

## Software as a Service Terms of Service Agreement

This Software as a Service Terms of Service Agreement (the “**Agreement**”) is entered into between JourneyLabs Inc., a Delaware Corporation with its principal place of business located at 1511 E SR 434, Suite 2001, Winter Springs, FL 32708 (the “**Company**”) and the **Clinician**, as described in the **Quotation Sheet**, incorporated by reference herein, and will be effective from the date specified on the Quotation Sheet (the “**Effective Date**”). (Company and Organization may be referred to singularly as a “**Party**” or collectively as the “**Parties.**”)

### 1. Definitions

- a. “**Authorized Users**” means the number of identifiable unique persons consisting of Clinician’s personnel and outside consultants who are authorized to access and use the Services, as specified in the applicable Quotation Sheet. Authorized Users may include Clinician’s third-party consultants, outsourcers, contractors, and other service providers.
- b. “**Clinician Data**” means the Clinician’s information or other data processed, stored, or transmitted by, in, or through the Services, including, but not limited to, personal information relating to the Clinician’s personnel, End Users, and prospective End Users.
- c. “**Patients**” means the Clinician’s patients who use the Services to provide feedback to the Clinician.
- d. “**Portal**” means the JourneyLabs™ website or JourneyLabs™ mobile app including the Technology.
- e. “**Proprietary Rights**” means any and all rights, whether registered or unregistered, in and with respect to patents, copyrights, confidential information, know-how, trade secrets, moral rights, contract or licensing rights, confidential and proprietary information protected under contract or otherwise under law, trade names, domain names, trade dress, logos, animated characters, trademarks, service marks, and other similar rights or interests in intellectual or industrial property.
- f. “**Quotation Sheet**” means a form, incorporating the terms of this Agreement, by which a Clinician selects and commences Services. A Quotation Sheet can be either a written form, specified as a “Quotation Sheet”, or an electronic form the Clinician configures through the Portal.
- g. “**Services**” means the features selected by the Clinician as specified on the applicable Quotation Sheet, the Portal, the HealthJourney™ mobile app, and any updates or upgrades to such services that may be generally released by the Company to all customers from time to time. These

Services may change by mutual consent of the Parties, as recorded through the Quotation Sheet.

- h. “Technology”** means the computer hardware, software, and other tangible equipment and intangible computer code necessary to deploy and serve the Services via the Portal.

- 2. Services; Portal.** The Portal is an engagement platform that allows a Patient to have continuous communication with the Clinician. Depending on your Quotation Sheet, Patients may have the ability to provide freeform feedback to you, ask for assistance from you, and/or take surveys you have provided.

### **3. Subscription Fees.**

- a. Payment for Services.** The Clinician shall pay to the Company the periodic subscription fees for the Services and technical support services provided in this Agreement in accordance with the applicable Quotation Sheet.
- b. Subscription Cancellation.** If the Company is unable to charge a Clinician using the form of payment indicated on the Quotation Sheet, the Company may terminate this Agreement and access to the Services, immediately and without notice to the Clinician.
- c. No Refunds.** If access to the Portal is cancelled or terminated, the Clinician is not entitled to any proration or refund of any unused subscriptions.

- 4. Taxes.** All fees exclude tax and duties. If the Company is required to pay or collect any federal, state, local, value added, tax, or duty on any fees charged under this Agreement, or any other similar taxes or duties levied by any governmental authority, excluding taxes levied on the Company’s net income, such taxes and/or duties will be billed to and paid by the Clinician immediately upon receipt of the Company’s invoice and supporting documentation for the taxes or duties charged.

### **5. Storage Provided by the Services.**

- a.** The Company will provide the Clinician free storage as provided for in the Quotation Sheet. For additional storage requirements, the Clinician must enter into an additional agreement with the Company to cover IT and storage costs.
- b.** The Company shall store Clinician Data for twelve (12) months on a rolling basis. If the Clinician requires longer storage of Clinician Data, the Clinician must either export the Clinician Data or enter into an additional agreement with the Company to cover IT and storage costs.

