

## HOLD HARMLESS AGREEMENT

This HOLD HARMLESS AGREEMENT (this "Agreement") is made effective on \_\_\_\_\_ by and between The Powerhouse dba Durango Discovery Museum (hereinafter, "POWERHOUSE"), of 1333 Camino del Rio, Durango, Colorado 81301 and San Juan Regional Medical Centre (hereinafter, "SJRMC"), of 801 W. Maple, Farmington, New Mexico 87401. The Powerhouse and San Juan Regional Medical Centre are sometimes individually referred to as "Party" and collectively referred to as the "Parties".

### RECITALS

WHEREAS, The Powerhouse has provided Personal Protective Equipment (PPE) as a donation during the COVID-19 Pandemic of 2020 to the San Juan Regional Medical Centre.

WHEREAS, in exchange for this donation the SJRMC desires to hold harmless POWERHOUSE from any claims and/or litigation arising out of or in connection with the exchange and manufacture of PPE.

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein, POWERHOUSE and SJRMC hereby agree as follows:

### TERMS

**1. Hold Harmless.** SJRMC shall fully defend, indemnify and hold harmless POWERHOUSE from an and all claims, lawsuits, demands, causes of action, liability, loss, damage and/or injury of any kind whatsoever (including without limitation all claims for monetary loss, property damage, equitable relief, personal injury and/or wrongful death), whether brought by an individual or other entity, or imposed by a court of law or by administrative action of any federal, state, or local governmental body or agency arising out of, in any way whatsoever, any acts, omissions, negligence, or willful misconduct on the part of POWERHOUSE, its officers, owners, personnel, employees, agents, contractors, invitees, or volunteers. This indemnification applies to and includes without limitation, the payment of all penalties, fines, judgements, awards, decrees, attorneys' fees, and related costs or expenses, and any reimbursements to POWERHOUSE for all legal fees, expenses, and costs incurred by it.

**2. Authority to Enter Agreement.** Each Party warrants that the individuals who have signed this Agreement that the actual legal power, right, and authority to make this agreement and bind each respective Party.

**3. Amendment; Modification.** No supplement, modification, or amendment of the Agreement shall be binding unless executed in writing and signed by both Parties.

**4. Waiver.** No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual right by custom, estoppel, or otherwise.

**5. Attorneys' Fees and Costs.** If any legal action is brought in connection with this Agreement, the successful or prevailing Party, if any, shall be entitled to recover reasonable attorneys' fees and other related costs, in addition to any other relief to which that Party is entitled. In the event that it is the subject of dispute, the court or trier of fact who presides over such legal action or proceeding is empowered to determine which Party, if any, is the prevailing party in accordance with this provision.

**6. Entire Agreement.** This Agreement contains the entire agreement between the Parties related to the matters specified herein, and supersedes any prior oral or written statements or agreements between the Parties related to such matters.

**7. Enforceability, Severability, and Reformation.** If any provisions of this Agreement shall be held to be invalid or unenforceable for any reason the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited. The intent of the Parties to provide as broad an indemnification as possible under **Colorado** law. In the event that any aspect of this Agreement is

deemed unenforceable, the court is empowered to modify this Agreement to give the broadest possible interpretation under **Colorado** law.

**8. Applicable Law.** This agreement shall be governed exclusively by the laws of Colorado, without regards to conflict of law provisions.

**9. Exclusive Venue and Jurisdiction.** Any lawsuit or legal proceeding arising out of or relating to this Agreement in any way whatsoever shall be exclusively brought and litigated in federal and state courts of Colorado. Each Party expressly consents and submits to this exclusive jurisdiction and exclusive venue. Each Party expressly waives the right to challenge this jurisdiction and/or venue as improper or inconvenient. Each Party expressly consents to the dismissal of any lawsuit that they bring in any other jurisdiction or venue.

**10. Signatures.** This agreement is signed on behalf of The Powerhouse by Jeff Susor, Executive Director, and on behalf of San Juan Regional Medical Center by \_\_\_\_\_, \_\_\_\_\_, and as effective of the date first written above.

The Powerhouse

By: \_\_\_\_\_

Jeff Susor

Title: Executive Director

San Juan Regional Medical Centre

By: \_\_\_\_\_

Title: