



SERVICE AGREEMENT

THIS SERVICE AGREEMENT is made as of August 7, 2019 (the "*Effective Date*") by and between **BIOSCENTDX, INC.** (hereinafter "*BioScentDX*"), located at 25424 83rd Avenue East, Myakka City, Florida 34251 and **THE CITY OF COSTA MESA**, Fire Department (hereinafter the "*Client*"), located at 77 Fair Drive, Costa Mesa, CA 92628 (collectively referred to herein as the "*Parties*").

WHEREAS, BioScentDX offers canine scent detection services to offer non-invasive and affordable cancer screening (the "*Services*"); and

WHEREAS, Client desires to retain the Services of BioScentDX and BioScentDX desires to render such Services in accordance with the terms and conditions set forth below.

IN CONSIDERATION of the foregoing and of the mutual covenants set forth below, the Parties, intending to be legally bound, agree as follows:

1. **DUTIES OF BIOSCENTDX.** BioScentDX shall provide the Services to the Client as outlined in **Exhibit A** which is attached hereto and incorporated herein by reference.

2. **INDEPENDENT CONTRACTOR STATUS.** The Parties recognize that BioScentDX is an independent contractor and not an employee, co-venturer, or representative of the Client. BioScentDX shall at all times disclose that it is an independent contractor of the Client and shall not represent to any third-party that it is an employee, agent, co-venturer, or representative of the Client other than as expressly authorized by the Client.

3. **AUTHORIZATION.** Client is duly and legally authorized to enter into this Agreement and has complied with any and all laws, rules, regulations, charter provisions, bylaws and operating agreements to which it may be subject and that the undersigned representative is authorized to act on behalf of and bind Client to the terms of this Agreement.

4. **BIOSCENTDX COMPENSATION.** The Parties agree that BioScentDX shall be paid as outlined in **Exhibit A** which is attached hereto and incorporated herein by reference. BioScentDX may revise the fees provided in this Agreement: (a) if Client requirements or any Client-provided information is inaccurate and/or incomplete; (b) if Client revises BioScentDX's responsibilities or the work specifications, instructions, procedures, assumptions, processes and/or requirements; or (c) for such other reasons as determined by BioScentDX and agreed to by Client at the time of determination. Should BioScentDX alter its fees, BioScentDX shall notify Client *thirty (30) days* in advance of such fee increase.

5. **TERM.**

6.1 **Initial Term.** The term of this Agreement will begin on June 28, 2019, and end on June 27, 2020.

6.2 **Renewal Terms.** Following the initial term, this Agreement will automatically renew for successive twelve (12) month terms, unless terminated earlier. If a party elects not to renew this Agreement, that party shall provide notice of that intention to the other party at least *thirty (30) days* before the renewal date. Notwithstanding the foregoing, this Agreement shall renew for no more than four (4) successive renewal terms.



6. **TERMINATION.** If either party commits any material breach or material default in the performance of any obligation under this Agreement, and the breach or default continues for a period of *ten (10) business days* after the other party delivers notice to it reasonably detailing the breach or default, then the other party may terminate this Agreement, with immediately effect, by giving notice to the first party. If Client does not agree to BioScentDX's fee increase, Client may terminate this Agreement by providing BioScentDX notice of termination within fourteen (14) days of receipt of BioScentDX's notice of fee increase.

7. **COVENANT OF NON-DISCLOSURE.** BioScentDX shall not, at any time during or after the term of this Agreement, in any manner, either directly or indirectly, divulge, disclose, or communicate to any person, firm, corporation or other entity, or use for its own benefit or for the benefit of any other person, firm, corporation or other entity, and not for the benefit of the Client, any information acquired from the Client or its affiliates, without the express prior written consent of an authorized representative of the Client. However, BioScentDX shall be entitled to use any and all screening data compiled from all canine scent detection screenings in research studies and/or for marketing purposes. Should BioScentDX utilize the aforementioned information in any research studies or for marketing purposes, all such information shall be aggregated and anonymized by removing all identifying information from the Client collected data.

8. **INDEMNIFICATION.** Client shall indemnify BioScentDX against all claims, liability, and expenses (including legal fees) arising from any third-party claim or proceeding brought against BioScentDX that alleges any negligent act or omission or willful conduct of the Client.

9. **LIABILITY.** BioScentDX shall not be liable to Client for any special, indirect, incidental, punitive, or consequential damages arising from or related to this Agreement, including loss of revenue, or profits or other benefits, and claims by any third-party. The foregoing limitation applies to all causes of action in the aggregate, including without limitation to breach of contract, breach of warranty, negligence, strict liability, and other torts.

9.1 To the fullest extent permitted by applicable law, in no event will BioScentDX or its affiliates, or any of its respective licensors or service providers, have any liability arising from or related to any action the Client takes based on the information it receives through or from the Services herein contemplated.

9.2 The Services provided by BioScentDX are not an attempt to practice medicine nor to provide specific medical advice, and they should not be used to make a diagnosis or to replace or overrule a qualified health care provider's judgment. Client shall not rely upon the Services for emergency medical treatment. The Services are not intended to be a substitute for professional medical advice, diagnosis or treatment. Client should always consult with a qualified and licensed physician or other medical care provider, and follow their advice without delay regardless of anything BioScentDX's Services indicate. Use of the BioScentDX Services does not establish a doctor-patient relationship.

9.3 BioScentDX cannot and does not warrant that the Services provided by BioScentDX will be error-free. Client understands and agrees that BioScentDX is not responsible or liable for any claim, loss or damage from the Client's use of BioScentDX's Services. Reliance on any information provided by BioScentDX is solely at the Client's own risk. The Services of BioScentDX are provided on an "as is" basis.

9.4 *Damages.* Client expressly acknowledges and agrees that in no case shall BioScentDX's liability for damages, regardless of the form of the action, exceed the amount of fees paid by Client hereunder during the most recent *three (3) month* period immediately preceding the event giving rising to





the claim. The foregoing limitation shall not apply to claims arising out of BioScentDX's gross negligence or willful misconduct.

10. **AMENDMENTS.** This Agreement replaces and supersedes all prior consulting agreements, and any other agreements relating to the subject matter hereof, between the Parties to this Agreement. No alteration, modification, amendment or other change of this Agreement shall be binding on the Parties unless in writing, approved and executed by BioScentDX and an authorized representative of Client whether by operation of law or otherwise.

11. **GOVERNING LAW & DISPUTE RESOLUTION.**

11.1 *Governing Law.* This Agreement shall be governed by and interpreted, construed and enforced in accordance with the laws applicable in the State of California, excluding conflicts of laws principles.

11.2 *Arbitration of Disputes Required (in lieu of litigation).* Any dispute or claim that arises out of or relates to this Agreement, or that relates to the breach of this Agreement or that arises out of or that is based upon this Service Agreement shall be resolved by arbitration in accordance with the then effective arbitration rules of (and by filing a claim with) the American Arbitration Association ("AAA"), and judgment upon the award rendered pursuant to such arbitration may be entered in any court having jurisdiction thereof. Any such arbitration proceedings shall solely be conducted in the County of Orange in the State of California.

12. **SEVERABILITY.** The terms of this Agreement shall be severable so that if any term, clause, or provision hereof shall be deemed invalid or unenforceable for any reason by a court of competent jurisdiction, such invalidity or unenforceability shall not affect the remaining terms, clauses and provisions hereof, the Parties intending that if any such term, clause or provision were held to be invalid prior to the execution hereof, they would have executed an agreement containing the remaining terms, clauses and provisions of this Agreement.

13. **WAIVER.** The waiver by either party hereto of any breach of the terms and conditions hereof will not be considered a modification of any provision, nor shall such a waiver act to bar the enforcement of any subsequent breach.

14. **HEADINGS.** The headings contained in this Agreement are for convenience of reference only and are not intended to have any substantive significance in interpreting this Agreement.

15. **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement between the Parties hereto and supersedes all existing contracts or agreements, written or oral, between the Parties hereto.

16. **NOTICE.** All notices required or permitted under this Agreement shall be in writing and shall be deemed delivered where delivered in person, delivered via email or deposited in the United States mail, postage prepaid, addressed as follows:

BIOCENTDX, INC.:

25424 83rd Avenue East
Myakka City, Florida 34251
Email: contracts@bioscentdx.com

A small, handwritten mark or signature in the bottom right corner of the page, consisting of a stylized, cursive-like scribble.



