

# Terms and Conditions for Service Contractors

1. All capitalized terms not otherwise defined in these Terms and Conditions for Service Contractors (“Terms”) shall have the meanings ascribed to them in the applicable Services Agreement between Contractor and the Company.
2. These Terms shall govern Contractor’s performance of the Services. Whenever there is a conflict between these Terms and the Agreement, the terms of the Agreement shall govern.
3. Contractor shall perform for the Company the Services specified in the Agreement in accordance with the Agreement and these Terms.
4. Contractor shall perform the Services hereunder in a manner consistent with the highest level of care and skill exercised by other professional contractors engaged in the same profession and working under similar circumstances. Contractor represents and warrants that Contractor possesses all necessary licenses, approvals, qualifications and/or certifications required to perform the Services, and that all such licenses, approvals, qualifications and/or certifications are valid. Contractor shall cause the Services to be performed to the reasonable satisfaction of the Company and, in the case of multiple facilities, the particular Client receiving the Services. Contractor shall perform the Services in such a manner to ensure that the resident, employee and visitor population, the Company’s and, in the case of multiple facilities, each Client’s, and Watermark’s property with respect to the subject facility is reasonably free from injury and harm.
5. In the case of an Agreement with a single facility, the following provisions of this Section 5 shall apply. Contractor agrees that it shall directly invoice and be paid directly by the Company for its performance of the Services. Contractor agrees that the Company, and no other party, is solely responsible for all monies due from the Services provided with respect to the Company. Under no circumstances shall Watermark be liable for monies due resulting from the Company’s inability or unwillingness to pay for the Services. Any and all legal and equitable recourse sought by Contractor shall be sought only against the Company. Contractor shall be paid by the Company for Contractor’s performance of the Services pursuant to the rates and payment terms specified in the Agreement. All claims for moneys due or to become due from the Company shall, at the option of the Company, be subject to deduction for any setoff or counterclaim damages awarded to the Company in a judicial proceeding and arising out of the Agreement, these Terms or any other contract with Contractor.
6. In the case of an Agreement with multiple facilities, the following provisions of this Section 6 shall apply. Contractor agrees that it shall directly invoice and be paid directly by Clients for its performance of the Services. Contractor agrees that Client, and no other party, is solely responsible for all monies due from the Services provided with respect to such Client. A Client shall not be liable for Services provided to any other Client. Under no circumstances shall Watermark be liable for monies due resulting from a Client’s inability or unwillingness to pay for the Services. Any and all legal and equitable recourse sought by Contractor shall be sought only against the Client. Contractor shall be paid by the Client for Contractor’s performance of the Services pursuant to the rates and payment terms specified in the Agreement. All claims for moneys due or to become due from the Client shall, at the option of the Client, be subject to deduction for any setoff or counterclaim damages awarded to the Client in a judicial proceeding and arising out of the Agreement, these Terms or any other contract with Contractor.
7. Contractor shall obtain, pay for and maintain insurance for the coverages, types and amounts of insurance not less than those set forth below:
  - a. Worker’s Compensation: \$500,000, each accident, including occupational disease covered with a limit of \$100,000 per each employee and \$500,000 disease policy limit. Contractor will purchase Worker’s Compensation in the State Fund in those states where established. Stop Gap Coverage or Employers Overhead will be purchased.
  - b. Commercial General Liability: combined bodily injury and property damage limit of \$1,000,000, each occurrence, and general and products liability aggregate of \$2,000,000 each.
  - c. Business Automobile: combined single limit of \$500,000, per occurrence, for bodily injury and property damage.
8. Contractor shall observe and abide by all applicable laws, regulations, ordinances, and other rules of federal, state, local governments, agencies and political subdivisions thereof, and of any other duly constituted public

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authority having jurisdiction where the Services are to be performed. This includes, without limitation, compliance with the Health Insurance Portability and Accountability Act (“HIPAA”). Execution of the Agreement indicates agreement with and execution of a HIPAA Business Associate Agreement in the form contained and available for printing at the following web link: [www.watermarkcommunities.com/vendors](http://www.watermarkcommunities.com/vendors). Watermark will provide a printed copy of the Business Associate Agreement upon either written request, or by calling (520) 797-4000. Contractor shall secure all permits and licenses necessary for the performance of the Services rendered hereunder, pay all fees and make deposits pertaining thereto, and shall furnish, at Contractor’s expense, all bonds required by proper authorities, and shall submit proof thereof to the Company. Contractor shall comply with all of the Company’s rules, regulations and policies.

