



## Takeda's eServices Center Participation Agreement

This eServices Center Participation Agreement (the "Agreement") is entered by and between TAKEDA US INC., a New Jersey limited liability company ("Takeda") and the user of this site ("Customer").

The Effective date of the Agreement is the date of acceptance of the terms below by Customer.

Takeda is offering an internet-based self-service option to customers who wish to purchase Takeda Products via a browser based order entry and fulfillment system known as Takeda's eServices Center ("eServices Center").

Customer desires to utilize, and Takeda desires to offer Customer access to, the eServices Center, on the terms and conditions set forth below;

Takeda and Customer agree as follows:

### 1. USE OF TAKEDA'S eSERVICES CENTER

- (a) Takeda intends to make the eServices Center available for use by any U.S. Customer, as defined in this Agreement. However, Takeda reserves all rights to limit or restrict access to its eServices Center, with or without cause, at any time.
- (b) **Permissible and Prohibited Uses.** Customer may use the eServices Center only for lawful and legitimate business purposes. Customer will be responsible for ensuring that it complies with all laws and licensing or other governmental requirements in connection with its participation in the eServices Center. Prohibited uses of the eServices Center shall include, but not be limited to, the following: (i) placement on the eServices Center of harassing or defamatory material or any material that is irrelevant to the legitimate use of the eServices Center; (ii) introduction of viruses, malware, worms or other programming routines that are intended to disrupt or interface with the intended operation of the eServices Center; (iii) promotion of any unlawful activity or purpose, including, but not limited to, any activity that potentially gives rise to criminal or civil liability; (iv) unauthorized alteration of any data or information supplied by the eServices Center; or (v) any activity that infringes upon the copyright, patent, trademark or other rights of any person or entity.
- (c) **System Integrity.** Except with the consent of Takeda, Customer will not use any software routine or any other device to interface or interfere with the eServices Center.
- (d) **Identification.** Takeda will provide Customer with log-on identifications and passwords (each an "Identification") for its representatives approved to use the eServices Center. Each of the Customer's authorized representatives will need an Identification to access the eServices Center. Customer agrees to use commercially reasonable efforts: (i) to protect the security of each Identification; and (ii) to ensure that only authorized individuals have access to the Identification and to the eServices Center.
- (e) **Security.** Takeda will use commercially reasonable efforts to maintain the security of the eServices Center. Takeda and Customer each will take commercially reasonable precautions to avoid introducing into the other's computers any "computer virus," "trojan horse," "worm" or other computer code not intended to facilitate the purposes of this Agreement.
- (f) **Authority.** By entering this Agreement, Customer represents and warrants that: (i) it has the authority to bind itself and any of its Affiliates and (ii) it will comply with this Agreement in accessing and using the eServices Center.
- (g) **Upgrades.** Updates and upgrades of the eServices Center services or software may be issued by Takeda from time to time. Such updates and upgrades are included in the services at no additional charge to Customer, and do not require Customer acceptance or rejection.
- (h) **Hardware and Software.** Customer will be responsible for obtaining and maintaining all hardware and software necessary to access the Internet and the eServices Center.
- (i) **Content.** Takeda, at its sole discretion, may enhance, delete or modify some or all of the features, format, "look and feel," functions or services of the eServices Center, or the information offered on the eServices Center.

(j) **Interruption of Service.** Takeda will take commercially reasonable measures to ensure that the eServices Center is available during its stated hours of operations without interruption, except for any scheduled downtime needed to maintain the operation of the eServices Center. However, service interruptions may result from time to time. In such cases, Takeda will take measures that it deems reasonable to address the interests of its Customers but will not be liable for any costs, loss or damages resulting from any downtime experienced by its Customers. It is expected that in cases when the eServices Center is not available, the Customer would be able to call Takeda's Customer Service Center during its stated hours of operation for assistance.

(k) **Taxes.** Unless tax exempt, Customer agrees that it will bear sole responsibility for payment of and/or collection from sellers of all local, state, federal and foreign taxes, licenses, export/import fees and similar obligations arising from its purchases and other transactions processed using the eServices Center.

(l) **Acknowledgement.** Customer acknowledges that (i) there is no guarantee that the prices for items available through the eServices Center are the lowest available anywhere or that all product lines are available through the eServices Center; (ii) if Customer elects to purchase items through the eServices Center, it is not relieved of such legal obligations as it may be under to purchase prudently and in compliance with all applicable laws and regulations.

## **2. OWNERSHIP AND LICENSE**

(a) **Ownership of Content.** Takeda owns and will continue to own all of the Content (as hereinafter defined), and the compilation or "look and feel" of all Content, including enhancements, improvements and other additions to any of the foregoing. Customer will not, and agrees to take reasonable steps to ensure that its authorized representatives do not, reproduce, transmit, display or create a derivative work of, any of the foregoing. All Product names, regardless of whether or not they appear in large print or with a trademark symbol, are trademarks of Takeda US Inc., its Affiliates, or its licensors ("Marks") unless otherwise noted.