CITY OF COSTA MESA:

Costa Mesa Fire Department
77 Fair Drive
Costa Mesa, CA 92628
Email: joseph.noceti@costamesaca.gov

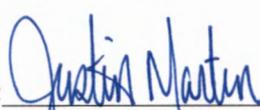
17. **VOLUNTARY AGREEMENT.** Client acknowledges that Client has had an opportunity to consult with an attorney concerning the meaning, import and legal significance of this Agreement, and has read this Agreement, as signified by Client's signature hereto, and is voluntarily executing this Agreement.

IN WITNESS WHEREOF, the Parties have executed this *Service Agreement* effective the date first written above.

BIOSCENTDX, INC.

CITY OF COSTA MESA, Fire Department

Signature: 

Signature: 

Name (printed): MICHAEL MOORE

Name (printed): Justin Martin

Title: DIRECTOR

Title: Acting City Manager

Date: 8/14/19

Date: 8/20/19





EXHIBIT A

1. **Client Contact.** BioScentDX's principal Client contact during the term of this Agreement will be:

Name: Joseph Noceti

Email: joseph.noceti@costamesaca.gov

2. **Canine Scent Detection Services.** BioScentDX shall render its canine scent detection services to Client to offer non-invasive and affordable cancer screening to the Client's affiliates, officers, directors, partners, managers, members, employees and/or agents (collectively the "Patients" and individually a "Patient"). As such, Client must comply with the following BioScentDX requirements:

2.1 **Consent Form & Patient History Form.** Each and every individual that utilizes the services of BioScentDX with respect to this Agreement shall be required to complete a Patient Consent Form (available at bioscentdx.com/consent) and shall fill out a Patient History Form (available at bioscentdx.com/patienthistory).

2.2 **Experimental Technology.** The Client acknowledges and understands that using canines to detect cancer in humans is an experimental technology, and therefore doesn't guarantee *One Hundred Percent (100%)* accurate results. Any and all estimates concerning the accuracy of using canines to detect cancer in humans on the BioScentDX website is subject to change without notice.

2.3 The Services herein contemplated are intended to serve as a complement to, and are not intended to replace or be used in lieu of, traditional diagnostic testing techniques.

2.4 BioScentDX shall *NOT* be liable for any Patient anxiety and/or related expenses that are generated as a result of the Services herein contemplated. Reliance on any information provided by BioScentDX is solely at the Client's own risk. The Services of BioScentDX are provided on an "as is" basis. Client agrees to indemnify and hold harmless BioScentDX from any and all liabilities, claims, demands, injuries (including death), or damages, including court costs and attorney's fees and expenses, which may occur to Client, other participants, Patients, and third-persons as a result of any reliance upon the Services offered by BioScentDX.

2.5 Patient results data will be used by BioScentDX as a part of a research study being conducted with the aim of publishing studies to generate broad acceptance of canine scent detection of cancer by the medical community. Any and all Patient data included in such study will be anonymized.

2.6 All Patients should share their canine scent test screening results with their respective physician.

2.7 BioScentDX shall retain all samples that are screened as general cancer positive but specific cancer (e.g. breast cancer, lung cancer, etc.) negative for twelve (12) months and rescreen the samples at no charge for new specific cancers as they become available under the Canine Scent Detection Services.

3. **Compensation & Expenses.**

3.1 **BioScentDX Compensation.** Client shall pay BioScentDX a fixed fee of \$2,500.00USD for one hundred (100) canine scent test screenings. Additional screenings can be purchased at \$25USD per screening kit. Client



shall be invoiced for such screenings within *ten (10) days* of the Effective Date of this Agreement, and upon receipt of said invoice, Client shall have *thirty (30) days* to submit payment in its entirety for the ordered test screening. Client shall remit payment to BioScentDX via check, ACH or wire transfer. Regardless of whether this Agreement is terminated early for any reason or if Client fails to utilize all canine scent test screenings purchased, BioScentDX shall be entitled to the full amount of the fee defined above.

