

## **INDEPENDENT INSTRUCTOR AGREEMENT**

**DISCLAIMER: READ THIS AGREEMENT CAREFULLY. THIS AGREEMENT IS A BINDING LEGAL DOCUMENT BETWEEN YOU AND PRO4MER, LLC REGARDING YOUR USE OF PRO4MER. IF YOU DO NOT AGREE TO ALL OF THESE TERMS AND CONDITIONS, DO NOT USE PRO4MER.**

This Independent Instructor Agreement (the "Agreement") constitutes a legal agreement between you and PRO4MER, LLC ("Owner") with respect to your use of Owner's website – www.pro4mer.com – and the interactive tools and content contained on the website (collectively "Pro4mer"), as well as your provision of private sports instruction (the "Services") to child and amateur athletes ("Customers"). You will be deemed to have accepted and agreed to all of the terms and provisions of this Agreement when your access and use Pro4mer.

This Agreement covers all Services that you ever provide to Customers, including those Services that you provide after you cancel your Account (as defined below). Owner may limit the number and types of Services that you provide on Pro4mer for any reason, or no reason, in Owner's sole and absolute discretion. Your use of Pro4mer is subject to the requirements of any Privacy Policy and any additional terms and conditions that are posted on Pro4mer from time to time (collectively, "Policies"). Owner may modify this Agreement and the Policies at any time by posting revised versions on Pro4mer, and the modified versions will become effective immediately upon posting. By continuing to use Pro4mer after the effective date of any modifications to this Agreement or the Policies, you agree to be bound by those modifications. It is your responsibility to check Pro4mer regularly for modifications to this Agreement and any Policies.

### **THE PARTIES AND THEIR RIGHTS**

**Appointment of Owner as Your Agent.** You appoint Owner and its affiliates as your agent and commissionaire to market and make your Services available through Pro4mer on your behalf. You authorize and instruct Owner to market, solicit, and obtain orders from Customers and issue invoices for, and to collect, charges payable by Customers for your Services ("Charges") on your behalf. You agree that you will not take any action to collect any Charges and that Owner has the sole and exclusive right to collect Charges from Customers for your Services offered through Pro4mer. Notwithstanding anything in this Agreement to the contrary, Owner is not required to take any effort to collect Charges that Owner deems, in its reasonable discretion, to be unreasonable or not in the best interest of Pro4mer.

**License to Use Your Name and Likeness.** You hereby grant to Owner and its affiliates a worldwide, non-exclusive, perpetual, irrevocable, and fully paid-up license to use your name, likeness, Services, and information about your Services in the marketing and delivery of your Services, to satisfy any of Owner's other obligations under this Agreement, and in any presentations, marketing materials, marketing events, investor pitches, and press releases for

purposes of marketing Pro4mer. You agree that no royalty or other compensation is payable by Owner in exchange for the rights described in this section. Owner may use consultants, contractors, and other individuals to perform its obligations, and to exercise its rights, under this Agreement, and such persons shall be entitled to use the licenses you have granted under this Agreement provided that Owner subjects such consultants and contractors to the same obligations as Owner under this Agreement.

**Reservation of Rights.** You and Owner each retain all other rights that you would each have independent of this Agreement and you agree that Owner has no responsibility for protecting and enforcing any of your rights on your behalf. Nothing in this Agreement gives you a right to use any of Owner's trade names, trademarks, service marks, logos, domain names, or other distinctive brand features without Owner's prior written consent, which may be granted or withheld in Owner's sole and absolute discretion.

**You are not an Employee, Agent, or Independent Contractor of Owner or Pro4mer.** You are not an employee, agent, or independent contractor of Owner or Pro4mer, and you have no authority to bind Owner or Pro4mer in any way. You are not entitled to any of the rights and benefits afforded to Owner's and Pro4mer's employees, including, without limitation, disability or unemployment insurance, workers' compensation, medical or disability insurance, vacation or sick leave, or any other employment benefit. Neither this Agreement nor any use of Pro4mer creates an independent contractor, employee/employer, partnership, joint venture, or franchiser-franchisee relationship between you and Owner. You and Owner both acknowledge and agree that your relationship with each other under this Agreement is, and shall remain at all times, that of principal and agent or principal and commissionaire, as the case may be, and that you, as the "principal" are, and shall remain, solely responsible for the timing and content of your Services and any and all claims and liabilities involving or relating to your Services. Nothing in this Agreement grants you the right to be the sole provider of your Services on or through Pro4mer, and Owner is under no obligation to refrain from promoting, offering, selling, developing, marketing, or taking any other action with respect to any other products or services, including any other Services from other instructors that compete with your Services. You are free to engage in, and simultaneously perform, any employment or other services and nothing precludes you from generally advertising or providing your Services to the general public through any means outside of Pro4mer.

