

**THIS LICENSE AGREEMENT** dated as of the 14<sup>th</sup> day of June, 2018 (the "**Effective Date**") is made between Avicanna Inc. ("**Avicanna**") and King's Garden LLC ("**King's Garden**"), a California limited liability company.

**RECITALS:**

- A. Avicanna has developed and has control of the Technology (as this term and other capitalized terms in this preamble are hereinafter defined), which can be used to manufacture the Products.
- B. Avicanna owns and controls the Avicanna Marks
- C. King's Garden holds all Licenses required for the manufacture and sale of the Products in California in accordance with Applicable Law.
- D. The Licenses and Applicable Law require that only employees of King's Garden are permitted to conduct the activities authorized by the Licenses, which include the manufacture of the Products.
- E. Avicanna desires to safeguard the confidentiality of, and its rights to, its Intellectual Property Rights, the Technology, and the Products by requiring any manufacture of the Products to be conducted by Key Designated Employees and King's Garden desires to accommodate Avicanna's desire.
- F. Subject to the terms and conditions hereof, King's Garden desires to obtain from Avicanna and Avicanna desires to grant to King's Garden, the right to utilize Avicanna's Technology and Marks in connection with the production and sale of the Products in the California cannabis market, in strict compliance with Applicable Law.

**NOW THEREFORE**, in consideration of the premises and the mutual agreements hereinafter set out and of other consideration (the receipt and sufficiency of which are acknowledged by each Party), the Parties covenant and agree as follows:

**1. INTERPRETATION**

- (a) Definitions: In this Agreement and the schedules annexed hereto, the following terms shall have the respective meanings indicated below.

"**Agreement**" shall mean this Technology License Agreement, including the preamble, annexes, schedules and all amendments or restatements, as permitted.

"**Applicable Law**" means any and all applicable local, state and federal laws, rules and regulations; provided, however, that notwithstanding anything to the contrary contained herein, the CSA shall for purposes hereof not constitute an Applicable Law, and a violation of the CSA shall not be deemed to constitute non-compliance with Applicable Law as used herein.

"**Avicanna Marks**" mean those Trademarks of Avicanna set out in Schedule "B" attached hereto.

"**Business Day**" means any calendar day except for Saturday or Sunday or any statutory holiday observed in the State of California.

"**CBD**" means the cannabinoid found in the cannabis plant known as "Cannabidiol".

"**Certificate of Analysis**" means the documentation issued upon the completion of third party analytical testing of any of the Products, or CBD and THC used to manufacture the Products, that confirms compliance with regulatory specifications.

"**Claims**" means any claim, demand, dispute, controversy or cause of action.

**"Confidential Information"** shall mean any and all information, whether written, graphic, electronic, communicated orally or otherwise disclosed by or on behalf of Avicanna (**"Disclosing Party"**) to King's Garden (**"Recipient"**) pursuant to this Agreement which at the time of disclosure is identified as confidential or is reasonably understood as being confidential or proprietary to the Disclosing Party. Such Confidential Information shall specifically include but shall not be limited to (i) the Technology and all related technical information, designs, data and plans, whether or not disclosed to Recipient (ii) information relating to the business and industries strategies of the Disclosing Party; and (iii) any financial information regarding the Disclosing Party. Confidential Information shall exclude information which the Recipient can show by competent evidence: (i) is or becomes public or generally available in the industry otherwise than through the fault of the Recipient; (ii) is obtained by the Recipient from a third party who is lawfully in possession of such Confidential Information and is not subject to an obligation of confidentiality or non-use owed to the Disclosing Party; (iii) is previously known to the Recipient prior to disclosure to the Recipient by or on behalf of the Disclosing Party and not obtained or derived directly or indirectly from the Disclosing Party; or (iv) is independently developed, discovered or arrived at by the Recipient without use of the Confidential Information; provided in the case of (iii) and (iv) Recipient shall have the onus of proving such prior knowledge or independent development with clear and convincing evidence.

**"CSA"** means 21 U.S.C. § 811, et seq. and all regulations promulgated thereunder.

**"Digital Files"** shall have the meaning ascribed to it in Section 3(a)(ii).

**"Direct Taxes"** means all taxes paid by King's Garden, which directly and exclusively relate to the production and sale of the Products, including, without limitation, any cannabis related taxes imposed, such as California excise tax, and sales tax, local cannabis-related taxes and excise fees, and all other applicable local, State or Federal taxes, including, but not limited to, sales, use, receipts, excise, remittance, and VAT.

**"Effective Date"** means the date first noted above.

**"GMP Standards"** means the good manufacturing standards commonly used for the manufacture and production of products similar to the Products.

**"Governmental Authority"** means any domestic or foreign government, whether federal, provincial, state, territorial or municipal; and any governmental agency, ministry, department, tribunal, commission, bureau, board or other instrumentality exercising or purporting to exercise legislative, judicial, regulatory or administrative functions of, or pertaining to, government.

**"Gross Receipts"** means the gross amount of monies, income, consideration and compensation actually received by King's Garden specifically and identifiably related to King's Garden's production and sale of the Products.

**"Guidelines"** shall have the meaning ascribed to it in Section 4(g) and Schedule "C".

**"Improvements"** shall mean any and all further innovations, inventions, ideas, designs, concepts, discoveries, developments, new derived material and modifications or enhancements related to or concerning the Technology and Products, whether or not patentable, or otherwise protectable as trade secrets or under any other Intellectual Property Right regime.

**"Initial Production Run"** shall have the meaning ascribed to it in Section 4(b)(ii).

**"Intellectual Property"** means any property, tangible or intangible, that may be subject to Intellectual Property Rights, including without limitation, ideas, formulae, algorithms, concepts, techniques, processes, procedures, approaches, methodologies, plans, systems, research, information, documentation, data, data compilations, specifications, requirements, designs, diagrams, programs, inventions, technologies, software, tools, products knowledge, know-how, including without limitation, trade secrets, and other materials or things.

**"Intellectual Property Rights"** means (a) any and all proprietary rights anywhere in the world provided under (i) patent law; (ii) copyright law, including Moral Rights; (iii) trademark law; (iv) design patent or industrial design law; (v) semiconductor chip or mask work law; (vi) trade secret law; (vii) privacy law; or (viii) any other statutory provision or common law principle applicable to this Agreement which may provide a right in either (A) Intellectual Property; or (B) the expression or use of Intellectual Property; and (b) any and all applications, registrations, licenses, sub-licenses, franchises, agreements or any other evidence of a right in any of the foregoing.

**"Key Designated Employee"** shall have the meaning ascribed to it in Section 3(c).

**"Licensed Premises"** means certain real property, wherein the Products shall be manufactured by the Key Designated Employees in accordance with this Agreement and Applicable Law pursuant to Licenses held, in good standing, by King's Garden.

**"Licenses"** means: both: (i) any and all approvals, permits, authorizations, certifications, and/or licenses required by local municipal law to engage in commercial cannabis activity at the Licensed Premises; and (ii) licenses required to engage in commercial cannabis activity at the Licensed Premises granted by the applicable California state Licensing Authorities.

**"Licensing Authorities"** means the Bureau of Cannabis Control, the California Department of Food and Agriculture (CalCannabis Division), and the California Department of Public Health (Manufactured Cannabis Safety Branch).

**"Licensed Items"** means the Technology, the Products and the Avicanna Marks

**"Marks Royalty"** shall have the meaning ascribed to it in Section 6(b).

**"List"** shall have the meaning ascribed to it in Section 3(a).

**"Net Profits"** means Gross Receipts after deduction by King's Garden of all Direct Taxes.

**"Notification"** shall have the meaning ascribed to it in Section 4(b)(vi).

**"Party"** means either Avicanna or King's Garden; and "Parties" means both of them.

**"Person"** means any individual, sole proprietorship, partnership, unincorporated association, unincorporated syndicate, unincorporated organization, limited liability company, corporation, body corporate, trustee, trust, Governmental Authority or other entity or organization.

