

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into as of _____ by and between KCI, Incorporated, a Missouri Corporation, whose address is 1639 Guinotte Avenue, Kansas City, Missouri 64120 (the "Company"), and _____ with offices located _____ ("Professional").

The Company and Professional agree as set forth below.

1. **Scope of Services**

Professional agrees to provide to the Company certain professional services from time to time on a project-by-project basis ("Services"). The parties will set forth the details of each task or project ("Project") to be performed hereunder in a written scope of work ("SOW") which will be incorporated into this Agreement as an amendment prior to start of the work. Professional will perform the Services in accordance with the applicable SOW and any accompanying schedules to the SOW. Professional acknowledges that time is of the essence in this Agreement and agrees that the Services will be completed by the date(s) set forth in the applicable SOW. In the event purchase order(s) are issued in connection with a SOW, any additional or conflicting provisions contained in the form purchase order(s) will not in any way supplement, modify or amend the terms and conditions of this Agreement.

2. **Prior Services**

If Professional has performed work for the Project within the scope of this Agreement before execution of this Agreement, all rights and liabilities of the parties for performance of the prior work are merged and included within and will be governed by the terms and conditions of this Agreement. All compensation due Professional for the prior work is included in the monthly payments, and the Company will have no obligation or liability to Professional for the prior work separate and apart from the terms and conditions of this Agreement.

3. **Content of SOW and Schedules**

The SOW and any accompanying schedules thereto for each Project will describe in detail the specific Services and/or any design, process, or product ("Work Product") to be provided; the schedule of Project completion, including any significant Project milestones; any specifications and/or acceptance criteria applicable to any Work Product or other Project deliverables; the rates Professional will charge for the Services and the total cost of or fee applicable to the Project and any additional terms and conditions which may be appropriate given the nature and scope of such Project called for by the SOW. Each SOW will also identify the Parties' Representatives who will fulfill the role set forth in Section 15, below. Any changes to a SOW, including changes to the timeframes set forth in the SOW, will be documented in a written Change Order (as defined herein).

4. **Change Orders**

Any addition, modification or change to a Project will be documented in a writing executed by the parties ("Change Order"). Such Change Order will amend the applicable SOW and/or accompanying schedules to incorporate the change and will include any modifications that may be necessary to the Project fee and/or Project milestones.

5. Term of Agreement

This Agreement will commence on the date of execution by the parties or commencement of the Services, whichever is earlier, and will continue until completion of work by Professional, unless earlier terminated in accordance with Sections 19 or 21.

6. Design, Project and Professional Responsibility

Professional will be responsible for the professional quality, technical accuracy, timely completion and coordination of all reports and Services rendered and all Work Product delivered by Professional hereunder. Professional will only employ qualified persons for performance of the Services. Professional will perform its Services in accordance with the recognized standards of good practice, exercising that degree of highest care, skill, and ability, which is ordinarily employed by others in Professional's profession under the same or similar conditions. In the event Professional fails to meet such standards, Professional's responsibility to the Company may include at the Company's request, but not be limited to, re-performance of any deficient Services without charge to the Company.

7. Company's Right to Select Project Staff

The Company will be entitled, at its sole discretion, to:

- A. Interview any of Professional's employees, independent contractors and/or subcontractors who Professional intends to assign to any Project.
- B. Make the ultimate determination as to which of Professional's employees, independent contractors and/or subcontractors will be assigned to any Project and
- C. Direct Professional to terminate from the Project, the services of any of Professional's employees, independent contractors and/or subcontractors assigned to any Project.

8. Professional Fees and Payment

The rates applicable to the Services, as well as the total fee for any given Project will be set forth in the applicable SOW. The SOW will also establish the timeframe for payment of any progress payments, including any milestones Professional must have achieved as a condition to receiving progress payments. Payments will be made by the Company to Professional based upon receipt of valid invoices submitted by Professional. The Company will have the right to refuse to pay all or a portion of an invoice until it can verify the accuracy of the invoice, obtain executed lien releases, affidavits or waivers with respect to work covered in the invoice or resolve a dispute with Professional regarding an invoice. The invoices for Services performed will identify the services which were performed, and the percent of work completed. The Company will pay for Services within sixty (60) days of receipt of Professional's invoice and will reimburse Professional for agreed upon reimbursable expenses within sixty (60) days of receipt of verification of such expenses.

9. Subcontractors

To the extent Professional hires subcontractors for performance of any portion of the Services under this Project, Professional will provide the Company with evidence of progress payments to subcontractors and executed lien releases, affidavits or waivers with respect to work covered in Professional's invoice. The Company will also have the right to refuse to pay all or a portion of an invoice until payment to subcontractors is verified.

