

## **AGREEMENT**

### **Parties**

This Agreement is made and entered into by and between Archimedes Medical Holdings LLC, FUJM, LLC, and Holistic Health Capital LLC (collectively, “**Licensees**”) and the Missouri Department of Health and Senior Services (the “**Department**”), collectively “the **Parties**,” and is effective on the date the last party signs below.

### **Background**

WHEREAS, Licensees applied for, and received, licenses to operate three medical marijuana cultivation facilities (License numbers: CUL000022, CUL000024, and CUL000060) and one manufacturing facility (License number MAN000085) within the State of Missouri.

WHEREAS, the Department is a subdivision of the State of Missouri and is authorized to regulate the production and sale of medical marijuana.

WHEREAS, Article XIV of the Missouri Constitution and 19 CSR 30-95.040(1)(F) authorize the Department to “suspend, fine, restrict, or revoke” a medical marijuana facility license. See Section 1.3(1)(a).

WHEREAS, between September 2021 and February 2022, the Department investigated Licensees’ cultivation facilities and has alleged that regulatory violations occurred.

WHEREAS, Licensees disagree with the Department’s position.

WHEREAS, through a series of orders, the Department partially suspended the operations of CUL00022, CUL00024, and CUL00060 on September 22, 2021, October 5, 2021, October 8, 2021, and November 1, 2021.

WHEREAS, on October 5, 2021, the Department placed an administrative hold on all product originating from CUL000022, CUL000024, and CUL000060.

WHEREAS, on October 12, 2021, the Department modified the administrative hold to make it only apply to flower and pre-rolls. All Licensees’ marijuana-infused products were released for sale to patients, subject to the products passing mandatory testing for medical marijuana products.

WHEREAS, pursuant to 19 CSR 30-95.025(6), Licensees filed appeals with the Missouri Administrative Hearing Commission, challenging the Department’s suspension orders and other actions (case numbers 21-2693, 21-2695, and 21-2755) (“the AHC Appeals”).

WHEREAS, Licensees dispute the Department’s interpretation and application of the Missouri Constitution and Department Rules.

WHEREAS, on January 15, 2022, the Department lifted the suspension on CUL000024.

WHEREAS, as of the date of this agreement, CUL000022 and CUL000060 remain subject to suspension orders, pending Licensees' completion of corrective actions.

WHEREAS, the parties desire to resolve their dispute in order to avoid the cost and uncertainty of continued litigation.

### **Terms**

1. The Parties have come to and agreed upon an appropriate settlement to resolve the Department's allegations.
2. This Agreement is a compromise between the Parties and shall not be construed as an admission of liability or wrongdoing by any Party. The fact of this compromise, and the content of this Agreement, will not be held against the Parties in any subsequent proceedings.
3. The Parties agree as follows:
  - a) Within ten days of the execution of this Agreement, all product on administrative hold originating from Licensees will be released from hold for either destruction or processing through a solvent-based extraction process (not to include water), which may include CO<sub>2</sub>, ethanol, or hydrocarbon, by a Missouri medical marijuana-infused product manufacturing facility. If another form of extraction is desired, the licensed manufacturer will be required to first request and obtain written approval from the Department to utilize a different extraction method. Per Department rules, as with any other medical marijuana-infused products, the products created from product previously on administrative hold will only be released for patient use after passing mandatory testing for medical marijuana products.
  - b) Licensees will destroy all medical marijuana product currently onsite at CUL000022. The destruction of product at CUL000022 will be supervised by the Department, and no product will be destroyed without at least one Department staff person observing the destruction. Licensee will coordinate with the Department on the destruction timeline and process prior to Department staff arriving at CUL000022. Licensees will furnish the Department with at least 2 business days of advance notice when such product destruction will be occurring. The Department will make all reasonable efforts to prioritize assigning staff to witness all product destruction on dates of Licensee's choosing, provided the 2 business days' notice is furnished.
  - c) All medical marijuana product of any type currently on administrative hold in licensed medical marijuana dispensaries originating from CUL000022 and all medical marijuana pre-rolls in licensed medical marijuana manufacturing facilities that contain product originating from CUL000022 shall be destroyed either by Licensees or by the facility in possession of the product.
  - d) Marijuana product originating from CUL000022, currently in the possession of licensed medical marijuana manufacturing facilities, excluding pre-rolls, may be released for extraction as described in paragraph 3(a).