## **REGISTRATION**

**Your Account.** You must establish an instructor account on Pro4mer (an "Account"). Only individuals eighteen (18) years or older may create an Account. You may not reveal your Account information to anyone else. You are solely responsible for maintaining the confidentiality and security of your Account, and for all activities that occur on or through your Account, and you agree to immediately notify Owner of any security breach of your Account. Owner shall not be responsible for any losses arising out of the unauthorized use of your Account. In order to use Pro4mer and to provide Services, you must enter your ID and password

in order to authenticate your Account for transactions. You agree to provide accurate and complete information ("User Information") when you register with, and as you use, Pro4mer, and you agree to update your User Information to keep it accurate and complete. You agree that Owner may store and use the User Information you provide for use in maintaining and remitting your portion of Charges to your Account, among other things. You are solely responsible for any and all communications and other actions initiated through your Account.

**Deliveries to Pro4mer.** As a condition to offering Services on Pro4mer, you must deliver the following to Owner at your own expense: (a) a detailed biography of your amateur and professional experience in the sports for which you are providing Services; (b) a reasonably detailed description of the Services and the location, times, and charges for those Services; (c) all other information requested when you register your Account on Pro4mer; (d) your ACH/direct debit information for transmitting your share of Charges to you; and (e) evidence of your Insurance. You agree to make any changes to these deliveries that are requested by Owner.

## **YOUR SERVICES**

**Provision of Services and Customer Communications.** You, and not Owner, are solely responsible for the time, manner, and method of providing your Services to Customers and all costs and expenses associated with providing the Services. You will provide your own supplies and equipment as necessary to complete the Services. You will not arrange or provide any Services, or deliver any other products or services reasonably similar to the Services (including, without limitation, any type of instruction in the same sport), with a Customer that has ever contacted you (or whom you have ever contacted) through Pro4mer unless the delivery of those Services or other products and services are scheduled through Pro4mer. You are solely responsible, and Owner shall have no responsibility to you, any Customer, or to any third party, for any Losses relating to, or caused by, your Services.

**Billing Information and Waiver and Release from Customers.** Prior to commencing any Services, you must verify with Pro4mer that the Customer has submitted appropriate billing information to Pro4mer and has provided a general waiver and release that has been signed by that Customer in the form of the most-recent version promulgated by Pro4mer (the "Form Release"). Owner is not responsible for payments for Services given before a Customer has appropriate billing information on file. Owner may change the Form Release from time to time in its sole and absolute discretion, and you must obtain any such new Form Release from Customers prior to providing Services to them (even if a Customer signed a prior version of a Form Release). If you are providing Services to a minor, the minor's parent or legal guardian must sign the Form Release.

**Your Use of Pro4mer.** Your use of Pro4mer is subject to the applicable provisions of the Terms and Conditions of Use and other Policies posted from time to time on Pro4mer, each of which are incorporated into this Agreement by this reference.

**Suspension and Termination.** Owner is not obligated to monitor your Services or communications with Customers, but Owner may at any time review your qualifications, conduct background checks and similar investigations, and attend your Services to determine whether you are complying with the requirements of this Agreement and any applicable laws. Owner retains the right to refuse to include on Pro4mer, and to immediately remove you or your Services from Pro4mer, in Owner's sole and absolute discretion.

**Insurance.** At any time when you provide Services, you must have in full force and effect commercial "general liability" insurance with combined single limits of not less than \$500,000.00 for each occurrence, and an annual aggregate limit of not less than \$1,000,000.00, which provides a reasonable and customary level of insurance coverage for you in connection with your provision of Services.