**"Products"** means, collectively, those products, apparatus or parts thereof set out and described in Schedule "A" attached hereto, the manufacture, use, import, offer for sale, sale, lease, export, and/or distribution of which, but for the license granted in this Agreement, would infringe the Technology. From time to time, the Parties may by mutual agreement amend Schedule "A" to include additional Products".

**"Products Royalty"** shall have the meaning ascribed to it in Section 6(a).

**"Production Room"** shall have the meaning ascribed to it in Section 4(e).

**"Production Run"** the production and manufacture of the Products by Key Designated Employees to provide the most cost-efficient quantity of units of the Products in a particular time period;

**"Production Run Fee"** shall have the meaning ascribed to it pursuant to Section 4(b)(iv).

**"Remaining Amount"** shall have the meaning ascribed to it pursuant to Section 8(c)(ii).

**"Royalties"** means both the Product Royalties and Marks Royalties referenced together.

**"SOPs"** means, collectively, any internal documentation, standard operating procedures or similar information, as reasonably required for the manufacture of products.

**"Target Supply"** shall have the meaning ascribed to it in Section 4(b)(i).

**"Technology"** shall mean the highly confidential and commercially valuable trade-secrets of Avicanna used to manufacture and produce the Products.

**"Term"** shall have the meaning ascribed to it in Section 12(b).

**"Territory"** shall mean the State of California in the United States of America.

**"THC"** means the cannabinoid found in the cannabis plant known as "Tetrahydrocannabinol".

**"Trademarks"** means trademarks, trade names, corporate names, company names, business names, fictitious business names, service marks, certification marks, collective marks, domain names, trade dress, logos, design elements, indicia of origin, and other forms of business identifiers of a Person.

**"Wrongful Act"** shall have the meaning ascribed to it in Section 8(c).

- (b) Headings: The division of this Agreement into articles, sections, schedules and other subdivisions, the inclusion of headings and the provision of a table of contents are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. The headings in the Agreement are not intended to be full or precise descriptions of the text to which they refer. Unless something in the subject matter or context is inconsistent therewith, references herein to Articles and Sections are to Articles and Sections of this Agreement.
- (c) Currency: Unless otherwise specified, all references to monetary amounts, including the symbol "\$", are in respect of American currency.
- (d) Schedules: The following Schedules are a part of and are integral to this Agreement:
  - Schedule "A" - Products.
  - Schedule "B" - Avicanna Marks.
  - Schedule "C" - Avicanna Marks Guidelines.
  - Schedule "D" - Sales Milestones.

## 2. GRANT OF RIGHTS

- (a) Exclusive License: Subject to the terms and conditions of this Agreement, and the reserved rights in 2(b)-(d), Avicanna hereby grants to King's Garden for the duration of the Term, an exclusive, non-transferable, non-assignable, limited license to
  - (i) manufacture the Products at the Licensed Premises by Key Designated Employees, provided that the Key Designated Employees shall perform such manufacture in strict compliance with the Technology and Applicable Law and no other persons, other than the Key Designated Employees, shall have access to the Technology;
  - (ii) to market, distribute, sell or otherwise transfer the Products, in the Territory in compliance with all Applicable Laws, subject to meeting the milestones pursuant to Section 2(d) and Schedule "D"; and
  - (iii) use, display the Avicanna Marks (in any media, including electronic media), and to communicate by telecommunication the Avicanna Marks solely within the Territory and solely in connection with

the production, manufacture, advertising, performance, promotion, sales and distribution of the Products in the Territory and for no other products or services

(b) Reservation of Rights:

- (i) Restrictions Regarding Grant: Any rights not granted herein are strictly reserved by Avicanna. Without limiting the generality of the foregoing, King's Garden shall not attempt to obtain, or reverse engineer the Products to obtain, the Technology. King's Garden will not market, distribute, ship or sell Products outside the Territory, nor market, sell or permit the sale of the Products other than as permitted by Applicable Law, nor knowingly sell the Products to any Person who intends to violate this restriction. King's Garden shall be responsible for ensuring compliance with these restrictions. King's Garden shall not make any changes, amendments or modifications to the Products or the packaging and instructions with the Products, without the prior written approval of Avicanna. In addition to the foregoing, King's Garden shall not, and this Agreement and the grant above shall not be interpreted or construed as permitting King's Garden to develop or make any Improvements, or use the Technology or Products to make, develop, reproduce, manufacture, distribute, commercialize, market, sell, lease, or otherwise transfer goods, merchandise artifacts or other products that compete with the Products
- (ii) No Further Grant: King's Garden acknowledges that it has no right, interest or title in the Technology or other proprietary rights of Avicanna, other than the license granted herein. This Agreement shall not be interpreted or construed as granting to King's Garden any rights, express or implied, by estoppel or otherwise, to any patents, patent applications, technology, copyrights, inventions, methods, technical information, confidential information, proprietary information, expertise, know-how, trade secrets or knowledge not specifically licensed under this Agreement. The words used in this section are intended to have their broadest possible meanings and are not to be limited by the definitions set forth herein.

(c) Appointment: For the duration of the Term, and subject to Section 2(d), King's Garden is hereby appointed Avicanna's exclusive producer, manufacturer and distributor of the Products in the Territory. King's Garden hereby accepts its appointment as the exclusive producer, manufacturer and distributor of the Products in the Territory upon and subject to the terms and conditions set forth herein.

(d) Milestones: King's Garden shall maintain the appointment described in Section 2(c) by meeting the milestones outlined in Schedule "D". In the event King's Garden is not able to meet the milestones set out in Schedule "D", at Avicanna's sole option this Agreement may proceed on a non-exclusive basis for the remainder of the Term.

3. **AVICANNA'S OBLIGATIONS**

(a) Deliverables: Within ten (10) Business Days of the Effective Date, Avicanna will provide King's Garden with:

- (i) access to the Technology and a list of chemicals, equipment, packaging, materials (aside from CBD and THC), and SOPs to meet quality control ("**QC**"), quality assurance ("**QA**"), and GMP Standards (a "**List**") necessary for the production of Products. Avicanna may organize such List based on the production, storage and delivery cycle of the Product (e.g. production, storage, packaging, etc.). King's Garden will be responsible, at its own cost, to procure, purchase and install the required equipment, materials, and supplies and have the equipment and supplies available to meet the agreed upon Production Run; and
- (ii) all necessary digital marketing files relating to the Avicanna Marks and the Products including but not limited to:
  - A. product labels;

B. product packaging; and

C. product brochures

(collectively the "**Digital Files**").

- (b) Production Room Design: Avicanna will provide site designs of the Production Room and will work in consultation with a local engineer provided at King's Garden's cost.
- (c) Key Designated Employees: Avicanna shall permit certain of its personnel to be employed by King's Garden whose sole job function is to manufacture the Products at the Licensed Premises ("**Key Designated Employees**").
- (d) Training: Avicanna shall provide training and information sessions to educate the King's Garden sales team about the Products.
- (e) PR and Marketing Support:
  - (i) Avicanna shall provide support to King's Garden relating to:
    - A. any public relations matters; and
    - B. any related marketing efforts.
  - (ii) To assist in King's Garden's sales efforts of the Products, Avicanna shall create a marketing plan for King's Garden.
- (f) Avicanna shall commit a minimum of one hundred thousand dollars (\$100,000.00) per year of the Agreement, to be allocated, at Avicanna's sole discretion, to an annual marketing campaign of the Products within the Territory. Notwithstanding the foregoing, Avicanna shall meaningfully consult with King's Garden with respect to same.