- c. If the Clinician's access to the Services is terminated, the Clinician may no longer have access to any of the Clinician Data. The Company is not responsible for providing the Clinician access to the Clinician Data after the cancellation or termination of this Agreement except as is provided in the Business Associate Agreement found at this link: <https://www.journeylabs.io/business-associate-agreement/>.

**6. Informed Consent.** It is the sole responsibility of the Clinician to obtain the informed consent of the patients to whom you grant access to the Services. In addition, if the patient is under the age of 18, it is up to the Clinician to determine whether the law requires it to obtain the consent of the parent or guardian before granting the minor patient access to the Services.

## **7. Clinician Data.**

- a. No Commingling of Clinician Data. The Services will be operated in an environment where (i) all Clinician Data will be stored on files totally separate from those of other customers of the Company or (ii) all files containing Clinician Data are partitioned sufficiently to protect the security and privacy of Clinician Data.
- b. Content Ownership. The Parties acknowledge that all Clinician Data used with the Services and all the data derived from such Clinician Data is and will remain the property of the Clinician.
- c. Trial Version. A trial version of the Services gives the Clinician access to the Services for a limited amount of time (the "**Trial Period**") as described in the Quotation Sheet. At the end of the Trial Period, the Clinician will have no access to any Clinician Data acquired or created during this Trial Period unless the Clinician has upgraded to a paid version of the Services.
- d. Use of Clinician Data is at the Clinician's Risk. The Company shall have no responsibility for the accuracy, quality, integrity, legality, reliability, or appropriateness of any Clinician Data including, but not limited to, Patient-supplied content. The Clinician acknowledges that use of any Clinician Data generated, obtained, or acquired through the use of the Services is at the Clinician's sole risk and discretion. The Clinician is not liable or responsible for any results generated using the Clinician Data. **The Clinician understands and agrees that it is using the Services/ Portal at its own risk. The Clinician assumes all risks and responsibility for its use of the Services and understands that the Clinician Data is stored at the Clinician's own risk.**

## 8. Use Restrictions.

- a. The Clinician covenants and agrees that its use of the Services will be in a manner consistent with this Agreement and with all applicable laws and regulations, including trade secret, copyright, trademark, and export control laws. Without limiting the generality of the foregoing, the Clinician shall not, nor shall it permit or assist others, (i) to abuse or fraudulently use the Services; (ii) to process or permit to be processed the data of any third party that is not expressly authorized herein to access and use such Services; and (iii) to attempt to copy, reverse engineer, decompile, disassemble, create a derivative work from, or otherwise attempt to derive the source code of any part of the Technology; or (iv) to access, alter, or destroy any information of any customer of the Company by fraudulent means or device, or attempt to do so.
- b. The Clinician covenants and agrees that it will not use either the trial version or the paid version of the Services for competitive analysis purposes. The Clinician's use of the Services for competitive analysis is a breach of this Agreement and will result in automatic, immediate termination of the Services.

**9. Not for Emergency Use.** The Clinician shall not use the Services for medical emergencies or other mission critical applications. The Clinician shall instruct Patients to call 911 or other first responders in case of serious emergencies. **The Company is not liable for any failures or communications or response issues.**

**10. Communications sent via SMS or email.** In addition to the internal communication mechanisms internal to the Software, the Software also facilitates communication via SMS (i.e., text messages) and email between Patients and Clinicians. You are advised not to send confidential information, personal information, or health information by SMS or email.

Also, be aware that many email systems electronically filter for "spam" and/or "viruses." That filtering process may result in email communications being quarantined (i.e., potentially not being received by the intended party) and/or delayed in reaching the intended party. Therefore, we cannot guarantee that the intended party will receive email communications at all or that they will receive the communications in a timely manner.