### **CHARGES AND TAXES.**

**Charges.** You determine the amount of the Charges. Any Charges that you select shall be inputted and adjusted, as necessary, by you through your Account. All prices will be charged in U.S. dollars. The amount of the Charges will determine the amount of payment you receive. You may not advertise pricing or price increases directly to Customers outside of the prescribed notification process on Pro4mer. Owner is not obligated to disclose to Customers the amount of any transaction fees or commissions payable with respect to the Charges. Owner or a person authorized by Owner to provide payment processing services ("Payment Processor") will process all payments made by Customers. A transaction fee may be charged against and withheld from Charges and apportioned to the Payment Processor for its services. A commission, as defined below, will be charged against, and withheld from, Charges and apportioned to Owner. The remainder of the Charges – the total amount of the Charges you set minus the transaction fee and the commission - will be remitted to you. If a Payment Processor is used by Owner, Owner assumes no responsibility for the Payment Processor's use, transmission, storage, or handling of your account information.

(a) **Commission.** Owner is entitled to a commission of 17% of any Charges in consideration of your use of Pro4mer and Owner's services as your agent and commissionaire under this Agreement. For purposes of determining the amount of any commission, the Charges payable by Customers shall be based on the total amount of Charges that are charged to Customers prior to the application of any amount of taxes or government levies payable or withheld in connection with the sale, and Owner shall be entitled to the commission based on the full amount of Charges without reduction for any taxes or other government levies, including any and all taxes or other similar obligations of you, Owner, or any Customers relating to your Services.

**Taxes.** In the event that your Charges are subject to any sales, use, goods and services, value added, or other similar tax under any applicable laws, you are solely responsible for the collection and remittance of such taxes. You are solely responsible for determining if the amount

of your Charges is taxable and the applicable tax rate and amount of taxes to collect for each taxing jurisdiction where your Services are sold. You are solely responsible for remitting taxes to the appropriate taxing authority. Owner has no responsibility for any taxes or withholdings on amounts paid to you. You shall timely file all tax returns and reports required to be filed by you on the basis that you are not an employee of Owner or Pro4mer. At any time upon the reasonable request of Owner, you shall provide Owner with a properly completed and signed IRS Form W-9 certifying that you are not subject to any back-up withholding. You shall indemnify, save, pay, insure, defend, protect, and hold harmless Owner, any Payment Processor, and any of their respective affiliates from and against any and all Losses (as defined below) and any claims by any tax authority for any underpayment of any taxes or other governmental levies, and any penalties and interest, relating to your Charges. Neither Owner nor any Payment Processor has any obligation to maintain payment records or pay, report, or charge taxes with respect to any Charges (other than income taxes with respect to any transaction fee or commission).

**Refunds.** You authorize Owner to give a Customer a full refund for Charges if the Customer requests a refund from the time Services are scheduled until forty-eight (48) hours after the Services are provided. If a Customer requests a refund after that time period, Owner may grant the refund in its reasonable discretion. Actions meriting a full refund to a Customer include, without limitation, any claim by a Customer that your Services did not conform to what you have posted on Pro4mer or communicated to the Customer. In the event that Owner refunds any Charges to a Customer, you shall reimburse, or grant Owner a credit for (in Owner's sole absolute discretion), an amount equal to the amount of such refund to the extent that you have received the corresponding Charges. Any refund paid to a Customer shall not relieve you of your obligation to pay any transaction fee or commission related to the Charges that were refunded. To the extent Owner gives a Customer a refund for Charges, Owner has no obligation to remit any portion of those Charges to you.

## **YOUR REPRESENTATIONS, WARRANTIES, AND COVENANTS**

In addition to the representations, warranties, and covenants made by you elsewhere in this Agreement, you hereby make the following additional representations, warranties, and covenants to Owner:

(a) You are at least eighteen (18) years old and have full power and authority to enter into this Agreement and to provide the Services you offer to Customers, and you have all of the rights, powers, and privileges necessary and required in order to grant the licenses set forth in this Agreement.

(b) All information that you input into Pro4mer will be true, correct, and complete at all times. You are adequately and well qualified to provide the Services you offer to Customers in accordance with industry-accepted standards at the time the Services are provided, and you are well informed as to all current necessary and recommended safety concerns and practices with respect to the Services. You will

implement and utilize all such safety practices whenever you provide Services, including, without limitation, using helmets and proper pads, guards, and other safety equipment and providing water after significant physical activity and in excessive heat.

