

MASTER SERVICES AGREEMENT (MSA) 2020

Jacksam Corporation / dba Convectium

This Master Services Agreement (MSA)(the "**MSA**")is entered into by and between Convectium, a JackSam Corp., a company duly organized and existing under the laws of the state of Delaware ("**Manufacturer**") and any company, or individual ("**Customer**"), that signs this MSA.

RECITALS

WHEREAS, Customer desires to engage Manufacturer to supply equipment, certain branded vaporizers and/or related products and may request that Manufacturer provide such products using Customer's graphic designs; and WHEREAS, Manufacturer desires to supply Customer with such vaporizers, equipment and/or related products according to the terms of this Agreement. NOW, THEREFORE, in consideration of the above and the mutual promises contained herein, Customer and Manufacturer agree as follows:

AGREEMENT

1. DEFINITIONS

Unless otherwise defined in this Agreement, capitalized terms used in this Agreement will have the following meanings: "Accepted Purchase Order" means a Purchase Order accepted by Manufacturer as provided in this Agreement.

"Contract Year" mean any annual period beginning on the Effective Date or any anniversary of the Effective Date, and ending the day immediately preceding the next anniversary of the Effective Date.

"**Delivery**" or "**Deliver**" means to deliver Products ordered by Customer in a particular Accepted Purchase Order to the Delivery Point.

"**Delivery Point**" means the location identified in the applicable Accepted Purchase Order.

"**Products**" means Manufacturer's vaporizers, equipment or related products.

"Purchase Orders" means written or electronically transmitted purchase orders for the Products issued by Customer to Manufacturer.

1 .GENERAL

a . **Custom Designs.** To the extent mutually agreed to in an applicable Accepted Purchase Order, Manufacturer will assist Customer in the development of graphic designs to be applied to Products ("Designs"). The price for developing the Designs will be as specified in the applicable Signed Purchase Order. Customer hereby grants Manufacturer a license to use, reproduce and modify the Designs as necessary to design and manufacture the Products bearing the Designs. The Designs, and all copyrights and trademarks therein, will be the sole property of Customer.

Manufacturer hereby assigns, all right, title, and interest in and to the Designs, and all copyrights and trademarks therein, to Customer unless there is any other mutually signed agreement stating otherwise.

b . **Purchase Orders.** Customer will order Products by issuing Purchase Orders to Manufacturer, in writing or by electronic means. Manufacturer will accept or reject Customer's Purchase Orders within five (5) working days after it receives them. Failure to execute a counter-signature on of such Purchase order by Manufacturer within such five (5) day period will be deemed rejection of the Purchase Order. In the case of conflict between this Agreement and any Accepted Purchase Order, the terms of this Agreement will prevail.

c . **Reverse Engineering.** Customer shall not, nor shall it assist any third party, in reverse engineering the Products. Further, during the term of this Agreement and for a period of one (1) year following the expiration of the Term, Customer shall not manufacture or distribute, or have a third-party manufacture or distribute, products that are based on the Products.

d . **No Misrepresentations.** Customer shall not make any false or misleading representations regarding Manufacturer or the Products. Customer shall not make any representations, warranties or guarantees with respect to the specifications, features or capabilities of the Products that are not consistent with Manufacturer's documentation accompanying the Products or Manufacturer's literature describing the Products. No representations made by Customer are binding upon Manufacturer.

2 . QUALITY AND INSPECTION

a . **Quality Requirements.** Manufacturer will manufacture the Products according to its standards for all of its own Products.

b . **Incoming Inspection.** Customer may inspect Product Delivered under this

Agreement for deficiencies in workmanship or material either at the Delivery Point and/or at its destination. Customer may return defective or non-conforming Products to Manufacturer within ten (10) days of Delivery. Failure to return defective or non-conforming Products to Manufacturer within such ten (10) day period will constitute acceptance of the Products for all purposes.

c . **Agency Approvals.** Customer will be responsible for obtaining agency and regulatory approvals for sale of Products to Customer's customers; provided, however, that Manufacturer will provide Customer all information and assistance reasonably requested by Customer for the purpose of obtaining such approvals.

3 .PRICING

a . **Pricing.** The price of each Product will be set forth in the applicable Accepted Purchase Order.

b . **Taxes.** Customer shall be responsible for all applicable sales tax in the state of California in addition to any use, value added, duty, import or export, excise or similar taxes. Customer may avoid paying sales tax only on items that are to be resold with a valid resellers permit issued by the California State Board of Equalization.

c . **Customer Solely Responsibility for its Resale Price.** Customer will have absolute discretion to set the price of the Products paid by its customers.