9. While performing the Services, Contractor may receive proprietary information of Company including, but not limited to operating procedures, business plans, strategies, products, procedures, business and trade secrets, plans, drawings, specifications and technical and financial information (“Company Confidential Information”). Contractor agrees to hold in the strictest confidence any and all Company Confidential Information provided to Contractor and Contractor further agrees that neither it nor its employees or agents’ employees will reveal, duplicate or otherwise make available the Company Confidential Information other than to its own employees or agents’ employees on a need-to-know basis only, and shall require their compliance with this provision. Upon termination of the Agreement, Contractor agrees to return any and all Company Confidential Information to Company and shall retain no copies of the Company Confidential Information.
10. Contractor will indemnify, defend, release, and hold harmless the Company from and against any and all claims, costs, damages, suits, expenses or causes of action (“Claims”) arising from or relating to acts by Contractor in performing the Services, including without limitation reasonable attorneys’ fees and court costs. The foregoing indemnification obligations shall include a) the failure of Contractor to fully and properly comply with applicable laws, rules, regulations, or orders relating to its performance of the Agreement and these Terms, b) Contractor’s or its agents’, employees’ and representatives’ breach of the Agreement and these Terms, c) on account of personal injuries or death or damage to any property in any way incident to or arising out of or claimed to have arisen out of the Services, and d) claims or suits based on the infringement or violation of the right of any person under any intellectual property right arising out of, occurring in, or in connection with the Services provided hereunder. All obligations to indemnify, defend, release, and hold the Company harmless shall extend to the Company’s affiliates, officers, employees, directors, agents, and shareholders, and shall extend for so long as an indemnitee may be subjected to claims or suits calling for such obligations, notwithstanding the completion, acceptance, or payment for the Services or the termination of the Agreement.
11. Contractor agrees to keep such books and records (which books and records shall be maintained on a consistent basis and substantially in accordance with generally accepted accounting principles) as shall readily disclose the basis for any charges or credits, ordinary or extraordinary, billed or due to the Company or a Client, as the case may be, under the Agreement and shall make them available for examination and audit by the Company and its agents prior to, and for a period of three (3) years thereafter, receipt by Contractor of final payment due under the Agreement. When requested by the Company, Contractor shall provide the Company’s personnel with access during normal working hours to Contractor’s personnel, property and records necessary to effectuate the Company’s audit. Contractor further agrees to keep such books and records and to issue such reports as may be required by any regulatory agency or other organization or as may be requested by the Company, and to provide such information to such parties upon the request of the Company.
12. Contractor and its personnel shall immediately disclose and assign to the Company any right, title and interest in any inventions, models, processes, patents, copyrights and improvements thereon relating to the Services or the processes or products of the Company that Contractor, Contractor’s personnel or Contractor’s employees conceive or acquire during any relationship with the Company. Contractor, Contractor’s personnel, Contractor’s employees and the Company agree that any work to be produced by Contractor and its personnel shall be considered a work made for hire as defined in the Copyright Act of 1976, 17 U.S.C. § 101, and is therefore owned exclusively by the Company under § 201 (b), which vests copyright ownership of works for hire in the company for whom the work is prepared.