#### 4. **KING'S GARDEN'S OBLIGATIONS**

- (a) Key Designated Employees:
  - (i) King's Garden shall employ Key Designated Employees, as directed in writing by Avicanna;
  - (ii) The Key Designated Employee shall report to King's Garden's Licensed Premises manager. Notwithstanding the foregoing, King's Garden shall not require any Key Designated Employee to disclose any Avicanna Confidential Information, or information related to Avicanna Intellectual Property, the Technology, or the manufacture of the Products to King's Garden or any King's Garden director, officer, employee, agent, or other personnel;
  - (iii) Employment agreements shall be signed by King's Garden and Key Designated Employees and those agreements shall clearly:
    - A. make reference to this Agreement;
    - B. indicate that the Key Designated Employee's sole role and job function is to manufacture the Products at the Licensed Premises;
    - C. indicate that the Key Designated Employee is manufacturing the Products pursuant to the limited license granted to King's Garden in this Agreement per Section 2(a);

- D. indicate that the Technology and any Improvements of the Technology is and will be owned by Avicanna to the exclusion of all others;
- E. indicate that the Key Designated Employee shall maintain the confidentiality of any of Avicanna's Confidential Information and especially any information related to the Technology and the manufacture of the Products; and,
- F. lay out terms that are consistent with the terms and spirit of this Agreement and not in conflict with any contract between Avicanna and that Key Designated Employee.

(b) King's Garden shall work with Avicanna to:

- (i) Estimate reasonable Production Runs and, therefore, the necessary supply chain management required for such production and estimate the number of Products that will need to be produced to meet distribution needs as reasonably determined by King's Garden and reasonable market demands (a "**Target Supply**").
- (ii) Determine the initial Target Supply to produce an estimation of a twelve (12) month sales projection ("**Initial Production Run**").
- (iii) Produce and manufacture the Products to meet the Target Supply.
- (iv) Production Run Fee: Kings Garden will pay Avicanna a per diem rate of \$1,000.00 per Key Designated Employee individual required to conduct a Production Run and will pay for all reasonable travel and accommodation expenses incurred by Avicanna during a Production Run (the "**Production Run Fee**").
  - A. Avicanna will waive a maximum of four (4) Production Run Fees for the first twelve (12) month period of the Term and will waive a maximum of two (2) Production Run Fees per twelve (12) month period for the remainder of the Term.
  - B. Avicanna may, in its sole discretion, waive any or all additional Production Run Fees.
- (v) Conduct Production Runs prior to running out of the supply of Products. All Production Runs will be conducted by Key Designated Employees. Production Runs shall also include any follow up site visits by Key Designated Employee to check on the manufacture of the Products, for packaging, or for any other purpose as determined by Avicanna.
- (vi) Provide Avicanna with at least three (3) months notice of a Production Run before selling out of current inventory of a particular Product (the "**Notification**"). During this stage, Avicanna and King's Garden will work together to determine production needs for the other Products, to minimize the number of Production Runs required for the calendar year and to reasonably assess market demands;
  - A. Within five (5) Business Days of the Notification, Avicanna will provide King's Garden with a List for the Production Run, based on the Notification, and King's Garden will allow for a reasonable amount of time for the items on the List to arrive at the Licensed Premises. Avicanna and King's Garden shall use best efforts to schedule the Production Run within a reasonable time taking into account King's Garden's current inventory at the time and current rate of sales of the Products.
- (vii) Ensure fulfillment of a Production Run within two (2) months of Notification, taking into account current inventory levels and schedules of King's Garden and the Key Designated Employees.

- (viii) Obtain any necessary government required security clearances for the Key Designated Employees.
- (ix) The Key Designated Employees will use all reasonable efforts to carry out all production work consistent with GMP Standards. King's Garden acknowledges that the Key Designated Employees may not be able to fully meet the GMP Standards if King's Garden does not fulfill its obligations regarding providing the necessary manufacture and equipment facilities. The Key Designated Employees shall comply with Applicable Law with respect to the manufacture of cannabis products. For any information not publicly available, the Key Designated Employees will rely on King's Garden's documentation or information that would be applicable for the manufacture and sale of the Products and which King's Garden used or developed, which forms part of King's Garden's Licenses for the manufacture and sale of the Products.
- (c) Information to Avicanna: King's Garden shall provide Avicanna with information of which it has knowledge regarding legal and regulatory requirements applicable to the Products, instruct and assist Avicanna with regard to all legal and regulatory requirements including, but not limited to Applicable Laws, regulations, ordinances, regulatory guidelines and guidance which are necessary for and related to the manufacture and approval for sale of the Products. In addition, upon request, King's Garden shall provide Avicanna with a copy of any of King's Garden's SOPs insofar as they relate to the manufacture or sale of the Products.
- (d) State of California Approvals:
  - (i) To the extent required by Applicable Law, King's Garden shall undertake to have Products approved for sale in the Territory. In that regard, to the extent required, King's Garden will provide to Avicanna the necessary requirements as mandated by the relevant Governmental Authority and Licensing Authority for the sale of the Products in the Territory, including requirements related to:
    - A. formulation restrictions;
    - B. additives;
    - C. dosages;
    - D. analytical requirements, in house testing or access to send samples out for third party testing;
    - E. testing requirements;
    - F. clinical requirements;
    - G. packaging and labelling requirements; and
    - H. any other requirements necessary to obtain approval from the relevant Governmental Authority and Licensing Authority.
  - (ii) King's Garden shall inform Avicanna immediately of any circumstances it becomes aware of which may have a material influence on the manufacture, sale, or safety of Products.
  - (iii) King's Garden shall maintain all necessary Licenses for the manufacture and sale of the Products and, where necessary, shall apply to the relevant Governmental Authority and Licensing Authority for, and obtain further, Licenses. In the event any of the aforementioned Licenses are revoked, cancelled, or otherwise not renewed, for any reason whatsoever, King's Garden will notify Avicanna forthwith and will take all immediate measures available to bring such necessary Licenses back in to good standing. Upon request, King's Garden shall provide Avicanna with proof of all Licenses



necessary for the manufacture and sale of the Products to be reviewed and accepted at Avicanna's sole discretion.

- (e) Production Room: King's Garden shall provide a dedicated area not less than two thousand (2,000) square feet for the Key Designated Employees to produce and manufacture the Products (the "**Production Room**"). King's Garden shall be responsible for all costs associated with the construction and design of the Production Room including, but not limited to, all architectural and contractor fees. King's Garden will design the Production Room according to the specifications provided by Avicanna. King's Garden will ensure that the Production Room receives all required local and/or state certification and approvals for Key Designated Employees to conduct Production Runs. Use of the Production Room will remain exclusive to the Key Designated Employees for the Term.
- (f) Packaging, Labeling and Marketing Regulatory Compliance. King's Garden shall provide input to Avicanna regarding the Digital Files and outline any regulatory restrictions relating to marketing, advertising, labelling, branding, or packaging applicable to the Territory pursuant to Applicable Law. Prior to production or sale of any Product or publication of any marketing material, King's Garden shall confirm that the applicable material complies in all respects with Applicable Law.
- (g) Guidelines: King's Garden shall use the Avicanna Marks in the manner and form as prescribed by Avicanna as set out in Schedule "C" (the "**Guidelines**").
- (h) Trademark Notices: King's Garden shall ensure that all Products sold by King's Garden and all related quotations, specifications, and descriptive literature, and all other materials carrying the Mark, be marked with the appropriate trademark notices, as set forth in the Guidelines, in accordance with Avicanna's instructions.
- (i) Co-Branding: When selling the Products, King's Garden will co-brand the Products with Avicanna Marks prominently displayed alongside any King's Garden Trademarks.
  - (i) All co-branding to be displayed on Product packaging or any other advertising and marketing efforts shall be determined by mutual agreement of Avicanna and King's Garden, acting reasonably.
  - (ii) King's Garden shall be permitted to include a small image, or proprietary mark on all Product packaging.
- (j) Standards:
  - (i) King's Garden shall follow all requirements and guidelines provided by Avicanna and meet all minimum Avicanna standards for quality, including:
    - A. analytical testing of all THC and CBD, with testing during and post-production to ensure that Avicanna's standards are met;
    - B. sourcing of recommended equipment, materials and inputs;
    - C. packaging; and
    - D. following and complying with the SOPs, as approved by Avicanna.
  - (ii) King's Garden acknowledges and is familiar with the high standards, quality, style and image of Avicanna, and King's Garden shall at all times, use any Avicanna Marks in a manner consistent with these standards, quality, style and image and in accordance with the Guidelines. King's Garden shall comply with Avicanna's specifications, standards and directions relating to the Products, including their character, quality, design, manufacture, advertising, performance,