4 .DELIVERY. CARRIER. RISK OF LOSS & EXPORT

a . **Delivery.** Manufacturer will Deliver the Products ordered in a particular Accepted Purchase Order to the Delivery Point.

i The Customer shall be solely responsible for the accuracy and completeness of the delivery addresses provided. Manufacturer shall assume no liability for any failed delivery in case of inaccurate, incomplete or outdated delivery addresses.

i . Unless stated otherwise in the Confirmed Order, delivery of the Products is Delivered At Place (DAP) – address designated in the Confirmed Order, according to Incoterms® 2010. Benefit and risk of physical Products are transferred to the Customer upon delivery. If delivery is not possible and no fault is attributable to Manufacturer, risk transfers to the Customer with the notification that the Product(s) are ready for delivery.

i. The preparation and delivery costs of Products are those mentioned on the Confirmed Order.

v . The Confirmed Order may include a delivery time schedule. Manufacturer shall make its best commercially reasonable efforts to supply the Products within this time schedule. However, any times or dates for delivery by Manufacturer are estimates and shall not be deemed of the essence. Manufacturer shall assume no liability for the failure to meet any delivery schedule nor for the costs of procurement of any substitute goods. Delay in delivery of any Products shall not relieve the Customer of its obligation to accept delivery thereof. Without prejudice to the foregoing, Manufacturer undertakes to inform the Customer immediately when it anticipates constraints on its capacity to supply the Products.

vi. Delays or changes in schedules due to Customer directed actions are subject to price adjustments.

b . **Carrier; Risk of Loss.** Manufacturer will use its Preferred Carrier; alternatively, Manufacturer may select a common carrier at its discretion. Customer shall be responsible for all transportation fees and costs as set forth on the Purchase order. All title and risk of loss or damage will pass to Customer upon Delivery or pickup at Manufacturers' facility.

c . **Exporter/ Import.** Each party agrees to comply fully with the import/export control laws of the United States and with the U.S. Export Administration Regulations when acting as the Importer/Exporter of Record.

5 . PAYMENTS

a . **Payments** Customer will pay Manufacturer all amounts as specified in the applicable Accepted Purchase Order.

b . **Payment Dates.** Unless otherwise specified in the applicable Accepted Purchase Order, all amounts will be due and payable prior to the shipment of Products. All payments will be made in immediately available funds in lawful money of the United States of America to a bank account designated by Manufacturer.

c . **Late Payment.** Any amount not paid by its applicable due date will be subject to interest at the lesser of (i) 1.5% per month and (ii) the maximum rate permitted by applicable law. Should Customer fail to make timely payments hereunder, Manufacturer may, at its discretion, suspend further performance under this Agreement, without limiting any other remedies it may have pursuant to this Agreement. Should it become necessary to institute collection proceedings for amounts invoiced to Customer and unpaid following the applicable due date, Customer shall pay all reasonable out-of-pocket costs and expenses incurred by Manufacturer in connection with such proceedings, including without limitation reasonable attorney's fees, without regard to whether a suit is filed by Manufacturer.

6 . WARRANTIES & PRODUCT GUARANTEES

a . **Title.** Manufacturer represents and warrants that all Products will be delivered with good and marketable title, and will be free from all mortgages, liens, and security interests of any kind.

b . **Equipment Guarantee.**

i . 710Shark & 710Captain Machines - Contractor warrants that the Equipment furnished hereunder, including the Units and the systems and structures associated therewith for 1 year. The Equipment Warranty does not apply to the expected, routine (i.e., a frequency typical in industry experience) replacement of consumables such as, but not limited to, gaskets, seals, filters, electronic tubes, packing, fuses, transistors and light bulbs.

l . If system fails to perform as needed – customer may seek a replacement or refund within 7 days of setup and training by Convectionium (Subject to section a below).

a . Customer must have a maximum of 10 automated runs and have provided Convectionium at least 72 hours to resolve. Customer is responsible for packaging and shipping costs associated for return to Convectionium. Machine must be returned in “like new” and “working” condition. Any returned machine is subject to a minimum 8% restocking fee for any damage (cosmetic or otherwise), missing parts or other reasonable causes at the discretion of Convectionium. In the event that damage exceeds the minimum restocking fee, Convectionium will work with the client to determine best resolution. Original shipping costs to Customer are non-refundable.

i . i . Cove Cartridges - The warranty period shall be 6 months from the date of delivery. Equipment that has any “leaking” will be insured by Jacksam for up to \$10 per cartridge for a maximum of 500 cartridges. Customer must demonstrate specific leaking problems for Convectionium to consider coverage. Customer has five (5) days from the initial fill to notify Company of any issue. Correct volume measurements in milliliters (ml) have been made for each cartridge and customer may not use weight in grams (g) as a valid reason for any discrepancy.

c . **Disclaimer of Warranties on ANY non-Cove Cartridges.** MANUFACTURER PROVIDES THE PRODUCTS AND DESIGNS ON AN “AS IS,” “WHERE IS” BASIS AND MAKES NO OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON- INFRINGEMENT.