- e) Licensees will destroy all plants or product not tagged with traceability information by the statewide track and trace system onsite at CUL000060 and MAN000085. The destruction of such product at CUL000060 and MAN000085 will be supervised by the Department, and no product will be destroyed without at least one Department staff person observing the destruction. Licensee will coordinate with the Department on the destruction timeline and process prior to Department staff arriving at CUL000060 and MAN000085. Licensees will furnish the Department with at least 2 business days of advance notice when such product destruction will be occurring. The Department will make all reasonable efforts to prioritize assigning staff to witness all product destruction on dates of Licensee's choosing, provided the 2 business days' notice is furnished. Licensees may correct Metrc records for plants or product that are not required to be destroyed, or for plants or product that has already died or been destroyed, to update the correct inventory status or weight. Adjustments in Metrc made pursuant to this paragraph shall be pre-approved by the Department in writing. Product "not tagged" means:
- i. Packages without a Metrc tag, if any;
  - ii. Product with a Metrc tag but not recorded in Metrc, if any;
  - iii. Plants without Metrc tags, if any, with the exception of plants that were properly referenced in Metrc when the suspension began but could not be updated in Metrc due to the suspension, such as clones identified in Metrc as part of an immature plant batch;
  - iv. Harvested product in the dry cure process without a harvest batch identifier (located near the corresponding harvest batch) recorded in Metrc, if any;
  - v. Product with a physical inventory weight greater than what is recorded in Metrc, if any.
- f) Product originating from CUL000060 as identified in the last spreadsheet Licensees sent to the Department before the parties signed this agreement, shall be destroyed either by Licensees or by the facility in possession of the product. Remaining product on administrative hold originating from CUL000060 may be released for extraction or destruction as described in paragraph 3(a).
- g) To maintain the confidentiality of individualized information from the licensees, the Department will communicate directly with each facility that possesses product from CUL000022 and CUL000060 to identify product that Licensees have agreed to destroy or designate for extraction. Such communication will be in the letter the Department last sent to Licensees before the parties signed this agreement. Licensees agree that if other Missouri medical marijuana licensees present true and correct copies of such letters to Licensees, they will accept them as evidence of how much product in that licensee's possession was affected by this negotiated resolution.