promotion, packaging, distribution and sale as provided to King's Garden in writing from time to time.

- (k) Equipment/Materials: King's Garden will procure/purchase all required equipment, materials, and supplies, as provided in a List by Avicanna, and have same installed and ready for use in advance of any production or other step in the production and sales process, as outlined by Avicanna.
- (l) Sourcing CBD: King's Garden will source, and procure/purchase all CBD, in either distilled or isolated forms, required for the production of the Products. All CBD must be analytically tested by a third party and the applicable Certificate of Analysis approved by Avicanna.
- (m) Sourcing THC: King's Garden will provide all THC, in either distilled or isolated forms, required for the production of the Products. All THC must be analytically tested by a third party and the applicable Certificate of Analysis approved by Avicanna.
- (n) Analytical Testing: King's Garden will cause all materials, Product samples, or any other item, as reasonably identified by Avicanna to be tested by a third party analytical testing facility, in compliance with Applicable Law, and will ensure that the proper accompanying documentation is made available to Avicanna.
- (o) Sales: King's Garden will make best efforts to meet the sales milestones set forth in Schedule "B".
- (p) Compliance with Laws: In exercising its rights under this Agreement, King's Garden shall comply with, and shall ensure that each Product, and the production, manufacture, advertisement, performance, promotion, and sale of Products by King's Garden complies with all Applicable Laws. King's Garden shall promptly provide Avicanna with copies of all communications, relating to the Products, with any Governmental Authority.

## 5. **QUALITY CONTROL**

- (a) Inspection of Facilities: To the extent permitted by Applicable Law, not more than once per calendar year of the Term, and upon reasonable prior written notice from Avicanna, King's Garden shall permit, Avicanna or its delegates at all reasonable times to enter any place used for the production, manufacture, performance, sale, storage or distribution of the Products to inspect the Product and the methods of production, manufacture, performance, sale, storage, and distribution to ensure compliance with the specifications, standards, and directions provided by Avicanna or any other requirements provided by this Agreement. Avicanna shall undertake such inspection without undue disruption to King's Garden's operations.
- (b) Remediation: If Avicanna determines that King's Garden is not complying with the required standards set out herein, Avicanna shall provide written notice to King's Garden of such determination together with a description of the deficiencies. King's Garden shall, within thirty (30) calendar days of receipt of such notice, provide Avicanna with a written plan by which it will rectify the deficiencies and implement same.

## 6. **CONSIDERATION**

- (a) Products Royalty: As consideration for the license to manufacture and market granted pursuant to Section 2(a)(i) and Section 2(a)(ii), King's Garden shall pay Avicanna an ongoing royalty equal to nine percent (9%) of the Net Profits charged and collected by King's Garden from the sale of the Products (the "**Products Royalty**"). The Products Royalty shall be calculated and paid on a calendar quarterly basis. Within thirty (30) days after the end of each calendar quarter, King's Garden shall submit to Avicanna a report detailing the Net Profits collected in the immediately preceding calendar quarter. All accounts, both financial and inventory, will be reconciled on an annual basis to track applicable Product Royalties.

- (b) Marks Royalty: As consideration for the license to use the Avicanna Marks granted pursuant to Section 2(a)(iii), King's Garden shall pay Avicanna an ongoing royalty equal to one percent (1%) of the Net Profits charged and collected by King's Garden from the sale of the Products (the "**Marks Royalty**"). The Marks Royalty shall be calculated and paid on a calendar quarterly basis. Within thirty (30) days after the end of each calendar quarter, King's Garden shall submit to Avicanna a report detailing the Net Profits collected in the immediately preceding calendar quarter. All accounts, both financial and inventory, will be reconciled on an annual basis to track applicable Marks Royalties.
- (c) Separate Accounting of Royalties: The Parties agree that King's Garden shall prepare separate accounting statement for the Products Royalty and the Marks Royalty, and the accounts for such Royalties shall be prepared, paid and accounted separately and distinctly.
- (d) Taxes: King's Garden shall pay any and all Direct Taxes, however designated or incurred, which are paid or payable as a result of or otherwise in connection with the transactions contemplated in this Agreement, except for any taxes based on Avicanna's net income.
- (e) Interest on Late Payments: Where King's Garden fails to pay any amount in accordance with the terms of this Article 6, Avicanna shall have the right, in addition to any other rights or remedies available to it, to charge, and King's Garden shall pay, interest on such overdue amounts at the rate of ten percent (10%) per year, calculated daily, compounded monthly, both before and after any court judgement in respect of the same from the date such payment was due.
- (f) Audit: Avicanna may, at its expense and upon thirty (30) days prior written notice, audit such records, documentation or files, including financial records and documentation, of King's Garden that evidence compliance by King's Garden of this Agreement, including the calculation and remittance of the appropriate Royalties. To the extent permitted by Applicable Law, any such audit shall be conducted during regular business hours at the Licensed Premises and shall not unreasonably interfere with King's Garden's business activities. King's Garden shall provide all reasonable assistance to Avicanna in the conduct of the audit. If an audit reveals that King's Garden has underpaid any Royalties to Avicanna, King's Garden shall be invoiced for the difference between the Royalties to be paid as determined by the audit and the actual Royalties paid by King's Garden. If the audit reveals that King's Garden underpaid fees to Avicanna by an amount equal to or greater than ten percent (10%), then in addition to the underpayment, King's Garden shall pay Avicanna the cost of the audit. Audits shall be conducted no more than once annually, and no more than once per statement, unless an audit reveals an underpayment by King's Garden by an amount equal to or greater than ten percent (10%), in which case Avicanna may conduct an audit again at any time upon thirty (30) days prior written notice.

## 7. OWNERSHIP

- (a) Technology: King's Garden acknowledges and confirms that the Technology is substantial, proprietary to Avicanna and secret, meaning that King's Garden does not have any access to, and has no knowledge of, the Technology. King's Garden acknowledges and agrees that Avicanna owns the Technology and all Intellectual Property Rights thereto, whether registered or not registered. Except for the limited rights set forth in this Agreement, this Agreement does not convey or transfer to King's Garden any ownership, right, title or license, express or implied, in or to any of Avicanna's Intellectual Property Rights in the Technology, all of which remain Avicanna's sole and exclusive property.
- (b) Avicanna Marks: King's Garden acknowledges and agrees that Avicanna owns the Avicanna Marks and all Intellectual Property Rights thereto, whether registered or not registered. Except for the limited rights set forth in this Agreement, this Agreement does not convey or transfer to King's Garden any ownership, right, title or license, express or implied, in or to any of Avicanna's Intellectual Property Rights in the Avicanna Marks, all of which remain Avicanna's sole and exclusive property.
- (c) Improvements: Any and all Improvements made to the Technology shall be the sole and exclusive property of Avicanna, including any and all Intellectual Property Rights thereto. In addition to any other rights that Avicanna may have hereunder, if King's Garden develops, creates or make any Improvements, King's

Garden agrees to and hereby does assign to Avicanna all rights, title and interest, including any and all Intellectual Property Rights, in and to any such Improvements in consideration of the services and the grant of the distribution license above and for no further consideration.

