

## **CalPro Research Standard Terms and Conditions**

The following Standard Terms and Conditions (“Standard Terms”) shall supplement the Program Documentation and together constitute the “Agreement” entered into between CalPro Research and Client. In the event of any conflict between the Program Documentation and these Standard Terms, the Program Documentation provisions shall control. All defined terms used herein have the same meaning as set forth in the Program Documentation.

1. **Background and Purpose.** CalPro Research is engaged in the business of (i) measuring customer satisfaction for its clients through customer satisfaction surveys, (ii) measuring employee engagement for its clients through employee surveys, and (iii) providing consulting services in the areas of marketing, technology, benchmarking, and management. Client desires to engage CalPro Research to provide Services in accordance with the terms and provisions hereof.
2. **Communications; Verification of Information.** CalPro Research shall periodically send written reports and updates to Client, to the attention of the party designated on the Services Agreement, regarding the Services unless otherwise designated by Client. Such reports shall be sent via e-mail to Client and shall be in CalPro Research’s standard format. During the term of this Agreement Client’s designated representative shall acknowledge the receipt of the report or update by sending a return e-mail. Client represents and warrants to CalPro Research that to Client’s best knowledge all information provided by Client to CalPro Research is true and correct and that Client has the right to provide such information. Client acknowledges that CalPro Research is relying on the accuracy of such information in providing the Services and will immediately notify CalPro Research in writing of any change in the accuracy of such information. Client acknowledges and agrees that the timeframes set forth in the Program Documentation rely on timely responses from Client. Client shall timely respond to all inquiries or requests from CalPro Research.
3. **Equipment; Access to Company Facilities; Third Party Assistants.** Except as specifically agreed by the parties, CalPro Research has and will provide all necessary tools, supplies and equipment necessary to perform the Services. Client will not be required to supply to CalPro Research any such tools, supplies or equipment.
4. **Ownership.** CalPro Research retains all right, title and interest, including all patents, copyrights, trademarks, trade secrets and other intellectual property rights in and to the materials produced by CalPro Research in connection with the Services. Notwithstanding the foregoing, CalPro Research shall not obtain ownership in any existing trademarks or trade names, data or information provided by or owned by Client.
5. **Confidential Information.**
  - 5.1 **Non-Disclosure.** Each party agrees that it shall not use or disclose to any third party, except for those essential to the implementation of the program, any information that is confidential or proprietary to the other party including, without limitation, such party’s business plans and practices, trade secrets, methods, processes or procedures, third party confidential information obtained pursuant to a confidentiality agreement or any other confidential information (collectively, the “**Confidential Information**”) of the other party which it learns during the course of its performance of this Agreement other than as required by law, regulation, or order of a court or regulatory agency or other authority having appropriate jurisdiction. The Confidential Information may be oral or written or in electronic or tangible form, and all Confidential Information shall be identified or marked as “Confidential” at the time of disclosure. Confidential Information shall not include any information that can be shown through contemporaneous documentation (a) is or becomes publicly known through no fault on the part of the recipient; (b) is, at the time of disclosure, already known to the recipient without obligation restricting disclosure; (c) is, or subsequently becomes, rightfully and without breach of this Agreement, in the recipient’s possession without any obligation restricting disclosure; (d) is independently developed by recipient without breach of this Agreement or any other agreement, with the recipient bearing the burden of proving such independent development or (e) is required to be disclosed by law or court order. Any employee to whom the recipient of Confidential Information gives access to any such Confidential Information must have a legitimate “need to know”

such Confidential Information and shall be bound in writing to maintain the confidentiality of the Confidential Information under terms and conditions no less stringent than those set forth in this Agreement. Neither party shall make any copies of or distribute written Confidential Information provided under this Agreement. Upon termination of this Agreement and written request, each party shall return all Confidential Information in its possession (including all copies thereof) of the other party within fifteen (15) days of such termination, except for Confidential Information used in accordance with section 5.3.

5.2. Remedies. Each party recognizes and acknowledges that the non-disclosing party may suffer irreparable injury from the unauthorized use or disclosure of any of its Confidential Information and each party agrees and acknowledges that the non-disclosing party shall have the right to seek injunctive or other equitable relief against the unauthorized use, disclosure or transfer of any of the Confidential Information, as well as the right to pursue all of its other remedies in equity and at law. This Section 5 shall survive the termination of this Agreement.

5.3. Use of Summarized Statistical Information. Client acknowledges and agrees that CalPro Research may use summarized statistical data obtained by CalPro Research in the course of performing the Services for preparation of summary comparison reports to be submitted by CalPro Research in conjunction with the Services. CalPro Research shall not use any Confidential Information, including but not limited to specific identities of individuals or organizations providing survey feedback, received by CalPro Research in preparation of such comparative summary reports.