**Accordingly, you should send any communications that are particularly important, contain sensitive information, or whose delivery is time-sensitive through the Software itself instead of through SMS or email.**

**11. Security.** The Clinician will be solely responsible for acquiring and maintaining technology and procedures for maintaining the security of its link to the Internet. As part of the Services, the Company shall implement reasonable security

procedures consistent with the prevailing industry standard to protect Clinician Data from unauthorized access (the “**Security Standard**”). The Company will not, any under circumstances, be held responsible or liable for situations (i) where data or transmissions are accessed by third parties through illegal or illicit means, or (ii) where the data or transmissions are accessed through the exploitation of security gaps, weaknesses, or flaws unknown to the Company at the time. The Company will promptly report to the Clinician any unauthorized access to Clinician Data promptly upon discovery by the Company and the Company shall use diligent efforts to promptly remedy any breach of security that permitted such unauthorized access. In the event notification to persons included in such Clinician Data is required, the Clinician shall be solely responsible for any and all such notifications, at its expense.

**12. Accounts for Services.** The Company will permit access to the Services only over the Internet using account information assigned by the Company. Account information will be deemed the Confidential Information of both Parties.

**13. Technical Requirements for Services.**

- a. Capacities. The Services will be rendered in a manner that will support the Authorized User requirements and other requirements provided in the applicable Quotation Sheet.
- b. Scalability. The Services will be scalable in a manner that allows the Services to meet any forecasted increase provided in the applicable Quotation Sheet.
- c. Internet Data Centers. The Services will be provided through Internet Data Centers that are configured consistent with the prevailing industry standards for fireproofing, power and backup generation, structural integrity, seismic resistance and resistance to other natural and man-made disruptions. In addition, the facility will be secured against physical and electronic intrusion in a manner consistent with prevailing industry standards. The Company may outsource its Internet Data Center operations to subcontractors; provided, however, that the Company shall be responsible for the performance of such subcontractors, and the Company shall be liable for any action or inaction by such subcontractors as if performed by the Company.

**14. Monitoring of Clinician’s and Patient’s Use.** The Company has no obligation to monitor posts by the Clinicians or its Patients or to exercise editorial control over such posts; however, the Company reserves the right to review such posts and to remove any material that, in the Company’s judgment, is not appropriate.

**15. Confidential Information.** For purposes of this Agreement, “**Confidential Information**” means Clinician Data and non-public aspects of Clinician technology, computer programs, and business and technical information and data. In addition, Confidential Information includes information which, although not related to the Services or this Agreement, is nevertheless disclosed hereunder, and which, in any case, is disclosed by the Clinician to the Company and which the Clinician has indicated to the Company is confidential or proprietary in nature.

- a. Restrictions on Use and Disclosure. The Company may use Confidential Information of the Clinician only for the purposes of this Agreement and shall protect such Confidential Information from disclosure to others, using the same degree of care used to protect its own proprietary information of like importance, but, in any case, using no less than a reasonable degree of care. The Clinician may disclose Confidential Information received hereunder only as reasonably required to perform its obligations under this Agreement and only to its employees who have a need to know for such purposes and who are bound by signed, written agreements to protect the received Confidential Information from unauthorized use and disclosure.
- b. Exclusions. The restrictions of this Agreement on use and disclosure of Confidential Information will not apply to information that: (i) is in the possession or control of the Company at the time of its disclosure hereunder; (ii) is, or becomes, publicly known, through no wrongful act of the Company; (iii) is received by the Company by a third party free to disclose it without obligation to the Clinician; (iv) is independently developed by a party as evidenced by its written and dated records and without any breach of this Agreement; or (v) is the subject of a written permission to disclose provided by the Clinician. The Company may disclose Confidential Information of the Clinician pursuant to the requirements of a governmental agency or by operation of law, provided that the Company gives the Clinician written notice thereof as soon as practicable and reasonably cooperates with Clinician to contest such disclosure.
- c. HIPAA HITECH Compliance. The Company shall comply with (i) HIPAA as amended by HITECH and (ii) the terms and conditions of the Business Associate Agreement found at this link: <https://www.journeylabs.io/business-associate-agreement/>.