(c) You are not, and will not: (i) be the subject of any bankruptcy, insolvency, or reorganization proceeding; (ii) have a receiver or trustee appointed over any of your assets; or (iii) make any assignment for the benefit of your creditors.

(d) You have never been accused, charged, or convicted of a felony, any crime involving any act of dishonesty, moral turpitude, or recklessness, or any crime against a minor, and you will not commit any such crime in the future and will notify Owner immediately if you are accused or charged with any such crime.

(e) You will not engage in any obscene, offensive, or harassing behavior through Pro4mer and will conduct yourself in a professional, workmanlike, first-class, and courteous manner at all times.

(f) In the event that you no longer have the ability to perform Services in the manner required by this Agreement, or if you have breached any representation, warranty, covenant, or other obligation under this Agreement, you shall promptly notify Owner of that fact; provided, however, that such a circumstance shall not in any way relieve you of any of your obligations under this Agreement, or any liability you have to Owner or any Customer.

(g) THE RELATIONSHIP BETWEEN YOU AND OWNER ESTABLISHED BY THIS AGREEMENT MAY HAVE IMPORTANT LEGAL AND TAX CONSEQUENCES FOR YOU. YOU ACKNOWLEDGE AND AGREE THAT IT IS YOUR SOLE AND EXCLUSIVE RESPONSIBILITY TO CONSULT WITH YOUR OWN LEGAL AND TAX ADVISORS WITH RESPECT TO YOUR LEGAL AND TAX OBLIGATIONS HEREUNDER.

## **LIABILITY AND INDEMNITY**

**DISCLAIMER OF WARRANTIES.** YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT YOUR USE OF PRO4MER AND ANY OTHER PRODUCTS IS AT YOUR SOLE RISK, AND THAT OWNER IS MAKING NO ASSURANCES TO YOU REGARDING THE QUALITY, PERFORMANCE, OR ACCURACY OF PRO4MER OR ANY OTHER PRODUCTS. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, PRO4MER IS PROVIDED "AS IS" AND "AS AVAILABLE", WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND, AND OWNER HEREBY DISCLAIMS ANY AND ALL WARRANTIES AND CONDITIONS WITH RESPECT TO PRO4MER OR ANY PRODUCTS, WHETHER EXPRESS, IMPLIED, OR STATUTORY, AND INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY, OF SATISFACTORY QUALITY, OF FITNESS FOR A PARTICULAR

PURPOSE, OF ACCURACY, OF QUIET ENJOYMENT, AND OF NONINFRINGEMENT OF THIRD-PARTY RIGHTS. OWNER DOES NOT REPRESENT OR GUARANTEE THAT PRO4MER OR ANY PRODUCT WILL BE FREE FROM LOSS, CORRUPTION, ATTACK, VIRUSES, INTERFERENCE, HACKING, OR OTHER SECURITY INTRUSION, AND OWNER DISCLAIMS ANY LIABILITY RELATING THERETO. OWNER DOES NOT WARRANT AGAINST INTERFERENCE WITH YOUR ENJOYMENT OF PRO4MER OR ANY PRODUCT, THAT THE FUNCTIONS CONTAINED IN OR SERVICES PERFORMED OR PROVIDED BY PRO4MER OR ANY PRODUCT WILL MEET YOUR REQUIREMENTS OR SATISFACTION, THAT THE OPERATION OF PRO4MER OR ANY PRODUCT WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS IN PRO4MER OR ANY PRODUCT WILL BE CORRECTED OR CORRECTIBLE. YOU AGREE THAT FROM TIME TO TIME PRO4MER MAY REMOVE, DISCONTINUE, OR CANCEL PRO4MER AND ANY INSTRUCTORS AND SERVICES, PERMANENTLY OR FOR INDEFINITE PERIODS OF TIME, ALL WITHOUT NOTICE TO YOU. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY OWNER OR ITS AUTHORIZED REPRESENTATIVES SHALL CREATE OR BE DEEMED TO CREATE ANY WARRANTY OF ANY TYPE OR NATURE WHATSOEVER. IF YOU ARE INJURED BY ANY CUSTOMER, YOU AGREE TO LOOK SOLELY TO THE CUSTOMER FOR REDRESS. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR LIMITATIONS ON APPLICABLE STATUTORY RIGHTS OF A CONSUMER; THEREFORE, IN SUCH AN EVENT, THE FOREGOING PROVISIONS SHALL BE CONSTRUED TO PROVIDE THE MAXIMUM EXCLUSION AND LIMITATION OF WARRANTIES AS PERMITTED BY SUCH APPLICABLE LAW.