8 . **INDEMNIFICATION.** Customer will, at Customer’s expense, indemnify,

hold harmless and, at Manufacturer's request, defend Manufacturer, any of its

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subsidiaries, affiliates, directors, officers, employees, agents, independent contractors, and customers, from and against any and all loss, cost, liability or expense (including, without limitation, costs and reasonable fees of attorneys and other professionals) arising out of or in connection with a claim: (i) that a Product caused injury or damage to a person or property; (ii) that the sale or distribution of the Products by or through Customer is in violation of any law or regulation; or (ii) that a Design infringes or violates any patent, copyright, trade mark right, trade secret, or other proprietary right of any third party.

9 . LIMITATION OF LIABILITY. IN NO EVENT WILL MANUFACTURER BE LIABLE TO CUSTOMER FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, WHETHER BASED UPON CONTRACT, TORT (INCLUDING NEGLIGENCE) OR ANY OTHER LEGAL THEORY, INCLUDING WITHOUT LIMITATION LOST PROFITS, OR CLAIMS OF EITHER PARTY'S CUSTOMERS FOR SUCH DAMAGES, WHETHER OR NOT MANUFACTURER WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. IN NO EVENT SHALL MANUFACTURER'S TOTAL AGGREGATE LIABILITY FOR ARISING OUT OF OR RELATED TO THIS AGREEMENT, REGARDLESS OF THE FORM OF THE ACTION OR THE THEORY OF RECOVERY, EXCEED THE AMOUNT PAID BY CUSTOMER TO MANUFACTURER UNDER THE APPLICABLE ACCEPTED PURCHASE ORDER GIVING RISE TO THE ACTION OR CLAIM.

10 . GENERAL TERMS

11 1 Force Majeure. Except for payments obligations, neither party will be deemed in default of this Agreement to the extent that performance of its obligations are

prevented by reason of any act of God, fire, natural disaster, act of government, or an act that is beyond the reasonable control of either party ("Force Majeure Event"), provided that such party gives the other party written notice thereof promptly and, in any event, within fifteen (15) days of discovery thereof and uses its best efforts to continue to so perform or cure. In the event the Force Majeure Event lasts for more than sixty (60) days, then the party that is not subject to the Force Majeure Event may terminate this Agreement by providing notice to the other party.

12 2 Publicity. Unless otherwise agreed by the parties in writing, no press releases, conferences, interviews or other public announcements, in whatever form, will be made or given by either party in relation to this Agreement.

13 3 No Third-Party Beneficiaries. This Agreement is for the sole benefit

of Customer and Manufacturer and their permitted assigns and nothing herein expressed or implied will give or be construed to give to any person, other than Customer and Manufacturer and such assigns, any legal or equitable rights hereunder, except that the indemnified parties in **Section 8** are intended third party beneficiaries to the extent of such indemnification.

¶ **4 Severability.** If for any reason a court of competent jurisdiction finds any provision of this Agreement or portion thereof to be unenforceable, that provision of this Agreement will be enforced to the maximum extent permissible to effect the intent of the parties and the remainder of this Agreement will continue in full force and effect.

¶ **5 No Waiver.** All rights and remedies conferred under this Agreement or by any other instrument or law will be cumulative and may be exercised singularly or concurrently. Failure by either party to enforce any provision of this Agreement will not be deemed a waiver of future enforcement of that or any other provision.

¶ **6 Notices.** All notices required or permitted under this Agreement will be in writing, will reference this Agreement and will be deemed given when: (i) delivered personally; (ii) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (iii) one (1) day after deposit with a commercial overnight carrier, with written verification of receipt or (iv) by verified email. All communications will be sent to addresses set forth below or such other address as may be designated by a given party by giving written notice to the other party pursuant to this Section.

¶ **7 Governing Law.** This Agreement shall be construed, governed, and enforced according to the laws of the State of California, excluding its conflicts of laws principles.

¶ **8 Interpretation.** This Agreement has been negotiated by the parties and their respective counsel. This Agreement will be fairly interpreted according to its terms and without any strict construction in favor of or against either party. The headings and captions are included for reference purposes only and do not affect the interpretation of the provisions hereof.

¶ **8 Interpretation.** This Agreement has been negotiated by the parties and their respective counsel. This Agreement will be fairly interpreted according to its terms and without any strict construction in favor of or against either party. The headings and captions are included for reference purposes only and do not affect the

interpretation of the provisions hereof.

9 Complete Agreement. This Agreement, including all Accepted Purchase Orders issued hereunder, constitutes the entire agreement between the parties in connection with the subject matter hereof, and terminates and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, between the parties. No amendment to or modification of this Agreement will be binding unless in writing and signed by a duly authorized representative of both parties.

IN WITNESS WHEREOF, each of the parties has caused this Agreement to be executed by its duly authorized representative as of the Effective Date.

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