(b) **Permission to Use.** For the term of this Agreement, Takeda grants a limited, nonexclusive, nontransferable license to Customer to access and use the eServices Center application solely in accordance with the terms and conditions of the Agreement. Except for copies of the eServices Center made by computers in the ordinary course of browsing, placing orders, conducting inquiries of orders and invoices and reprinting of invoices, Customer may not use, copy, modify or distribute the eServices Center, including the Customer interface (electronically or otherwise), or any copy, adaptations, transcription or merged portion thereof. Customer may not disassemble, reverse engineer, decompile or otherwise translate the eServices Center. If Customer breaches this license, Takeda may terminate Customer's license immediately.

## **3. DISCLAIMER**

THE CONTENT PROVIDED ON THE ESERVICES CENTER IS PROVIDED "AS IS," AND TAKEDA EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTY OF NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY AND COMPLETENESS OF CONTENT, OR MERCHANTABILITY. EXCEPT FOR THE EXPRESS WARRANTIES STATED IN THE AGREEMENT OR IN ITS TERMS AND CONDITIONS OF SALE, TAKEDA MAKES NO WARRANTIES TO ANY OTHER PERSON REGARDING ITS PRODUCTS, SERVICES OR OTHERWISE, EXPRESS, IMPLIED OR STATUTORY. TAKEDA SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTY OF NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY WITH RESPECT TO ANY PRODUCTS OR SERVICE ACQUIRED BY CUSTOMER. TAKEDA DOES NOT GUARANTEE CONTINUOUS, UNINTERRUPTED ACCESS TO THE ESERVICES CENTER OR THE SERVICES, AND OPERATION OF THE ESERVICES CENTER MAY BE INTERFERED WITH BY NUMEROUS FACTORS OUTSIDE OF TAKEDA'S CONTROL.

## **4. INDEMNIFICATION**

(a) **By Takeda.** Takeda will defend, indemnify and hold harmless Customer, its Affiliates and their respective officers, directors and employees ("Customer Indemnities") against any loss, liability, cost or expense (including reasonable attorneys' fees) resulting from any third-party claims of actual or alleged infringement of third-party intellectual property rights under any United States trademark, copyright or trade secret, or any United States patent issued as of the Commitment Date, in each case arising out of Customer's or its representatives' authorized use of Takeda's eServices Center.

(b) **By Customer.** Customer will defend, indemnify and hold harmless Takeda, its respective Affiliates and its respective officers, directors and employees against any loss, liability, cost or expense (including reasonable attorneys' fees) resulting from any third-party claims arising from: (i) any virus, worm, malware, Trojan Horse or other contaminating or destructive feature introduced by Customer or its authorized representatives in using the

eServices Center; (ii) Takeda's acts or omissions in accordance with Customer's instructions with respect to the delivery of Customer Information; and (iii) Customer's negligence, any breach of the Agreement by Customer and any errors in data supplied by Customer.

## 5. LIMITATION OF LIABILITY AND WARRANTIES

EXCEPT FOR LIABILITY ARISING UNDER SECTION 4 AND AS EXPRESSLY SET FORTH BELOW, IN NO EVENT SHALL TAKEDA BE LIABLE TO CUSTOMER, OR SHALL CUSTOMER BE LIABLE TO TAKEDA, FOR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATING TO THE AGREEMENT, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

## 6. CONFIDENTIALITY; INTELLECTUAL PROPERTY

(a) Confidentiality. Except as expressly set forth in this Agreement, (1) Takeda will regard and preserve as confidential all of Customer's Confidential Material, and Customer will regard and preserve as confidential all Confidential Material of Takeda, and (2) Takeda will not, without first obtaining Customer's prior written consent, disclose to any third party or use for its benefit any of Customer's Confidential Material, and Customer will not, without first obtaining Takeda's prior written consent, disclose to any third party or use for its benefit any Confidential Material of Takeda. This confidentiality obligation does not apply to information that the receiving party demonstrates: (a) is publicly known prior to the disclosure or becomes publicly known through no wrongful act of the receiving party; (b) was in the lawful possession of the receiving party prior to the disclosure and was not received as a result of any breach of confidentiality; (c) was independently developed by the receiving party outside the scope of the Terms of the Agreement; or (d) must be disclosed by the receiving party pursuant to court order or regulatory agency request. In the event of a request for disclosure pursuant to subsection (d), immediate notice of such request shall be provided the appropriate party in order to provide an opportunity to oppose such request for disclosure.

(b) [Privacy Notice](#). All use by Takeda of Customer Information (as hereinafter defined) will be made in conformance with Takeda's eServices Center [Privacy Notice](#) then in effect.