10. Insurance

Professional will maintain the following insurance in full force and effect during the full term of this Agreement and, with respect to Professional Errors and Omissions Insurance, for five years thereafter:

- I. Worker's Compensation Insurance with full statutory limits.
- II. Employers' Liability Insurance in the amount of \$1,000,000 per occurrence and in the aggregate.
- III. Comprehensive General Liability Insurance (including blanket contractual liability and completed operations coverage) with combined single limits of coverage for bodily injury and death and property damage in the amount of \$2,000,000 per occurrence and in the aggregate; with \$5,000,000 Umbrella Insurance for personal injury and property damage per occurrence and in the aggregate.
- IV. Automobile Liability Insurance for owned and non-owned vehicles with combined single limits of coverage for bodily injury and death and property damage in the amount of \$1,000,000 per occurrence and in the aggregate.
- V. Professional Errors and Omissions Insurance in the amount of \$1,000,000 per claim and in the aggregate

All insurance policies will be cancelable only upon 30 days advance written notice to the Company. The Company will be named as an additional insured on the Comprehensive General Liability and Automobile Liability Insurance policies. Prior to the commencement of the Services hereunder, Professional will provide the Company with certificates of insurance from a reputable insurance company with a Best's rating of A or an equivalent Best's rating, showing that the required coverage is in effect within 10 days after execution of this Agreement and from time to time as necessary during the term of this Agreement. Professional will require all subcontractors under this Agreement to carry the same insurance, with the same limits of coverage as required of Professional and designate the Company as an additional insured under the subcontractor's insurance.

11. Patents/Ownership of Materials

A. Professional will defend suits or claims for infringement of patent rights, copyrights, trademarks or any other proprietary rights and will hold the Company harmless from loss or expenses, including attorney's fees, on account thereof regarding any Work Product provided or specified by Professional under this Agreement, but Professional will not be responsible for such defense or loss when a particular design, process or product has been required to be used by the Company.

B. If Professional or any person, firm or corporation employed by or otherwise connected with Professional, including without limitation Professional's subcontractors, suppliers and their employees (severally or collectively referred to "Professional" in this Paragraph) makes any discovery, invention, trademark, trade name, secret process or improvement in procedure made, conceived or discovered by Professional of value to the Company or to any corporation owning, owned by, or under common ownership with the Company (severally and collectively referred to as the "Company" in this Paragraph) while performing the Services, or if Professional is influential in assisting the Company's employees to make inventions while performing the Services, such inventions, together with any and all letters patent which may issue thereon, are to be and will become the property of the Company and the Company may at its election take out patents in its own name and at its own expense thereon.

C. Any and all Work Product specifically developed by Professional for the Company pursuant to any SOW will be the sole property of the Company and Professional will not sell or license such Work Product to any other party.

12. Confidentiality

A. All information which Professional or any person, firm or corporation employed by or otherwise connected with Professional, including without limitation Professional's subcontractors, suppliers and their employees (severally or collectively referred to as "Professional" in this Paragraph) receives from the Company or Company's employees, any other contractor or subcontractor of KCI or employees of any such other contractors or subcontractors (severally or collectively referred to as "the Company" in this Paragraph) or which Professional learns by observation of all or any portion of the work, under or pursuant to this Agreement will be considered confidential and maintained as a trade secret and Professional will neither use such information, except pursuant to and in accordance with the terms and conditions of this Agreement, nor disclose such information to any third party without the prior written consent of the Company. In addition, after completion of the Services, Professional will not use or disclose any such information to anyone.

B. Professional will: (i) make known to all of its employees and employees of all firms or corporations employed by or otherwise connected with Professional, including without limitation Professional's subcontractors and suppliers, who may perform work for the Company hereunder or to whom confidential information may be disclosed, the terms and conditions of this Agreement.

C. Information received by Professional from the Company will not be considered confidential or required to be maintained as a trade secret if and to the extent that the information:

(i) was already known to Professional at the time of its receipt from the Company; (ii) is or becomes, through no fault of Professional, in the public domain; (iii) is subsequently disclosed to Professional without restriction by a third party which has the lawful right to disclose such information; or (iv) is independently developed by Professional and Professional can demonstrate such independent development to the Company's satisfaction. Disclosure of certain information in a publication, such as a patent, will not, in and of itself, free Professional from its obligation to keep information confidential hereunder with respect to any information not specifically disclosed in or ascertainable from the publication.

13. Warranty

Professional warrants that: (a) all Services will be performed in accordance with the recognized standards of good practice, exercising that degree of highest care, skill, and ability which is ordinarily employed by members of its profession under the same or similar conditions; (b) any Work Product specifically developed by Professional for the Company will: (i) be merchantable, of good material and workmanship, free from defects and will be fit and sufficient for the purpose intended and (ii) conform to the applicable specifications and perform in accordance with the performance requirements set forth in such specifications. If any defects in the Services and/or Work Product appear within one year of completion of the applicable Service or, in the case of Work Product, acceptance of such Work Product, Professional will without undue delay, re-perform such Service(s) or, in the case of Work Product, repair, replace or modify such Work Product at its own cost so as to correct said warranty breach. This Section will not be deemed to relieve Professional from liability as provided for by applicable law for any period exceeding such one year warranty.

14. Indemnification

Professional will indemnify and hold harmless the Company, any parent or affiliated corporations of the Company and their directors, officers, employees, consultants and agents or any of them from and against claims, damages, losses and expenses, including attorneys' fees, arising out of or resulting from performance of the Services, but only to the extent caused by the Professional, its subcontractors or employees or anyone directly or indirectly employed by them or anyone for whose acts or omissions they may be liable. In claims against any person or entity indemnified hereunder by an employee of the Professional, a subcontractor, anyone directly or indirectly employed by either of them or anyone for whose acts they may be liable, the indemnification obligation hereunder will not, except as provided above, be limited by compensation or benefits payable by or for the Professional or a subcontractor under worker's or workmen's compensation acts, disability benefit acts or other employee benefit acts.

15. Parties' Representatives

Prior to commencement of the Services, each party will designate and describe the scope of authority in writing of one or more Representatives who will make, within the scope of their authority, all necessary and proper decisions with reference to the Services. All requests for Agreement interpretations, changes, and other clarifications or instructions will be directed to the Parties' Representative with authority over the subject matter of the request.

16. Weekly Report

Commencing seven (7) days after commencement of work hereunder and every seven (7) days thereafter or as required by the Company's representative, Professional will provide the Company with a written report of the status of the Services. Failure to provide any required weekly report may, at the option of the Company, suspend the processing of any progress payment request.

17. Acceptance Not Waiver

The Company's review of studies, drawings, designs, plans, specifications, reports, computer programs and other work or materials furnished hereunder will not in any way relieve Professional of responsibility for the technical accuracy of the Services. The Company's review or acceptance of, or payment for, any Services hereunder will not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

18. Suspension

The Company will have the right at any time to suspend all or any portion of the performance of the Services upon two working days prior written notice to Professional. In the event of such a suspension, Professional will suspend performance of the Services in accordance with the written notice. The schedule and fee for performance of the Services will be equitably adjusted in the event of suspension by the Company.

19. Termination for Convenience

The Company will have the right to terminate this Agreement or any individual Project for its convenience at any time upon written notice to Professional. Upon such termination, the Company will pay Professional for all Services performed hereunder up to the date of termination. The Company will be liable for any other reasonable documented costs to Professional in the event of such termination of this Agreement by the Company.

20. Default

In the event either party fails or refuses to perform according to the material terms of this Agreement, such party may be declared in default thereof by the other party by a written notice.

21. **Termination for Cause**

A. **By the Company.** In the event Professional fails to cure a default within five (5) business days of receiving the Company's notice of default pursuant to Section 20, the Company may, in addition to any other remedies to which it may be entitled, terminate the Agreement immediately upon written notice. In the event Professional fails or neglects to perform the Services in accordance with this Agreement, the Company may elect to make good such deficiencies and charge Professional for the full cost thereof. In the event of default hereunder by either party, which will result in litigation, the prevailing party will be entitled to recover reasonable attorneys' fees and costs.

B. **By Professional.** In the event the Company fails to pay any undisputed amounts owed to Professional when due, and the Company fails to cure such payment default within thirty (30) days of receipt of Professional's notice of default pursuant to Section 20, Professional may, in addition to any other remedies to which it may be entitled, terminate this Agreement immediately upon written notice.

22. **Laws, Regulations and Permits**

Professional will comply with all applicable federal, state or provincial and local codes, statutes, rules, regulations, ordinances, permits and orders in its performance of the Services under this Agreement. Professional will provide to the Company any certification the Company reasonably requests in order to evidence compliance with one or more of said provisions.

23. **Company's Audit Rights**

The Company will have the right to audit the account books and other records of Professional related to the Services at any time during the period of this Agreement and two years after the completion of the Services under this Agreement. Professional will retain all such account books and records for at least two years after the completion of the Services under this Agreement.

24. **Independent Contractor**

Nothing herein will be construed to make Professional an agent or employee of the Company. Professional will in all respects be an independent contractor of the Company. Professional will in no way represent himself to third parties as an agent or employee of the Company in performance of the Services.

25. **Assignment and Subcontracting**

Professional will not assign or subcontract with any other person or firm for the performance of any of the Services hereunder without the prior written approval of the Company. All work under this Agreement will be performed under Professional's direct supervision and control. This Agreement will bind and inure to the benefit of the parties hereto and their respective successors and assigns. This Agreement is intended to benefit only the parties hereto and neither subcontractors nor suppliers of Professional hereunder nor any other person or entity is intended by the parties hereto to be a third party beneficiary of the Agreement.

26. **Use of Payments Under Agreement**

Payments by the Company to Professional under this Agreement constitute compensation for services performed hereunder. This Agreement, the payments hereunder, and the use of the payments hereunder by Professional do not and will not constitute an offer, payment or promise, or authorization of payment, of any money or gift to an official or political party of, or candidate for political office, in any jurisdiction within or outside the United States. Payments under this Agreement will not be used to influence any act or decision of an official, party or candidate to use his, her or its influence with a government to assist the Company in obtaining, retaining, or directing business to the Company, or any person or other corporate entity affiliated with the

Company. As used in this Paragraph, "official" means any officer or employee of a government and "government" includes any department, agency or instrumentality of a government.

27. Force Majeure

Neither party will be liable to the other party for any delay or inability to perform to the extent that such delay or inability to perform was caused by a force majeure event including acts of God, war, civil disturbance, Governmental action, computer virus or denial of access to the site or any other event beyond the reasonable control of the claiming party. Performance under this Agreement will resume promptly once the cause of delay or inability to perform ceases and an equitable adjustment will be made to the schedule of Services, if applicable.

28. Severability

If any provision of this Agreement is held invalid by a court of competent jurisdiction, such provision will be severed from this Agreement and to the extent possible, this Agreement shall continue without affect to the remaining provisions.

29. Governing Law

This Agreement and the rights and obligations of the parties hereto will be governed by, and construed according to, the laws of the State of Missouri, excluding any conflict of laws principles that would require application of the laws of another jurisdiction.

30. Arbitration

A. Any dispute or claim arising out of, or relating to the SOW breach or performance thereof, shall be settled by arbitration in accordance with the Arbitration Rules of the American Arbitration Association currently in effect, unless the parties mutually agree otherwise.

B. The decision and award of the Arbitrators shall be final and binding upon both parties, and judgements may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

C. This section shall not be deemed a limitation of rights or remedies which the Professional may have under federal law, under state mechanic's lien law or under applicable labor or material payment bonds unless such rights or remedies are expressly waived by the Professional.

D. Such arbitration shall take place in the State of Missouri, only, exclusive of all other States.

E. The Parties shall continue to perform all of their obligations under this Agreement during the course of any arbitration proceeding.

31. Entire Agreement

This Agreement constitutes the entire agreement between the Company and Professional regarding the subject matter hereof and replaces all prior written or oral agreements and understandings. It may be altered, amended, or repealed only by a duly executed written instrument signed by both parties, which expressly states the intent to alter, amend or repeal this Agreement.

32. Notice

Any notices required to be given under this Agreement must be in writing, and will be deemed to have been duly given (a) when delivered personally to the other party to who addressed or (b) upon receipt when sent by

United States mail, postage prepaid, as certified or registered mail, properly addressed as follows or (c) upon confirmation when sent by facsimile transmission and receipt is confirmed by return facsimile transmission:

If to Company: any:

KCI, Incorporated 1639
Guinotte Ave. Kansas
City, MO 64120
Phone: 816-471-0500
Fax: 816-471-2263
Attn.: Doug Barton

If to Professional:

In Witness Whereof, the parties have executed this Agreement as of the date written.

Company

Professional

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

Professional Services Agreement

EXHIBIT A
SCOPE OF WORK STATEMENT
TO PROFESSIONAL SERVICES AGREEMENT DATED:

PAGE INTENTIONALLY LEFT BLANK
PARTIES TO JOINTLY DEFINE A SCOPE OF WORK FOR EACH
PROJECT AND AMEND THE AGREEMENT TO INCORPORATE