

**INSULIN PUMPERS FOUNDATION
PUMP ASSISTANCE PROGRAM
HEALTHCARE PROVIDER PARTICIPATION AGREEMENT**

THIS PARTICIPATION AGREEMENT (the “**Agreement**”) is made to be effective as of the ___ day of _____, 2013 (the “**Effective Date**”), between Insulin Pumpers Foundation, a California non-profit corporation with its principal place of business at 558 Valley Way, Milpitas, California 95035 (“**Insulin Pumpers**”), and _____, a(n) _____ having his or her or its principal place of business at _____ (“**Healthcare Provider**”).

WHEREAS, Insulin Pumpers operates the Pump Assistance Program (the “**Program**”), whereby it provides, new, used or refurbished insulin pumps, and related items, (the “**Products**”) to eligible diabetes patients;

WHEREAS, Healthcare Provider, or one of its employees, affiliates or members, has prescribed, or may prescribe, the use of an insulin pump to one or more patients and wishes to refer eligible patients (“**Patients**”) to Insulin Pumpers for participation in the Program;

WHEREAS, Insulin Pumpers is willing to include Healthcare Provider’s eligible Patients in the Program on the condition that the Healthcare Provider support and train the Patients on the use of the Products and any user manuals, guides, labels, and/or instructions for the Products (the “**Documentation**”);

BE IT KNOWN, that most if not all of Products are obtained by Insulin Pumpers from individual donors as directed donations for the benefit of economically disadvantaged members of the diabetes community;

NOW, THEREFORE, in consideration of the covenants and conditions set forth below and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereby agree as follows:

1. **Referral of Eligible Patients.** In the event Healthcare Provider, or one of its employees, affiliates or members, has prescribed an insulin pump to a Patient and wishes to refer such Patient to the Program, Healthcare Provider shall submit a Patient Referral Form to Insulin Pumpers in the form attached hereto as **Exhibit A**. In the event Healthcare Provider is a corporation, partnership, limited liability partnership or any other entity, each prescribing physician that submits a Patient Referral Form shall be deemed to be a Healthcare Provider for purposes of this Agreement. Healthcare Provider shall only refer Patients who are deemed suitable candidates for successful insulin pump therapy.

2. **Distribution of Equipment and Documentation.** Upon receipt by Insulin Pumpers of a completed Patient Referral Form and Patient eligibility and participation agreements, Insulin Pumpers, shall use commercially reasonable methods to ship Products and Documentation to Healthcare Provider to be provided to the Patient.

3. Support of Patients. Healthcare Provider shall determine whether Products are suitable for use by Patients and train Patients on the proper use of the Products.

4. Compliance with Applicable Law. Healthcare Provider shall comply with all applicable laws and regulations relating to participation in the Program including, without limitation, the possession of any applicable licenses, or any other regulatory requirement that may be applicable to the support of Patients pursuant to this Agreement.

5. Term. The initial term of this Agreement shall run from the Effective Date for a period of one (1) year (unless earlier terminated according to its terms), at which point the Agreement shall renew automatically for additional terms of one (1) year; provided, however, that either party may terminate this Agreement upon thirty (30) days' prior written notice to the other party, for any or no reason.

6. Effect Of Termination.

a. Post-Termination Actions. Upon the effective date of termination Healthcare Provider shall return to Insulin Pumpers any Products and any Documentation in its possession that have not been provided to Patients under Section 2.

b. Survival. Sections 6, 7, 8, and 9, and any other provisions in this Agreement that by their nature are intended to survive expiration or termination, shall survive expiration or termination of this Agreement for any reason.

7. DISCLAIMER OF WARRANTY. THE PRODUCTS ARE PROVIDED BY INSULIN PUMPERS AND ITS DISTRIBUTORS "AS-IS" WITHOUT WARRANTY OF ANY KIND. INSULIN PUMPERS DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, WITH RESPECT TO THE PRODUCTS.

8. LIMITATION OF LIABILITY.

a. No Consequential Damages. IN NO EVENT SHALL INSULIN PUMPERS OR ITS AFFILIATES BE LIABLE OR RESPONSIBLE TO HEALTHCARE PROVIDER OR ANY THIRD PARTY FOR ANY TYPE OF INCIDENTAL, PUNITIVE, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOST REVENUE OR LOST PROFITS, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER ARISING UNDER THEORY OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE.

b. Maximum Liability. NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT, THE AGGREGATE LIABILITY OF INSULIN PUMPERS AND ITS AFFILIATES AND DISTRIBUTORS UNDER THIS AGREEMENT SHALL BE LIMITED TO \$100.

9. General.

a. Independent Contractors. Insulin Pumpers and Healthcare Provider are independent contractors and nothing in this Agreement shall establish any relationship of partnership, joint venture, employment, franchise or agency between the parties and neither party shall have the power or authority to represent, act for, bind, or otherwise create or assume any obligation on behalf of the other party for any purpose whatsoever.

b. Governing Law; Venue. This Agreement shall be governed by the laws of the State of California. Each party hereby (1) irrevocably submits to the jurisdiction of any state or federal court sitting within the State of California, County of Santa Clara, in any action or proceeding brought to enforce or otherwise arising out of or relating to this Agreement, (2) irrevocably waives to the fullest extent permitted by law any objection that it may now or hereafter have to the laying of venue in any such action or proceeding in any such forum in California, and (3) hereby further irrevocably waives any claim that any such forum is an inconvenient forum.

c. Severability; Waiver. In the event that any of the provisions of this Agreement shall be held by a court or other tribunal of competent jurisdiction to be invalid or unenforceable, the remaining portions hereof shall remain in full force and effect and such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed to extent necessary to make such provision valid and enforceable. The waiver of any breach or default of this Agreement will not constitute a waiver of any subsequent breach or default, and will not act to amend or negate the rights of the waiving party.

d. Notices. Any notice or communication required or permitted to be given hereunder may be delivered by hand, deposited with an overnight courier, or mailed by registered or certified mail, return receipt requested, postage prepaid, in each case to the address of the receiving party as listed on the first page of this Agreement or at such other address as may hereafter be furnished in writing by either party to the other party. Such notice will be deemed to have been given as of the date it is delivered. Notices shall be addressed to the attention of "Michael Robinton, Executive Director" and "_____ " if to Healthcare Provider.

e. Assignment. Healthcare Provider may not assign its rights or delegate its duties under this Agreement either in whole or in part, whether voluntarily or by operation of law, without the prior written consent of Insulin Pumpers. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the respective parties hereto and their heirs, personal representatives, successors and assigns.

f. Third Parties. Nothing contained in this Agreement, express or implied, is intended to confer upon any person, other than the parties hereto and their respective, permitted successors and assigns, any rights or remedies under or by reason of this Agreement.

g. Entire Agreement. This Agreement, including all documents incorporated herein by reference, constitutes the complete and exclusive agreement between the parties with respect to the subject matter hereof, and supersedes and replaces any and all prior or

contemporaneous discussions, negotiations, understandings and agreements, written and oral, regarding such subject matter. This Agreement has been executed by and may be changed only by a written document signed by authorized representatives of the parties. This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together shall constitute one and the same instrument..

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of the Effective Date.

INSULIN PUMPERS FOUNDATION:

HEALTHCARE PROVIDER

Name: _____

By: _____

By: _____

Print Name: Michael Robinton

Print Name: _____

Title: Executive Director

Title: _____

EXHIBIT A

**Insulin Pumpers Foundation Pump Assistance Program
Patient Referral Form**

Please complete this form for eligible patients and submit to Insulin Pumpers by mail or fax to:

Insulin Pumpers
558 Valley Way
Milpitas, CA 95035
Fax: (408) 942-7321

1. Patient Name: _____
2. Patient Address: _____
3. Healthcare Provider Name: _____
4. Healthcare Provider Address: _____
5. Prescribing Physician: _____
6. Prescribing Physician License Number: _____
7. Please attach statement of medical necessity and insulin pump prescription.
8. By submitting this referral form, Prescribing Physician represents that it deems Patient is a suitable candidate for successful insulin pump therapy.
9. Prescribing Physician agrees to be bound by the terms of the Agreement as a Healthcare Provider thereunder.

Prescribing Physician Signature:

Patient Signature:

Date: _____

Date: _____