## 8. INFRINGEMENT

- (a) Third Party Claims: Should a claim that the Technology or any material part thereof, infringes a third party's Intellectual Property Right or a claim challenging validity or ownership of the Technology be threatened or made against Avicanna or King's Garden (each a "**Third Party Claim**"), Avicanna and King's Garden agree that (i) they shall give the other Party prompt written notice detailing as many facts as possible concerning the Third Party Claim, and (ii) shall consult with each other to decide which action, if any, should be taken in respect of the Third Party Claim.
- (b) Defense Against a Third Party Claim: Each Party shall, during the Term have the right, but shall not be obliged, to take such action, legal or otherwise (including but not limited to commencing and conducting court proceedings in its own name) as they may deem appropriate and commercially reasonable in the circumstances and at their own expense, to defend themselves against a Third Party Claim.
- (c) Infringement of the Technology by Third Persons: In the event that either King's Garden or Avicanna becomes aware of or suspects any actual or threatened infringement, taking, copying or wrongful use in the Territory by an unlicensed third Person of the Technology (a "**Wrongful Act**"), it shall notify the other Party in writing to that effect within ten (10) Business Days of becoming aware of or suspecting such Wrongful Act, including with such written notice any available evidence to support an allegation of a Wrongful Act. In the event of a Wrongful Act, King's Garden and Avicanna each has the right to abate or prevent such a Wrongful Act as follows:
  - (i) Avicanna has the first right, but not the obligation, to take appropriate steps in connection with any action, proceeding or suit to abate or to prevent a Wrongful Act. Before commencing any action to abate or to prevent the Wrongful Act, Avicanna will first consult with King's Garden. If Avicanna believes King's Garden is a necessary party to effectively achieve the result desired by Avicanna, King's Garden will consent to being named as a party to the lawsuit and Avicanna shall be responsible for King's Garden's reasonable costs (including reasonable legal fees) associated with its participation. Avicanna will have the right to select counsel and will control all decisions relating to the lawsuit. If King's Garden is not a necessary party, it may join the action as a party, with Avicanna's consent, and Avicanna may choose, but will not be obligated, to select and pay for King's Garden's counsel. If Avicanna does not choose to select and pay for King's Garden's counsel, King's Garden may engage its own counsel and participate at its own cost, in which case King's Garden will enter into a common interest and joint defence agreement with Avicanna. Whether or not King's Garden is a party to the lawsuit, King's Garden agrees to cooperate with, and give reasonable assistance to, Avicanna in abating or preventing a Wrongful Act, at Avicanna's cost.
  - (ii) Avicanna's costs and expenses in connection with all actions, proceedings and suits brought under Section 8(c)(i)) shall be reimbursed, first, out of any settlement amount, damages, or other monetary award recovered. If any settlement amount, damages or other monetary award remains after reimbursement of Avicanna's costs and expenses (the "**Remaining Amount**"), Avicanna shall retain the Remaining Amount. However, in the event King's Garden joins the lawsuit on its own volition and not at the request of Avicanna, Avicanna and King's Garden will divide the Remaining Amount in proportion to their respective use of the Technology in the Territory based on sales using the Technology.
  - (iii) In the event that Avicanna has not commenced an action or application to abate or prevent a Wrongful Act within sixty (60) calendar days of either: (i) receipt of King's Garden's notice of such Wrongful Act; or (ii) Avicanna notifying King's Garden that Avicanna is aware of or suspects such Wrongful Act, then King's Garden may, upon notice to Avicanna, take any steps King's Garden considers appropriate in the circumstances, including bringing suit, to abate or prevent such

Wrongful Act in the name and on behalf of Avicanna. In such case, Avicanna agrees, at King's Garden's cost (including reasonably legal fees), to cooperate with, and give reasonable assistance to, King's Garden in abating or preventing the Wrongful Act and King's Garden may keep any damages, other monetary rewards or proceeds of settlement it obtains as a result. King's Garden's costs and expenses in connection with all actions, proceedings and suits brought under this Section 8(c)(iii) shall be reimbursed out of any settlement amount, damages, or other monetary award recovered, failing which all costs and expenses shall be borne solely by King's Garden.

- (iv) The Parties agree that neither Party will waive any privilege, including but not limited to attorney-client privilege or joint defence privilege that may exist or arise, without the prior written consent of the other Party, such consent not to be unreasonably withheld, conditioned or delayed.

## 9. REPRESENTATIONS

- (a) Mutual Representations of the Parties: Each Party represents to the other that:

- (i) *Corporate:* it is a company duly organized, validly existing and in good standing under the laws of its incorporation and it has full power and authority to enter into this Agreement and to perform each and every covenant and agreement herein contained;
- (ii) *Authorization and Enforceability:* this Agreement has been duly authorized, executed and delivered by it and constitutes a valid, binding and legally enforceable agreement of it;
- (iii) *Other Commercial Arrangements:* the execution and delivery of this Agreement, and the performance of the covenants and agreements herein contained, are not, in any manner or to any extent, limited or restricted by, and are not in conflict with, any commercial arrangements, obligations, contract, agreement or instrument to which it is either bound or subject; and
- (iv) *Laws:* the execution and delivery of this Agreement and the performance of its covenants and agreements herein contained shall comply in all respects with all Applicable Laws to which it or its business is subject.

## 10. WARRANTIES AND DISCLAIMER

- (a) Technology: Avicanna hereby warrants that:

- (i) it is the sole and exclusive owner of the Technology;
- (ii) it has instituted and shall follow such procedures to protect its interest in the Technology, including entering into non-disclosure and confidentiality agreements prior to any disclosure of the Technology to any third Person to preserve the trade secrets contained in the Technology.
- (iii) As of execution of this Agreement, Avicanna is unaware of any Claim or potential Claim by any third-party relating to the ownership in the Technology; and
- (iv) as of execution of this Agreement, Avicanna is unaware of any Claim or potential Claim by any third-party which might affect King's Garden's rights hereunder.

- (b) Exclusion of Other Warranties: EXCEPT AS OTHERWISE EXPRESSLY STATED IN THIS AGREEMENT, THERE ARE NO EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS IN RELATION TO ANY OF THE TECHNOLOGY OR ANY IMPROVEMENTS THAT ARE THE SUBJECT MATTER OF THIS AGREEMENT, INCLUDING IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. AVICANNA MAKES NO WARRANTIES OR CONDITIONS, EXPRESS, IMPLIED OR STATUTORY, AND ASSUMES NO LIABILITY OR RESPONSIBILITY WITH RESPECT TO (I) THE USE, SALE OR OTHER DISPOSITION BY KING'S

GARDEN OF PRODUCTS USING THE TECHNOLOGY, OR (II) ANY REPRESENTATIONS OR WARRANTIES THAT KING'S GARDEN MAY EXTEND. AVICANNA DOES NOT WARRANT THAT THE TECHNOLOGY IS ERROR FREE OR THAT IT WILL MEET KING'S GARDEN'S REQUIREMENTS. ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSLY DISCLAIMED AND EXCLUDED. THE ENTIRE RISK AS TO THE RESULTS AND PERFORMANCE OF THE TECHNOLOGY IS ASSUMED BY KING'S GARDEN.