**LIMITATION OF LIABILITY.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO CASE SHALL OWNER OR ITS MEMBERS, MANAGERS, OFFICERS, EMPLOYEES, AFFILIATES, AGENTS, CONTRACTORS, AND PRINCIPALS BE LIABLE FOR PERSONAL INJURY OR ANY INCIDENTAL, SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, BUSINESS INTERRUPTION, OR ANY OTHER COMMERCIAL DAMAGES OR LOSSES, ARISING OUT OF OR RELATED TO YOUR USE OR INABILITY TO USE PRO4MER OR ANY PRODUCT, HOWEVER CAUSED, REGARDLESS OF THE THEORY OF LIABILITY (CONTRACT, TORT, OR OTHERWISE) AND EVEN IF OWNER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OF LIABILITY FOR PERSONAL INJURY, OR OF INCIDENTAL OR CONSEQUENTIAL DAMAGES; IN SUCH AN EVENT, THE FOREGONIG PROVISIONS SHALL BE CONSTRUED TO PROVIDE FOR THE MAXIMUM LIMITATION OF LIABILITIES AS PERMITTED BY SUCH APPLICABLE LAW. In no event shall Owner's total liability to you for damages, other than as may be required by applicable laws, exceed the amount of Fifty and No/100 Dollars (\$50.00). The foregoing limitations will apply even if the above stated remedy fails of its essential purpose.

**Indemnification.** To the maximum extent permitted by applicable laws, you agree to indemnify, save, pay, insure, defend, protect, and hold harmless Owner, its affiliates, and their respective members, managers, officers, employees, affiliates, agents, contractors, and principals from and against any and all claims, actions, suits, proceedings, losses, liabilities, damages, costs, and expenses (including reasonable attorneys' fees through all levels of adjudication, including settlement and appeal) (collectively, "Losses") arising out of or accruing from either: (a) your use or misuse of Pro4mer; (b) any breach by you of your obligations under this Agreement; (c) your violation of any applicable laws; (d) the Services, including the performance of your Services; (e) any claim brought by a Customer relating to you; (f) any injuries, losses, or damages that you incur that were caused by a Customer; and (f) any act of fraud, negligence, or willful misconduct made by you.

**Right of Set-Off.** Owner shall have the right, but not the obligation, to set-off against any unpaid portion of any Charges collected by Owner that you are otherwise entitled to receive, as a non-exclusive source of recovery, any amounts that are necessary to satisfy any claim for recovery of Losses asserted by Owner, its affiliates, or their respective members, managers, officers, employees, affiliates, agents, contractors, and principals.

## **OTHER PROVISIONS**

**Term.** This Agreement shall remain in full force and effect until such time as you are fully bound by a successive version of this Agreement. Your obligations and requirements under this Agreement shall survive any expiration or termination of this Agreement and your cancellation of your Account or removal of Services from Pro4mer, and shall remain binding on you except to the extent that such sections have been superseded by a successive version of this Agreement that is fully binding on you.

**Product Ratings.** Owner reserves the right to incorporate into Pro4mer a mechanism permitting Customers to rate and comment on instructors and Services. Along with other factors, ratings may be used to determine the placement of instructors and Services on Pro4mer, with higher-rated instructors or Services given better placement, and subject to Owner's right to change such placement in Owner's sole and absolute discretion. For new Instructors without history of providing Services through Pro4mer, Owner may use or publish performance measurements to identify or remove Services that are not meeting acceptable standards, as determined by Owner in its sole and absolute discretion. Owner reserves the right to display instructors or Services to Customers in a manner that will be determined in Owner's sole and absolute discretion. You and your Services may be subject to Customer comments and ratings about which you may not agree. You may contact Owner if you have any questions or concerns regarding such comments and ratings; provided, however, that Owner is under no obligation to modify or remove any comments or ratings.