6. Conflicts of Interest. Client represents that it is free to enter into this Agreement, and that this engagement does not knowingly violate the terms of any agreement between Client and any third party. CalPro Research is expressly free to perform similar or identical services for any other parties during the term of this Agreement, subject to CalPro Research's duty of confidentiality under this Agreement.

7. No Implied Warranties.

7.1. DISCLAIMER OF WARRANTY. CALPRO RESEARCH MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES, INCLUDING, ANY IMPLIED WARRANTY ARISING BY USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE AND ANY IMPLIED WARRANTY OF NON-INFRINGEMENT. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, CLIENT ACKNOWLEDGES THAT THE SERVICES, CONTENT USED OR PROVIDED BY CALPRO RESEARCH IN CONNECTION WITH THE SERVICES ARE PROVIDED "AS IS" AND CALPRO RESEARCH MAKES NO WARRANTY THAT THE WEB SITES OR ANY SERVERS HOSTING THE SAME SHALL BE FREE FROM BUGS, FAULTS, DEFECTS OR ERRORS OR THAT ACCESS TO ANY OF THE WEB SITES CREATED IN CONJUNCTION WITH THE SERVICES SHALL BE UNINTERRUPTED. CALPRO RESEARCH MAKES NO REPRESENTATIONS OR WARRANTIES REGARDING RESULTS OF ANY SURVEYS.

7.2. LIMITED LIABILITY. CalPro Research agrees to indemnify and save harmless the Client, the Client's officers, employees and agents against any and all liabilities, actions, losses, damages, costs and expenses which the Client, its officers, employees and agents may sustain, incur, suffer or be required to pay by reason of CalPro Research's breach of this Agreement or by reason of any act, omission, fault, default or negligence of CalPro Research or of those for whom CalPro Research is responsible at law. This indemnity shall not be prejudiced by, and shall survive, the termination of this Agreement.

The Client agrees to indemnify and save harmless CalPro Research, CalPro Research's officers, employees and agents against any and all liabilities, actions, losses, damages, costs and expenses which CalPro Research, its officers, employees and agents may sustain, incur, suffer or be required to pay by reason of the Client's breach of this Agreement or by reason of any act, omission, fault, default or negligence of the Client or of those for whom the Client is responsible at law. This indemnity shall not be prejudiced by, and shall survive, the termination of this Agreement.

8. Taxes. CalPro Research will be responsible for payment of all taxes and insurance applicable under existing laws, including, but not limited to, social security taxes, and federal and state and city income taxes with respect to the fees payable to CalPro Research.

9. Miscellaneous.

9.1. Announcements. No public or internal announcements, other than internal communications necessary for the purposes of complying with the terms of this Agreement shall be made without the prior written consent of both parties.

9.2. Independent Contractors. Nothing contained herein is intended to establish a partnership, joint venture or employee-employer relationship between the parties. The parties shall act solely as independent contractors to one another and neither party shall have the authority to bind the other or to represent the other in any manner.

9.3. Counterparts. Facsimile transmission of any signed original of this Agreement will be deemed the same as delivery of an original. This Agreement may be executed in counterparts.

9.4. Section Headings. The section headings used herein are for reference only and shall not affect the interpretation of this Agreement.

9.5. Severability. If any provision of this Agreement is invalid under any applicable laws, it is to that extent to be deemed omitted.

9.6. Waiver. The waiver or failure of either party to exercise any right in any respect provided for herein shall not be deemed a waiver of any further right hereunder.

9.7. Governing Law. This Agreement and performance hereunder shall be governed by the laws of the State of California without regard to conflict of law principles.

9.8. Arbitration. The parties agree that any dispute arising in connection with this Agreement, shall, upon demand of a party, be submitted to and decided by binding arbitration. Any application, petition or other proceeding for provisional or equitable relief pending appointment of the arbitrator, shall be commenced in the appropriate state or federal courts having jurisdiction in Sacramento County, California and the parties hereby consent to jurisdiction and venue in such courts. In the event that arbitration is not demanded as set forth herein, the parties hereby agree on behalf of themselves and any person claiming by or through them that the sole jurisdiction and venue for any litigation relating to this Agreement shall be an appropriate federal or state court located in Sacramento County, California.

9.9. Survival. The provisions of Sections 4, 5, 7 and 9 of these Standard Terms and any other provisions that by their terms anticipate survival, shall survive the termination of this Agreement.

9.10. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and there are no representations, understandings, commitments or agreements relative hereto which are not fully expressed herein.

12.11. Amendment. No amendment to this Agreement shall be valid unless in writing signed by both parties.

12.12. Assignment. This Agreement is not assignable, in whole or in part, by either party without prior written consent.

12.13. Notices and Acceptance. Acceptance of these terms and notices required by this Agreement shall be in writing by the respective parties and shall be by electronic delivery such as facsimile or email, and shall be deemed delivered upon acknowledgment of receipt of electronic transmission.

By: 

Name: Larry Hill, Principal Consultant, CalPro Research