**11. CONFIDENTIALITY**

- (a) Restrictions and Standard of Care: Recipient shall protect the disclosed Confidential Information by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized use, dissemination or publication of the Confidential Information as the Recipient uses to protect its own confidential information of a like nature. The Recipient agree to notify the Disclosing Party immediately upon the discovery of any unauthorized use or disclosure of Confidential Information, and to reasonably cooperate with the Disclosing Party to regain possession of the Confidential Information and prevent its further unauthorized use.
- (b) Obligations related to the Licensed Items: Without affecting the generality of Section 11(a), with respect to the Confidential Information related to the Licensed Items and the trade-secrets contained in such Licensed Items (it being expressly understood that the use of Avicanna Marks in accordance with the terms of this Agreement shall not be violation of this Section 11(b)), the Recipient shall:
- (i) take all the necessary precautions to protect the secrecy and therefore the commercial value of such Confidential Information by implementing physical, technical and legal barriers to access to such Confidential Information;
  - (ii) protect the Licensed Items related Confidential Information from inadvertent or unauthorized disclosure, including securing any tangible copies of the Licensed Items related Confidential Information in locked files or restricted access areas in order to prevent unauthorized disclosure or use;
  - (iii) only provide access to King's Garden employees or personnel which need to access Confidential Information regarding the Licensed Items and only to the extent such access is necessary for the completion of their specific tasks;
  - (iv) ensure that all King's Garden employees or personnel having access to the Licensed Items related Confidential Information are bound by confidentiality and secrecy obligations materially equivalent to the obligations contained herein;
  - (v) ensure that Licensed Items related Confidential Information will only be used in accordance with the license rights granted hereunder and for no other purpose;
  - (vi) ensure that Licensed Items related Confidential Information is held in strict confidence and is not disclosed to any other third Person;
  - (vii) not record, make notes of, copy or reproduce the Licensed Items related Confidential Information by any means, except to the extent permitted under this license Agreement; and
  - (viii) identify all Licensed Items related Confidential Information (including copies, records, notes or reproductions, in whole or in part) as being the exclusive property of Avicanna and include a clear notice identifying them as confidential.
- (c) Third Party Disclosure: The Licensed Items are considered as highly confidential by Disclosing Party and may only be disclosed by Recipient to a third Person who needs to know, for the proper performance of

Recipient's business, with the prior written consent of Disclosing Party, which consent may be refused or withheld at the absolute discretion of Disclosing Party.

- (d) Rights in Confidential Information: All right, title and interest in and to the Confidential Information shall remain the property of Disclosing Party.
- (e) Return of Confidential Information: Upon the termination of this Agreement and on receipt of a written demand from the Disclosing Party, the Recipient shall return or destroy all Confidential Information, including any copies thereof, and any memoranda, notes or other documents relating to the Confidential information, and certify in writing its destruction and, in the case of Confidential Information stored electronically, its deletion and removal from all computer systems.
- (f) Confidentiality Period: The duty of the Recipient to protect Confidential Information disclosed under this Agreement and the restrictions contained in this Section 11 shall continue perpetually with respect to the Licensed Items. For all other Confidential Information (not covered under the Technology), the restriction in this Section 11 shall continue for a period of thirty (30) years from the Effective Date, except for such Confidential Information that the Disclosing Party reasonably identifies as trade secret, in which case the restrictions in this Section 11 shall continue for as long as the Confidential Information retains its trade secret status.
- (g) Confidentiality of Agreement: Neither Party may disclose the terms of this Agreement to any third party or person except where the disclosed person needs to know about the existence, terms and/or conditions of the Agreement for the performance of the Parties' obligations under the Agreement, or where the disclosed person is bound and protected by legal privilege.
- (h) Use of Names and Publicity: Except as otherwise required by law, neither Party shall disclose to a third Person or issue a press release or make any other public disclosure with regard to the existence of this Agreement or the terms thereof without the prior written approval of the other Party, which approval shall not be unreasonably withheld. In the event a public disclosure is required by law, including without limitation in a filing with any securities and exchange commission, the Recipient shall: (i) provide reasonable notice of its intention to disclose with a clear indication of the content of what will be disclosed; and (ii) use commercially reasonable efforts to secure confidential treatment of any Confidential Information of the Disclosing Party contained in such release (whether through protective orders or otherwise), prior to its disclosure.

## 12. TERM AND TERMINATION

- (a) Initial Term: This Agreement shall commence on the Effective Date and shall continue for a period of thirty-six (36) months (the "**Initial Term**").
- (b) Renewal Term: At least ninety (90) days prior to the expiration of the Initial Term (or the then Renewal Term, as the case may be, the Parties shall meet to discuss renewing this Agreement on mutually agreeable terms. If the Parties agree on such renewal terms, then this Agreement shall renew pursuant to such agreed upon terms and conditions and for the period so agreed (each a "**Renewal Term**"; the Initial Term and any Renewal Term collectively referred to herein as the "**Term**").
- (c) King's Garden's Right to Terminate: Subject to Sections 12(f) and 12(g), King's Garden may terminate this Agreement and the rights granted hereunder without prejudice to enforcement of any other legal right or remedy, immediately upon giving written notice of such termination if Avicanna breaches any material provision of this Agreement and such breach continues for a period of twenty (20) Business Days after delivery of a written notice by King's Garden requiring Avicanna to correct such failure.
- (d) Avicanna's Right to Terminate: Subject to Sections 12(f) and 12(g), Avicanna may terminate this Agreement and the rights granted hereunder without prejudice to enforcement of any other legal right or remedy, immediately upon giving written notice of such termination if King's Garden:

- (i) fails to pay in full any sum owing by it under this Agreement by the due date thereof and such failure continues for a period of ten (10) Business Days after delivery of a written notice by Avicanna requiring King's Garden to correct such failure;
  - (ii) underpays fees to Avicanna by an amount equal to or greater than ten percent (10%) more than once in a twelve (12) month period as revealed by the Audit provision in Section 6(d);
  - (iii) infringes the Intellectual Property Rights of Avicanna;
  - (iv) breaches any other material provision of this Agreement and such breach continues for a period of twenty (20) Business Days after delivery of a written notice by Avicanna requiring King's Garden to correct such failure; or
  - (v) becomes or is adjudicated insolvent or bankrupt, admits in writing its inability to pay its debts as they mature, or makes an assignment for the benefit of creditors; or King's Garden applies for or consents to the appointment of any receiver, trustee or similar officer for it or for all or any substantial part of its property; or such receiver, trustee or similar officer is appointed without the consent of King's Garden; or King's Garden institutes any bankruptcy, insolvency, reorganization, moratorium, arrangement, readjustment or debt, dissolution, liquidation or similar proceeding relating to it under the laws of any jurisdiction, or any such proceeding is instituted against King's Garden and is not dismissed within sixty (60) Business Days; or any judgment, writ, warrant or attachment or execution of similar process is issued or levied against a substantial part of King's Garden's property and remains unsatisfied for sixty (60) Business Days.
- (e) Waiver: The waiver by either Party of a breach or default of any provision of this Agreement by the other Party shall not be effective unless in writing and shall not be construed as a waiver of any succeeding breach of the same or of any other provision. Nor shall any delay or omission on the part of either Party to exercise or avail itself of any right, power or privilege by such Party shall constitute a waiver.
- (f) Effect of Termination: Upon the termination of this Agreement for any reason:
- (i) King's Garden shall pay Avicanna any and all accrued Royalties;
  - (ii) King's Garden shall pre-pay the Products Royalty of any remaining inventory on the effective date of termination. The pre-paid Products Royalty shall be calculated based on the last audited/reconciled accounts; and
  - (iii) Recipient will return to the Disclosing Party all Confidential Information of the Disclosing Party which is then in Recipient's possession or control.
- (g) Survival of Covenants: Notwithstanding the termination or expiration of this Agreement for any reason, the covenants set out in this Section 12(g) and in Sections 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, and 17, of this Agreement shall survive any such termination or expiration.

