to all Consigned Products until such Consigned Products are lost or damaged by Customer, at which time Consigned Product will be deemed purchased by Customer and subject to a payment of five thousand dollars (\$5,000.00) plus any applicable taxes.

5.2 Prior to Customer's receipt of Consigned Products, Allotrope bears the risk of loss. Allotrope may reduce, change or discontinue providing the Consigned Products at any time in its sole discretion. Customer shall (a) mark Consigned Product as Allotrope's property, (b) segregate Consigned Products from other goods, (c) be solely responsible for the proper use and storage of the Consigned Products, including securing and protecting them from loss or damage, and (d) shall not sell or otherwise transfer Consigned Products to any other party without prior approval of Allotrope.

5.3 Customer hereby grants Allotrope as security for obligations under this Agreement a security interest in all of Customer's right, title and interest in and to the Consigned Products. Customer agrees to cooperate and assist Allotrope with establishing and maintaining Allotrope's title and ownership in and to the Consigned Products, including without limitation, granting Allotrope the authority to file UCC financing statements or other documents that Allotrope deems necessary or useful to perfect and secure its interest and rights in and to the Consigned Products. Customer will be responsible for tracking each Product using the item number, as well as the product ID number.

5.4 Customer shall be responsible for the proper care and protection of Consigned Products, shall maintain Consigned Products free of all liens, encumbrances, or other claims of any kind and shall bear all risks of loss and damage to the Consigned Products.

5.5 Customer shall indemnify and hold harmless Allotrope from and against any loss or damage caused by Customer's acts which result in a lien or encumbrance placed on any Consigned Products.

5.6 Customer will allow Allotrope or its designee to inspect Consigned Product during normal business hours and will provide a detailed inventory upon request. Any Consigned Products missing from the Consigned Product inventory or damaged will be considered purchased and immediately invoiced.

5.7 Customer shall promptly return any Consigned Products (a) within thirty (30) days upon written request from Allotrope; (b) within thirty (30) days of Customer's Lapse in Subscription (as defined herein), or (c) upon termination of this Agreement. Subject to Section 5.1, if Customer fails to return Consigned Products as set forth in this Section 5.7, such Consigned Products will be considered purchased, invoiced, and payment immediately due.

6. WARRANTY

6.1 Allotrope warrants that each Product shall be free from defects in workmanship for a period of twelve (12) months from the shipment date to Customer. No other affirmation of fact or promise made by Allotrope, whether or not in this Agreement, by words or action shall constitute a warranty. The foregoing warranty does not extend to any Product that is modified or altered, damaged from improper packing, storage, misuse, damage from assembly, shipping or processing, negligence, or any other improper treatment.

6.2 If a Product is found to be defective, Customer shall notify Allotrope promptly and in any event no later than fifteen (15) days from Customer's learning of problem. Notwithstanding the foregoing, all notices regarding any Product defect must be sent to Allotrope within twelve (12) months from date of shipment. Allotrope reserves the right to repair, replace or refund the purchase price of any Product returned under warranty.

6.3 In no event shall Allotrope be liable for any loss of anticipated profits, loss of use, or for the incidental or consequential damages. Customer waives any right, extending beyond the warranty in this Article 6 to claim negligence in design, material or workmanship.

7. TERMINATION

7.1 In addition to any other rights and remedies available to it, Allotrope may cease deliveries of Products at any time that Customer defaults in any payment due to Allotrope hereunder and such default continues un-remedied for a period of thirty (30) days after the due date.

7.2 In addition to any other rights and remedies available to it, Allotrope may upon written notice to Customer terminate its relationship with Customer (including, without limitation, accepted POs that haven't shipped) at any time in the event that (a) Customer is involved in any voluntary or involuntary bankruptcy proceeding or any other proceeding concerning insolvency, dissolution, cessation of operations, or reorganization of indebtedness or (b) Customer becomes unable to pay its debts as they mature in the ordinary course of business or makes an assignment for the benefit of its creditors.

8. LIMITATION OF LIABILITY

IS AGREEMENT OR OTHERWISE, ALLOTROPE WILL NOT BE LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR OTHER LEGAL OR EQUITABLE THEORY FOR (I) AMOUNTS THAT IN THE AGGREGATE ARE IN EXCESS OF THE AMOUNTS PAID TO ALLOTROPE HEREUNDER OR (II) ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES, LOST PROFITS OR LOST DATA OR (III) COST OF PROCUREMENT OF SUBSTITUTE GOODS, TECHNOLOGY, OR SERVICES. ALLOTROPE SHALL HAVE NO LIABILITY FOR ANY FAILURE OR DELAY DUE TO MATTERS BEYOND ITS REASONABLE CONTROL. THIS SECTION DOES NOT LIMIT LIABILITY FOR BODILY INJURY OF A PERSON.