**Confidentiality.** You agree that, at all times during the term of this Agreement and forever thereafter, you shall not (except as expressly required or permitted under the terms of this

Agreement) communicate or divulge any Confidential Information to any third party or use any Confidential Information for your personal benefit or for the benefit of any other person, firm, association, corporation, or entity without the express prior written consent of Owner in each instance. "Confidential Information" means any and all trade secret or confidential nonpublic information of, about, or relating to Pro4mer, Customers, or Owner, which includes without limitation the terms of this Agreement and all financial information, Customer lists and all other proprietary information relating to Owner or Pro4mer, but excluding any information which is: (i) generally known to the industry or trade through no action of you; (ii) independently developed by you without use of anything provided by Owner or Pro4mer; or (iii) publicly known for reasons other than disclosure by you.

**Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida (without regard to the principles thereof relating to conflicts of law) and any action related hereto shall be brought in a court in Orange County, Florida; provided, however, that Owner may seek injunctive or other relief in any state, federal, or national court of competent jurisdiction for any actual or alleged infringement of Owner's, its affiliates', or and third party's intellectual property or other proprietary rights. In the event of any conflict between a law, rule, or regulation of the United States and a foreign jurisdiction, the law, rule or regulation of the United States shall prevail and govern. You and Owner irrevocably and unconditionally waive any right to a jury trial with respect to any claims or disputes arising out of or related to this Agreement.

**Notice.** Owner may notify you with respect to any issue relating to your use of Pro4mer by sending an email message to your Account email address or a letter via postal mail to your Account mailing address, or by posting such notice on Pro4mer. Notices shall become effective immediately when sent or posted.

**Miscellaneous Provisions.** This Agreement constitutes the entire agreement between you and Owner with respect to the subject matter hereof and thereof and supersedes any previous agreements and understandings between the parties with respect to such matters. No amendment or waiver of any provision of this Agreement shall be binding on Owner unless in writing and signed by Owner. This Agreement binds and will inure to the benefit of the parties hereto and their respective successors and permitted assigns. You may not assign your rights or delegate your obligations under this Agreement without the prior written consent of Owner in each instance, which consent may be granted or withheld in Owner's sole and absolute discretion. No assignment by you shall relieve you of any of your obligations or responsibilities under this Agreement. In the event any provision, or portion thereof, of this Agreement is held by a court of competent jurisdiction to be unenforceable in any jurisdiction, then such portion or provision will be deemed to be severable as to such jurisdiction (but, to the extent permitted by applicable laws, not elsewhere) and will not affect the remainder of this Agreement, which will continue in full force and effect. If any provision of this Agreement is held to be so broad as to be unenforceable, such provision will be interpreted to be only as broad as is necessary for it to be enforceable. In the event that one party brings an action against the other party to enforce or

interpret any of the provisions of this Agreement, the “prevailing party” in such action shall, in addition to any other recovery, be entitled to recover from the other party such "prevailing party's" reasonable attorneys’ fees and expenses arising from such action and any appeal or any bankruptcy action related thereto, whether or not such matter proceeds to court. For purposes of this Agreement, “prevailing party” shall mean, in the case of a party asserting a claim, such party if it is successful in obtaining substantially all of the relief sought, and in the case of a party defending against or responding to a claim, if such party is successful in denying substantially all of the relief sought. Owner and its affiliates will not be liable for any delay or failure to perform any obligation under this Agreement where the delay or failure results from any cause beyond Owner's or its affiliates' reasonable control. You acknowledge and agree that any breach or threatened breach by you of any of the covenants and restrictions related to usage of Pro4mer, intellectual property, proprietary information, termination, and your other responsibilities contained in this Agreement will give rise to irreparable injury which may not be adequately compensated by damages and, therefore, you agree that in the event of any such breach or threatened breach, Owner may seek and shall be entitled to injunctive relief and to the enforcement of these covenants and restrictions by specific performance, in addition to any other rights and remedies available hereunder or under applicable law. This Agreement shall be construed as if both you and Owner jointly prepared it, and no provision shall be construed against Owner on the basis that Owner prepared it.

Dated: June 10th, 2016

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