### 13. INDEMNITY

- (a) General Indemnification: Each Party shall defend, indemnify and hold harmless the other Party from and against any and all third Persons' Claims including, without limitation, reasonable legal fees and costs of suit, arising out of or in connection with any:
- (i) actual or alleged negligent or wilful act or omission of the indemnifying Party;
  - (ii) personal injury, including death, or any property damage caused by the acts or omissions by the indemnifying Party; and/or



(iii) breach by indemnifying Party of its obligations under Article 11.

- (b) Procedures for Indemnification: Without limiting the indemnifying Party's indemnity obligations contained in Section 13(a), the indemnified Party shall provide the indemnifying Party: (i) prompt written notice of the Claim; and (ii) all reasonable information and assistance from indemnified Party, at indemnifying Party's expense, which indemnifying Party may require defending the Claim. Indemnifying Party shall have carriage of the defence of the Claim, and all negotiations for the settlement or compromise thereof, provided that indemnified Party may have counsel present to represent indemnified Party's interest and that no settlement or compromise thereof shall attach any liability to or require payment from indemnified Party.

#### 14. **INSURANCE**

- (a) Insurance Coverage: King's Garden shall, at all times during the Term of this Agreement and for a period of twelve (12) months after the termination or expiration of this Agreement, maintain the following policies of insurance in effect:

- (i) worker's compensation insurance or any alternative plan or coverage as permitted or required by Applicable Law;
- (ii) commercial general liability insurance (bodily injury, product liability and property damage) with contractual liability insurance to cover liability relating to this Agreement with a minimum coverage of two million dollars (\$2,000,000) per occurrence and five million dollars (\$5,000,000) annual aggregate;
- (iii) "All Risk" property insurance in an amount equal to the full replacement value of the premises, equipment, and network used to manufacture the Products;
- (iv) automobile bodily injury and property damage liability insurance covering owned, non-owned and hired automobiles with a minimum coverage of two million dollars (\$2,000,000) per occurrence;
- (v) professional liability insurance covering the liability for financial loss due to error, omission or negligence of King's Garden with a minimum coverage of two million dollars (\$2,000,000) per occurrence; and
- (vi) fidelity/crime insurance policy covering employee dishonesty and computer fraud for loss arising out of or in connection with fraudulent or dishonest acts committed by the personnel of King's Garden, acting alone or in collusion with others, in a minimum amount of one million (\$1,000,000) per loss.

- (b) Requirements: King's Garden shall promptly deliver to Avicanna certificates of insurance made out by the applicable insurer(s) or their authorized agents for the insurance required under this section and for any material policy amendments thereto. Each policy shall provide for thirty (30) days prior written notice to be given by insurer to Avicanna in the event of any termination, non-renewal or cancellation or any material change in coverage or deductibles. Avicanna is to be shown as additional insured under the insurance coverage required in this Section, with the exception of Workers' Compensation. King's Garden, King's Garden's insurer(s) and anyone claiming by, through, under or on King's Garden's behalf shall have no claim, right of action or right of subrogation against Avicanna based on any loss or liability insured under the required insurance. All required insurance shall be carried with responsible insurance companies of recognized standing which are authorized to do business in the jurisdiction in which the Services are rendered and are rated "A VIII" or better by A.M. Best.

#### 15. **LIMITATION ON LIABILITY**

- (a) Exclusion of Certain Types of Damages: SUBJECT TO SECTION 15(c), IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY LOST REVENUE, LOST PROFITS, DAMAGED DATA,

FAILURE TO ACHIEVE COST SAVINGS, LOSS OF USE OF FACILITY OR EQUIPMENT, OR THE FAILURE OR INCREASED EXPENSE OF OPERATIONS OR FOR ANY CONSEQUENTIAL, INCIDENTAL, EXEMPLARY OR PUNITIVE DAMAGES EVEN IF ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES.

- (b) Limitation of Direct Damages: SUBJECT TO SECTION 15(c), IN RESPECT OF ANY CLAIM, DEMAND OR ACTION BY EITHER PARTY AGAINST THE OTHER OR ANY OF THEIR RESPECTIVE EMPLOYEES, DIRECTORS, OFFICERS, OR AGENTS WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, INCLUDING A BREACH BY A PARTY OF ANY OF ITS OBLIGATIONS UNDER THIS AGREEMENT (WHETHER OR NOT A FUNDAMENTAL BREACH), THE OTHER PARTY'S SOLE AND EXCLUSIVE REMEDY SHALL BE TO RECEIVE FROM THE BREACHING PARTY PAYMENT FOR ACTUAL AND DIRECT DAMAGES TO A MAXIMUM AGGREGATE AMOUNT EQUAL TO THE AMOUNT PAID BY KING'S GARDEN TO AVICANNA IN THE TWELVE MONTHS PRECEDING THE DATE OF THE EVENT.
- (c) Exceptions: The provisions of Sections 15(a) and 15(b) shall not apply to or limit (a) liability for breach of Article 11; (b) liability for infringement or misappropriation of the other Party's Intellectual Property Rights, (c) the indemnity obligations set forth in Article 13; or (d) payment obligations arising under Article 6.

**16. FORCE MAJEURE**

Except for any obligation to make payments, any delay or failure of either Party to perform its obligations under this Agreement shall be excused if, and to the extent, that the delay or failure is caused by an event or occurrence beyond the reasonable control of the Party and without its fault or negligence, such as, by way of example and not by way of limitation, acts of God, action by any Governmental Authority (whether valid or invalid), fires, flood, wind storms, explosions, riots, natural disasters, wars, terrorist acts, sabotage, labour problems (including lock-outs, strikes and slow downs, except for any labour problems of the Party claiming a force majeure event), or court order or injunction; provided that written notice of delay (including anticipated duration of the delay) shall be given by the affected Party to the other Party within two (2) Business Days of the affected Party first becoming aware of such event. If requested by the unaffected Party, the affected Party shall, within three (3) Business Days of the request, provide adequate assurances that the delay shall not exceed thirty (30) Business Days. In the event that the force majeure event lasts for thirty (30) Business Days or longer, either Party shall have the option to terminate this Agreement upon written notice to the other without liability.

**17. MISCELLANEOUS**

- (a) Notice: Every notice or other communication hereunder shall be deemed to have been duly given and made if in writing and if served by personal delivery upon the Party for whom it is intended, if delivered by registered or certified mail, return receipt requested, or by a national courier service, or if sent by email (receipt of which is confirmed) to the Person at the address set forth below, or such other address as may be designated in writing hereafter, in the same manner, by such Person:

To Avicanna

MaRS Centre, West Tower  
661 University Avenue  
Suite 1300  
Unit 1397  
Toronto ON M5G 0B7

Attention: Setu Purohit, President & Chief Legal Officer  
Email: setu.purohit@avicanna.com

To King's Garden  
King's Garden, LLC  
3450 N. Anza Road  
Palm Springs, CA 92262

Attention: Michael King, Chairman  
email: [michael@kingsgardeninc.com](mailto:michael@kingsgardeninc.com)

With a courtesy copy, via email to: Jeff Welsh Esq. ([jeff@fronteralawgroup.com](mailto:jeff@fronteralawgroup.com))

Any such notification shall be deemed delivered (a) upon receipt, if delivered personally, (b) on the next Business Day, if sent by national courier service for next Business Day delivery or if sent by email. Any correctly addressed notice or last known address of the other parties that is relied on herein that is refused, unclaimed, or undeliverable because of an act or omission of the Party to be notified as provided herein shall be deemed effective as of the first date that said notice was refused, unclaimed, or deemed undeliverable by the postal authorities by mail, through messenger or commercial express delivery services.