9. INDEMNIFICATION

9.1 Allotrope shall indemnify, defend, and hold Customer harmless from and against third-party claims, liabilities, losses, proceedings, damages, suits, or actions arising out of or relating to (i) any infringement by the Products of any thirdparty United States patent, or (ii) solely from a defect in the manufacture or design of the Products ("Allotrope Indemnified Claims") of which Customer promptly notifies Allotrope. Allotrope shall pay all costs, expenses, liabilities and damages (including reasonable attorneys' fees) incurred or paid in settlement by Customer in connection with any Allotrope Indemnified Claim; provided, however, that Allotrope shall not be responsible for any compromise or settlement made without its consent. THE FOREGOING CONSTITUTES ALLOTROPE'S TOTAL LIABILITY WITH RESPECT TO ANY ALLOTROPE INDEMNIFIED CLAIM. In no event will Allotrope have any obligation for any claim if such claim is caused by, or results from: (i) any modification of the Products (or any portion thereof), (ii) any use or storage of the Products in a manner not contemplated by the documents provided with the Product, (iii) any improper or off label use of the Products, or (iv) any act or omission of Customer or its employees, agents, or customers. Customer shall indemnify, defend, and hold Allotrope harmless, from and against any and all third party claims, losses, proceedings, damages, suits or actions arising out of or relating to any negligent, wrongful or intentional act of Customer and Customer's employees, agents and independent contractors in connection with the performance of Customer's obligations hereunder, regardless of whether such act constitutes a breach of this Agreement(collectively, the "Customer Indemnified Claims") of which Allotrope promptly notifies Customer. Customer shall pay all costs, expenses, liabilities and damages (including reasonable attorneys' fees) incurred or paid in settlement by Allotrope in connection with any Customer Indemnified Claim. NOTWITHSTANDING THE FOREGOING ALLOTROPE WILL NOT BE LIABLE FOR ANY CLAIM FOR INDEMNIFICATION MADE BY CUSTOMER MORE THAN ONE (1) YEAR AFTER PURCHASE OF THE PRODUCT BY CUSTOMER.

9.2 Customer agrees to indemnify Allotrope against and hold Allotrope harmless from, any and all damages, losses, expenses (including reasonable attorney's fees and costs of litigation on an ongoing basis) and claims by any other party resulting from Customer's acts, omissions or misrepresentations, regardless of the form of action.

10. CONFIDENTIAL INFORMATION

10.1 Customer and Allotrope agree to make all commercially reasonable efforts to protect, from unauthorized use and from disclosure to third parties, any and all information (a) marked "confidential" or "proprietary", (b) designated confidential or proprietary expressly or by the circumstances under which it is provided, or (c) known or reasonably should be known to be confidential or proprietary.

10.2 Neither the execution and delivery of this Agreement, nor the furnishing of any of either party's confidential information shall be construed as granting to the other party, either expressly, by implication, estoppel or otherwise, any license under any invention, patent, trademark, or copyright now or hereafter owned or controlled by the supplying party. The Customer agrees that all inventions, improvements, patents, copyrights, trademarks, trade secrets, or other intellectual property developed by Allotrope relating to the Products, shall be the property of Allotrope, and Customer agrees to assign to and otherwise cooperate with Allotrope with respect to all such inventions, improvements, patents, copyrights, trademarks, trade secrets, or other intellectual property owned by Allotrope or relating to the Products to the extent necessary.

11. GENERAL

11.1 Export Control. Customer shall not export or re-export, directly or indirectly, (i) any technical data received from Allotrope, or (ii) any Products, process, or technical data using such received technical data, to any country to which such export or re-export is restricted or prohibited by United States or other relevant laws, without obtaining prior written authorization from the relevant government authorities as required by such laws.

11.2 Governing Law. The laws of the State of Texas shall apply with respect to all matters relating to this Agreement, any related contracts, all Exhibits attached hereto, and to the parties' duties and responsibilities hereunder. Any suit or proceeding with respect to such matters shall be brought in the courts of Harris County, Texas.

11.3 Entire Agreement; Amendment. This Agreement the entire agreement between Allotrope and Customer and shall not be affected in any way (including, without limitation, trade usage, past practice and/or prior agreement or dealings) not expressly set forth herein. Any changes hereto must be made in writing and signed by both parties.

11.4 No Waiver. No delay or failure by either party to exercise or enforce at any time, any right or provision of the Agreement shall be considered a waiver thereof or of such party's right thereafter to exercise or enforce each and every right and provision under the Agreement. A waiver to be valid shall be in writing but need not be supported by consideration.

11.5 Arbitration. Any controversy arising from or relating to the subject matter of this Agreement shall be submitted to arbitration on the request of any party, and the arbitration shall be administered by JAMS (f/k/a Judicial Arbitration & Mediation Services) in accordance with its Comprehensive Arbitration Rules and Procedures ("JAMS Rules"). The arbitration shall be conducted by a single neutral arbitrator agreed upon by the Parties. If the Parties are unable to agree upon a single arbitrator within thirty (30) days, the arbitrator will be appointed by JAMS. Notwithstanding the foregoing, Allotrope at

any time may seek injunctive or other forms of equitable relief at any time from any court of competent jurisdiction.

11.6 Severability: In the event that any law or regulation or any interpretation of law or regulation by a court or regulatory authority of competent jurisdiction after the date of this Agreement materially affects or materially impacts upon the reasonable expectations of either party under this Agreement, renders any provision of this Agreement illegal or unenforceable, or materially affects the ability of any party to perform their obligations under this Agreement, then (1) the provision determined to be illegal or unenforceable shall be deemed omitted, and the remaining portion of the Agreement shall remain in full force and effect, and (2) either party may request renegotiation of the applicable terms of this Agreement by written notice to the other party. In the latter event, the parties shall in good faith attempt to negotiate an amendment which preserves the original reasonable expectation of the parties to the extent possible. If no such amendment is agreed upon in the reasonable opinion of either party within thirty (30) days of receipt of such notice, then either party may terminate this Agreement.

11.7 Force Majeure. Allotrope will not be responsible for any failure to perform due to unforeseen circumstances or to causes beyond Allotrope' control, including but not limited to acts of God, war, terror, riot, embargoes, acts of civil or military authorities, fire, floods, accidents, strikes, or shortages of transportation, facilities, fuel, energy, labor or materials. In the event of any such delay, Allotrope may defer the delivery date of Products for a period at least equal to the time of such delay.

11.8 Termination: Either party may terminate this Agreement at any time for any reason or no reason, with or without cause, upon thirty (30) days prior written notice to the other party and with prompt return of all Consigned Products pursuant to Section 5 herein and full payment of all amounts due hereunder.