- h) Licensees shall provide documentation to the Department, in a Department approved format, to demonstrate medical marijuana product in their possession has been destroyed or used for extraction per this Agreement.
- i) The parties agree to cooperate with one another in good faith to ensure that their respective obligations agreed to herein are being performed.
- j) Licensees may execute a management agreement with a third party (“the Management Company”) to manage and operate the facilities connected with licenses CUL000022, CUL000024, CUL000060, and MAN000085 no later than June 30, 2022. If Licensees do not enter into a management agreement described in 3(j) and 3(k) by June 30, 2022, Licensees agree, beginning July 1, 2022, to cease to operate CUL000022, CUL000024, CUL000060, and MAN000085, including plant or product care or maintenance, unless approved or directed by the Department. The Management Company must have experience operating state-licensed marijuana facilities; be capable of complying with applicable Department regulations; have no common control, ownership, or management with Licensees; and participate in a conference call with the Department prior to assuming control of operations in order to demonstrate competence in seed-to-sale tracking requirements and other regulatory requirements. The lifting of the suspensions on CUL000022 and CUL000060 is not a prerequisite to the Management Company assuming operational control over Licensees’ four facilities.
- k) The Management Company will assume operational control over Licensees’ four facilities no later than ten calendar days after the conference call with the Department referenced in the previous paragraph. The Management Company will abide by the Licensees’ commitments made in the application for licensure, or as modified in any previous change request approved by the Department.
- l) By November 30, 2022, Licensees shall submit change of ownership or transfer of license change requests to the Department for licenses CUL000022, CUL000024, CUL000060, and MAN000085. Each such change request must include all Department-required documents. Prior to completing the documents, Licensees will work with its licensing specialist for the most up to date Department required documents for change of ownership and transfer of license change requests. The Department’s approval of the change of ownership or transfer of the licenses is contingent upon Licensees divesting themselves of all product currently in their possession. As to product that the parties have agreed to designate for destruction, this means that Licensees have completed the process of destroying all such product. As to product that the parties have agreed to designate for “extraction only,” this means that Licensees have either (1) voluntarily destroyed the product; (2) performed extraction on the product at MAN000085; or (3) transferred the product to another Missouri medical marijuana facility licensee for extraction.
- m) If Missouri passes a constitutional amendment or adopts laws legalizing the non-medical use of marijuana by adults before the Department has issued a final decision on the change requests or transfer of licenses referenced in paragraph 3(l), Licensees agree to not take any step, or make any request, to convert any of their facility licenses to a comprehensive or recreational marijuana facility license. This restriction does not apply to any future

owners of licenses CUL000022, CUL000024, CUL000060, and MAN000085 (or their successor licenses, if the Department assigns them new license numbers).

- n) As to each of CUL000022, CUL000024, CUL000060, and MAN000085, if Licensees fail to submit a timely change request, as required by paragraph 3(1), that license will be deemed to have been surrendered to the Department, effective December 1, 2022.
- o) Licensee will not plant new marijuana crops unless and until the Management Company or new ownership has requested and passed a compliance inspection. If the Management Company is identical to, or affiliated with, the entity(s) to whom Licensees will seek Department approval to transfer their facility licenses, the Department will permit the Management Company to submit a variance request seeking approval for a one year period of time to acquire new genetics for use at those facilities.
- p) After passing a compliance inspection, the recipients of Licensees' four licenses will be treated as any other new Missouri medical marijuana facility licensee.
- q) The Licensees agree to continue working with the Department to address the regulatory compliance concerns raised in the suspension orders imposed on licenses CUL000022 and CUL000060, and the Department agrees to lift those suspension orders as soon as practicable under Department regulations. Suspension orders in CUL000022 and CUL000060 will only be lifted after the destruction of product at those facilities are completed as described in 3(a), 3(b), 3(e), and 3(f). The lifting of the suspension orders is not contingent upon any product designated for "extraction only" actually being processed through extraction.
- r) Irrespective of whether the suspension order has been lifted, CUL000060 will be authorized to sell any product in its possession, pursuant to Paragraph 3, any time after (1) the Department releases the product from the administrative hold; and (2) Licensee has completed the destruction of all product in CUL000060's possession that the parties have identified for destruction, pursuant to Paragraphs 3(e) and 3(f). If the Department lifts the suspension orders imposed on CUL000022 and CUL000060 before Licensees have entered into an agreement with the Management Company, Licensees will only engage in the following activities:
  - i. Maintain, care for, harvest, and package any marijuana plants currently growing in either facility;
  - ii. Sell harvested product in the possession of either facility;
  - iii. Any other reasonable activities related to ensuring compliance with Department rules while performing the tasks described in the previous two paragraphs.
  - iv. Licensees shall submit a bi-weekly report to the Department on the status of CUL000022 and CUL000060.

- s) Within 5 days of the Department lifting the suspension orders for CUL000022 and CUL000060, Licensees will dismiss with prejudice the AHC Appeals.
- t) Licensees shall waive any and all claims against the Department, including any claims for monetary relief or attorneys' fees, arising from any known or unknown claim.
- u) The Department shall waive any and all claims against each Licensee, including any claims for monetary relief or attorneys' fees, arising from any known or unknown claims.
- v) While Licensees' four licenses remain subject to the Department's regulatory oversight, the Department agrees to not pursue revocation, suspension, fines, or penalties for any alleged regulatory violations based on conduct occurring prior to this agreement.
- w) Renewal applications for licenses CUL000022, CUL000024, CUL000060, and MAN000085 will be reviewed in the same manner by the Department as all other facility license renewal applications. *See* Guidance Letter 12 and 19 CSR 30-95.040(1)(F). However, nothing identified in the notices of violations and suspension orders referenced in this Agreement will negatively impact Licensees' (or their successors') ability to successfully renew CUL000022, CUL000024, CUL000060, and MAN000085 so long as Licensees are working in good faith to correct any outstanding violations. Corrected violations will not negatively impact the renewal application. The Parties agree to work cooperatively and in good faith in the submission and review of the renewal application to effectuate the terms of the agreement.
- x) Licensees shall pay its annual licensing fees for CUL000022, CUL000024, CUL000060, and MAN000085 no later than sixty (60) days after the date that the Department delivers to Licensee written approval to sell product in the possession of CUL000060.
- y) To the extent a waiver from rule would be required to implement terms in this agreement, the Department grants that waiver.

### **General Recitals**

4. The provisions of this Agreement shall be construed and interpreted in accordance with the laws of the State of Missouri.
5. This agreement constitutes the entire Agreement between the Parties, and supersedes all prior understanding, whether oral or written, between the Parties. Any amendments or modification to this Agreement must be in writing and signed by the Parties.
6. The Parties agree to bear their own costs and attorneys' fees incurred as of the date of this Agreement or arising from the execution of these terms, and each Party waives any statute, rule of court, or other law or provision awarding costs, fees, or expense.
7. This Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective heirs, executors, administrators, or other legal representatives and permitted successors and assigns, and is not made for the benefit of any third parties.

8. The General Recitals set forth herein form a part of this Agreement and are binding on the Parties to the Agreement.
9. The Parties agree that the terms of this Agreement have been negotiated by all the Parties with the assistance of counsel. In the event of any litigation arising out of this Agreement, the Parties agree the draftsmanship of this Agreement shall not be construed against any one Party.
10. This Agreement and any amendment or modification hereto may be executed in two or more signature counterparts, each of which shall constitute an original but all of which, taken together, shall constitute one and the same Agreement. The Parties agree that a document (or signature page thereto) signed and transmitted by facsimile machine, telecopier, or other electronic transmission, including portable document file (PDF), is to be treated as an original document. The signature of any Party thereon, for purposes hereof, is to be considered as an original signature, and the document transmitted is to be considered to have the same binding effect as an original signature on an original document. No Party may raise the use of or transmission of a signature by facsimile machine, telecopier, or other electronic transmission as a defense to the enforcement of this Agreement.

**IN WITNESS WHEREOF**, the duly authorized representatives of the Parties hereto execute this Agreement as shown below by their respective signatures.

*[remainder of page intentionally blank]*

**Archimedes Medical Holdings, LLC**

By: [Signature]  
Hayley Rosenblum Dudney, Manager

Date: 5/12/22

**The Missouri Department of Health and Senior Services**

By: [Signature]  
Lyndall Fraker, Director  
Section for Medical Marijuana Regulation

Date: 5-16-22

**FUJM, LLC**

By: [Signature]  
Blonie Dudney, Manager

Date: 5-12-22

By: [Signature]  
Jason Buchheit, Manager

Date: 5/12/22

**Holistic Health Capital, LLC**

By: [Signature]  
Blonie Dudney, Manager

Date: 5-12-22

By: [Signature]  
Jason Buchheit, Manager

Date: 5/12/22