- (b) Entire Agreement: This Agreement, together with any agreements and other documents to be delivered pursuant hereto, constitutes the entire agreement between the Parties pertaining to the subject matter hereof and supersedes all prior agreements, negotiations, discussions and understandings, written or oral, between the Parties. Except as expressly provided in this Agreement, there are no representations, warranties, conditions other agreements or acknowledgements, whether direct or collateral, express or implied, that form part of or affect this Agreement. The execution of this Agreement has not been induced by, nor do either of the Parties rely upon or regard as material, any representations, warranties, conditions, other agreements or acknowledgements not expressly made in this Agreement or in the agreements and other documents to be delivered pursuant hereto.
- (c) Severability: In the event that any provision (or any portion of a provision) of this Agreement shall for any reason be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable for any reason, such invalidity, illegality or unenforceability shall not affect any other provision hereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision (or portion of a provision) had never been contained herein in regards to that particular jurisdiction.
- (d) United Nations Convention: The Parties hereby expressly exclude the application of the United Nations Convention on Contracts for the International Sale of Goods and any local implementing legislation related thereto.
- (e) Modifications: The Parties may modify this Agreement only upon written agreement.
- (f) Further Assurances: Each Party shall take such action (including, but not limited to, the execution, acknowledgement and delivery of documents) as may reasonably be requested by the other Party for the implementation or continuing performance of this Agreement.
- (g) Relationship: The Parties are independent contractors and no other relationship is intended. Nothing herein shall be deemed to constitute either Party as an agent, representative or employee of the other Party, or both Parties as joint venturers or partners for any purpose. Neither Party shall act in a manner that expresses or implies a relationship other than that of independent contractor. Each Party shall act solely as an independent contractor and shall not be responsible for the acts or omissions of the other Party. Neither Party will have the authority or right to represent or obligate the other Party in any way except as expressly authorized by this Agreement.
- (h) Inurement: This Agreement shall inure to the benefit of and be binding upon each of the Parties hereto and their permitted successor and assigns.
- (i) Assignment: Neither this Agreement nor any rights or obligations hereunder shall be assignable by either Party without the prior written consent of the other Party.

- (j) Counterparts and Facsimile Execution and Delivery: This Agreement may be executed in counterparts, each of which shall be deemed to be an original and both of which together shall constitute one and the same instrument. To evidence its execution of an original counterpart of this Agreement, a Party may send a copy of its original signature on the execution page hereof to the other Party by facsimile transmission or email and such transmission shall constitute delivery of an executed copy of this Agreement to the receiving Party as of the date of receipt thereof by the receiving Party or such other date as may be specified by the sending Party as part of such transmission.
- (k) Non-Solicitation: Both Parties covenant and agree that during the Term of this Agreement, and for a period of twelve (12) months thereafter, they will not, directly solicit the services of any Person who is, or who was at the time of such solicitation, engaged by the other Party as an employee, agent or independent contractor for the purposes of this Agreement without the prior written consent of the other Party, such consent not to be unreasonably withheld. Notwithstanding the foregoing, the Parties acknowledge and agree that this Section 17(k) will not prohibit (i) solicitations through general public advertising or other publications of general public circulation or (ii) the hiring of any employee of a Party who contacts the other Party without such other Party having solicited such employee.
- (l) Language: It is the Parties desire and agreement that this Agreement and all Schedules and associated documentation be drafted in English. Les Parties conviennent que la présente convention et tous les documents s'y rattachent, soient rédigés et signés en anglais.
- (m) Jurisdiction and Disputes.
  - (i) This Agreement shall be governed and construed in accordance with the internal laws of the State of California without giving effect to any choice or conflict of law provision or rule (whether of the State of California or any other jurisdiction) that would cause the application of laws of any jurisdiction other than those of the State of California.
  - (ii) In the event of any Claim arising out of or relating to any performance required under this Agreement, or the interpretation, validity or enforceability hereof, the Parties hereto shall use their best efforts to settle the Claim. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable resolution satisfactory to the Parties. If the Claim cannot be settled through negotiation within a period of ten (10) Business Days, then, upon notice by either party to the other they shall commence arbitration as set forth below.
  - (iii) Subject to Section 17(m)(ii), the Parties agree to submit any and all Claims, or any dispute related in any way to this Agreement and the services rendered hereunder, to binding arbitration before JAMS. The arbitration shall be held in accordance with the JAMS then-current Streamlined Arbitration Rules & Procedures (and no other JAMS rules), which currently are available at: <https://www.jamsadr.com/rules-streamlined-arbitration> except as otherwise provided for in this Agreement, shall govern the arbitration process. The arbitrator shall be either a former judge, or an attorney who is experienced in commercial contracts and licensed to practice law in California, selected pursuant to the JAMS rules. The Parties expressly agree that any arbitration shall be conducted in the Los Angeles County, California. Each party understands and agrees that by signing this Agreement, such party is waiving the right to a jury. The arbitrator shall apply California substantive law in the adjudication of all Claims. Notwithstanding this Section or any language in this Agreement to the contrary, at any time either party may apply to the Superior Courts located in Los Angeles County, California for a provisional remedy, including but not limited to a temporary restraining order or a preliminary injunction. The application for or enforcement of any provisional remedy by a party shall not operate as a waiver of the agreement to submit a dispute to binding arbitration pursuant to this provision. In no event shall a Claim be adjudicated in Federal District Court. In the event that either party commences a Claim in Federal District Court or moves to remove such action to Federal District Court, the Parties hereby mutually agree to stipulate to a dismissal of such Federal Claim with prejudice. After a demand for arbitration has been filed and served, the Parties may engage in reasonable discovery in the form of requests for documents,

interrogatories, requests for admission, and depositions. The arbitrator shall resolve any disputes concerning discovery. Each Party shall be responsible for their respective attorney's fees, costs, and other expenses associated with the arbitration or otherwise relating to or arising from the underlying dispute. The arbitrator's decision shall be final and binding upon the Parties. The arbitrator's decision shall include the arbitrator's findings of fact and conclusions of. The prevailing party may submit the arbitrator's decision to Superior Courts located in Los Angeles County for an entry of judgment thereon.

(iv) Exceptions to Arbitration: The following matters shall be excluded from arbitration under this Agreement:

- A. breach of confidentiality by either Party; and
- B. intellectual property claims, whether initiated by third Persons or by one of the Parties to this Agreement.

**IN WITNESS WHEREOF**, each Party hereto has caused this Agreement to be duly executed as of the date first written above by an officer authorized in that behalf.

**AVICANNA INC.**

**KING'S GARDEN LLC**

*(signed) "Setu Purohit"*

per: \_\_\_\_\_

Name: Setu Purohit

Title: President & Chief Legal Officer

*(signed) "Michael King"*

per: \_\_\_\_\_

Name: Michael King

Title: Director of Business Development

**SCHEDULE "A"**

**PRODUCTS**

[Redacted - Commercially Sensitive Information]

**SCHEDULE "B"**  
**AVICANNA MARKS**

[Redacted - Commercially Sensitive Information]

**SCHEDULE "C"**  
**AVICANNA MARKS GUIDELINES**

[Redacted - Commercially Sensitive Information]



**SCHEDULE "D"**  
**SALES MILESTONES**

[Redacted - Commercially Sensitive Information]