Link to Privacy Notice: <https://www.takeda.com/privacy-notice>

## 7. DISPUTES

The parties shall meet and confer in good faith to resolve any disputes, claims, questions, or disagreements arising out of this Agreement. Either party may initiate negotiations by providing written notice to the other party, setting forth the subject of the dispute and the relief requested. The recipient of such notice shall respond within five (5) business days with a written statement of its position on and recommended solution to the dispute. If the dispute is not resolved through this exchange of correspondence, then representatives of each party with full authority to settle the dispute will meet at a mutually agreeable time and place within ten (10) business days of the initial notice in order to exchange relevant information and attempt to resolve the dispute. Nothing in this Section 7 precludes either party's right to seek (i) redress in the courts at any stage of the dispute; and (ii) interim or provisional relief, including a temporary restraining order, preliminary injunction or other interim equitable relief if necessary to protect the interests of such party.

## 8. GOVERNING LAW; JURISDICTION

This Agreement, and the rights and obligations of the parties hereunder, shall be governed by, interpreted and construed in accordance with the laws of the State of Delaware, USA, without regard to any conflicts of law provisions. All disputes arising out of this Agreement shall be exclusively resolved in a court of competent jurisdiction in the state of Delaware, USA. Each party expressly consents to the jurisdiction of the state and federal courts in the state of Delaware, USA, and waives any objections or right as to forum non conveniens, lack of personal jurisdiction or similar grounds.

## 9. ASSIGNMENT

Customer will not assign, delegate, sublicense, transfer or subcontract the whole or any part of this Agreement without prior written consent from Takeda. Notwithstanding any provisions hereof, Takeda may assign this Agreement to one of its Affiliates or to any successor by law or by sale of substantially all of its assets, provided that any such assignee assumes all obligations of its assignor under this Agreement. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the respective parties and their successors and permitted assigns.

## 10. NOTICES

All notices, requests and other communications required or permitted to be given under this Agreement must be in writing. If to Takeda, such notice shall be sent to Takeda at 300 Shire Way, Lexington, MA 02421 to the attention of "General Counsel". If to Customer, such notice shall be sent to the mailing address provided by Customer when using the eServices Center. All notices to Takeda must be mailed by regular mail, prepaid, or delivered by express mail, private courier. Any such notice will be considered to have been given when received, or if mailed, five (5) business days after it was mailed, as evidenced by the postmark.

The parties hereto further agree to accept service of process, for any action brought related to this Agreement, by the mailing of process by registered or certified mail, postage prepaid, return receipt requested, to the representative or address specified in this Agreement, or to such other representative or address as has been identified as of such time as service is to be made, and the parties hereto irrevocably waive any objection that service of process must conform to any such applicable law or treaty regarding service of process, in favor of the procedure for service of process set forth herein.

## 11. ENTIRE AGREEMENT

The terms and conditions of this Agreement set forth the entire agreement between Takeda and Customer concerning the availability and use of the eServices Center and supersedes and controls over any prior or contemporaneous oral, written or electronic communications and proposals. No modification of these terms and conditions shall be deemed enforceable by either party unless such modification is set forth in a writing signed by authorized representatives of both parties.

## 12. DEFINITIONS

- (a) "Affiliate" means any legal entity that directly or indirectly is controlled by, controls or is under common control with an entity, provided that "control" shall mean ownership as to more than 50% of another legal entity or the power to direct decisions of another legal entity, including the power to direct management and policies of another legal entity, whether by reason of ownership, by contract or otherwise.
- (b) "Confidential Material" means information of Takeda relating to the eServices Center. Without limiting this definition, Confidential Material of Takeda includes its intellectual property, Product Data owned or licensed by it, information regarding other Customers of the eServices Center, and all aggregated information created or compiled by it, and Customer's Confidential Material includes all Customer Information relating to transactions conducted by it through the eServices Center.
- (c) "Content" means any text, graphics, logos, button icons, images, audio clips, HTML code, java programs and other materials used or displayed in the eServices Center, including Product Data.
- (d) "U.S. Customer" means a customer that is based in the continental United States and places orders with Takeda for its facilities located in the 50 United States.
- (e) "Customer Information" means any and all information and data collected, transmitted, stored, or received by Takeda related to Customer and any purchase, sale or other transaction processed by Customer on the eServices Center or using the Services, including summaries of such information.
- (f) "Products" means information, goods and services supplied by Takeda on the eServices Center.
- (g) "Product Data" means Product information supplied by Takeda and displayed on the eServices Center including without limitation Product descriptions and specifications, Marks, catalog prices, catalogs, directions for use, text, pictures, sound, video and other data.
- (h) "Services" means all services available through the eServices Center.

By accepting below, and by using the eServices Center, you accept this Agreement.