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13. Contractor will not pay any commissions, fees or rebates to any employee of the Company or a Client, as the case may be, or favor any employee of the Company or a Client with gifts or entertainment of significant cost or value. If the Company has reasonable cause to believe that the provisions of the preceding sentence have been violated, the Company or its representative may audit the records of Contractor for the sole purpose of establishing compliance with and enforcing such requirements.
14. The Company may freely assign this Agreement.
15. This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective permitted successors and assigns. No person or entity other than the Company, a Client (if applicable), Watermark and Contractor shall have any rights under this Agreement.
16. No modification or amendment of the Agreement or these Terms or any waiver of any provision hereof or thereof shall be of any force or effect except by a written document signed by both parties, which specifically references the Agreement. For the sake of clarity with respect to an Agreement with multiple facilities, the addition or removal of any Client parties to the Agreement from time to time shall be evidenced by, and only by, an amended Attachment B signed by each of Contractor and the Company.
17. The Agreement and these Terms constitute the legal, valid, and binding obligations of each party hereto, enforceable against it in accordance with its terms. Contractor represents and warrants to the Company that Contractor has caused the Agreement to be executed on Contractor's behalf by a representative empowered to bind Contractor with respect to the undertakings and obligations contained therein.
18. All notices or advices required or permitted to be given by a party by, or pursuant to, the Agreement and these Terms shall be given in writing. All such notices and advices shall be (i) delivered personally, (ii) delivered by facsimile or delivered by U.S. Registered or Certified Mail, Return Receipt Requested mail, or (iii) delivered for overnight delivery by a nationally recognized overnight courier service. Such notices and advices shall be deemed to have been given (i) the first business day following the date of delivery if delivered personally or by facsimile, (ii) on the third business day following the date of mailing if mailed by U.S. Registered or Certified Mail, Return Receipt Requested, or (iii) on the date of receipt if delivered for overnight delivery by a nationally recognized overnight courier service. All such notices and advices and all other communications related to the Agreement to be given to the Company shall be given to the attention of Watermark on behalf of the Company at Watermark's principal offices.
19. The Agreement and these Terms shall be subject to, and interpreted by and in accordance with, the laws (excluding conflict of law provisions) of the State in which the Company's facility subject to the Agreement is located. In the event of a dispute involving multiple Clients, the law of the State of Arizona shall govern. Any cause of action for a breach or enforcement of, or a declaratory judgment respecting the Agreement and these Terms shall be commenced and maintained only in the applicable United States District Court sitting in the State referenced above in respect of the choice of law.
20. No course of prior dealings involving any of the parties hereto and no usage of trade shall be relevant or advisable to interpret, supplement, explain or vary any of the terms of the Agreement and these Terms. The Agreement and these Terms, and all the provisions hereof and thereof, shall be deemed drafted by all of the parties hereto. The Agreement and these Terms shall not be interpreted strictly for or against any party, but solely in accordance with the fair meaning of the provisions hereof to effectuate the purposes and intent of the Agreement and these Terms.
21. Each party hereto has entered into the Agreement based solely upon the agreements, representations and warranties expressly set forth therein and herein, and upon its own knowledge and investigation. No party has relied upon any representation or warranty of any other party hereto except any such representations or warranties as are expressly set forth herein.
22. The Agreement may be executed in counterparts, each of which shall be deemed an original. The Agreement shall become effective only when all of the parties thereto shall have executed the original or counterpart hereof. The Agreement may be executed and delivered by a facsimile transmission of a counterpart signature page thereof.

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23. In any action brought by a party hereto to enforce the obligations of any other party hereto, the prevailing party shall be entitled to collect from the opposing party(ies) (as applicable) to such action such party's reasonable litigation costs and attorneys fees and expenses (including court costs, reasonable fees of accountants and experts, and other expenses incidental to the litigation).
24. A party to the Agreement may decide or fail to require full or timely performance of any obligation arising under the Agreement and these Terms. The decision or failure of a party hereto to require full or timely performance of any obligation arising under the Agreement and these Terms (whether on a single occasion or on multiple occasions) shall not be deemed a waiver of any such obligation. No such decisions or failures shall give rise to any claim of estoppel, laches, course of dealing, amendment of the Agreement and these Terms by course of dealing, or other defense of any nature to any obligation arising thereunder or hereunder.
25. The repudiation, breach, or failure to perform any obligation arising under the Agreement and these Terms by a party after reasonable notice thereof shall be deemed a repudiation, breach, and failure to perform all of such party's obligations arising under the Agreement and these Terms.
26. Time is of the essence with respect to each obligation arising under the Agreement and these Terms. The failure to timely perform an obligation arising thereunder or hereunder shall be deemed a failure to perform the obligation.
27. In the event any provision of the Agreement and these Terms, or the application of such provision to any person or set of circumstances, shall be determined to be invalid, unlawful, or unenforceable to any extent for any reason, the remainder of the Agreement and these Terms, and the application of such provision to persons or circumstances other than those as to which it is determined to be invalid, unlawful, or unenforceable, shall not be affected and shall continue to be enforceable to the fullest extent permitted by law.
28. Contractor is engaged hereunder as an independent business and shall perform the Services as an independent contractor with full responsibility and control of its employees. The Agreement and these Terms shall not create a joint venture, agency or partnership relationship between Contractor and any of the Company, Client (if applicable) or Watermark, or all of them.