**16. Purchase of Additional Services.** The Clinician may elect to purchase rights for additional Authorized Users and/or additional services by Quotation Sheet from time to time. Such additional purchases will be governed by the terms and conditions in this Agreement. The Clinician agrees that, absent the Company’s express written acceptance thereof, the terms and conditions contained in any Quotation Sheet or other document issued by the Clinician to the Company for the

additional purchases, will not be binding on the Company if such terms and conditions are additional to or inconsistent with those contained in this Agreement.

**17. Technical Support, Training, and Consulting Services.** During the term of this Agreement, the Company will provide technical support in the form of responses to questions by e-mail or telephone at no additional charge. The support time typically will be 9:00AM-6:00PM EST/EDT Monday – Friday. Consulting Services will be negotiated by the Parties and agreed upon in writing.

**18. Technical Contacts.** The Clinician shall designate one of its employees as its principal contact for communicating with the Company regarding technical issues. The Clinician may change its technical contact by written notice to the Company.

**19. Proprietary Rights Ownership.** Ownership of the Proprietary Rights embodied in the Portal, Services, and the Technology will remain exclusively vested in and be the sole and exclusive property of the Company and its licensors. In addition, the Clinician hereby transfers and assigns to the Company, any rights the Clinician may have to any suggestions, ideas, enhancement requests, feedback, recommendations, or other information provided by the Clinician relating to the Services. The journeylabs.io domain name, product names, and logos associated with the Services are trademarks of the Company or third parties, and no right or license is granted to use them.

**20. Clinician Representations and Warranties.**

- a. The Clinician represents and warrants that it is not located in a country that is subject to a U.S. Government embargo, or that it has been designated by the U.S. Government as a “terrorist-supporting” country, and it is not listed on any U.S. Government list of prohibited or restricted parties.
- b. The Clinician represents and warrants that (i) the performance of its obligations and use of the Services (by Clinicians and its Authorized Users) will not violate any applicable laws or regulations including, but not limited to, any and all laws and regulations regarding the transfer to personal information of residents of the European Union outside the European Union or (ii) cause a breach of any agreements with any third parties or unreasonably interfere with the use by other customers of the Services.
- c. The Clinician acknowledges that (i) the Company is not required to monitor the content of information passing through the Services for purposes of verifying accuracy or legal compliance and (ii) the Clinician shall use commercially reasonable efforts to ensure that the information it

and its Authorized Users transmit thereby complies with all applicable laws and regulations, whether now in existence or hereafter enacted and in force.

- d. In the event of breach by the Clinician of any of the foregoing representations or warranties, in addition to any other remedies available at law or in equity, the Company will have the right to suspend immediately any Services if the Company deems it reasonably necessary to prevent any harm to the Company and its business. The Company shall provide notice to the Clinician and an opportunity to cure, if practicable, depending on the nature of the breach. Once cured, the Company shall promptly restore the Services.

**21. Company Representations and Warranties.** The Company represents and warrants that (i) it has the legal right to enter into this Agreement and perform its obligations under this Agreement, and (ii) the performance of its obligations and delivery of the Services to the Clinician will not violate any applicable laws or regulations of the United States or cause a breach of any agreements between the Company and any third parties. In the event of a breach by the Company of the foregoing warranties, the Clinician's sole remedy is termination of this Agreement upon written notice to the Company.

**22. DMCA Notice.** The Company respects the intellectual property rights of others and expects the Clinician to do the same. The Company will remove all infringing content if properly notified that it infringes third-party copyrights, and may do so at its sole discretion, without prior notice at any time. Under the United States Digital Millennium Copyright Act of 1998 (the "DMCA"), it is the Company's policy to respond expeditiously to copyright owners who believe content infringes their rights. The Company reserves the right to remove any content without prior notice to the Clinician, any Patient, or any third party. If the Clinician believes that content made available through the Portal infringes its copyright, the Clinician may send the Company a notice requesting that it be removed or that the Company block access to it. If the Clinician believes that such a notice has been filed wrongfully against it, the DMCA allows the Clinician to send the Company a counter notice. Notices and counter notices must meet DMCA's requirements. The Company recommends that the Clinician consult its legal advisor before filing a notice or counter notice. There can be substantial penalties for false claims. Notice and counter notices may be sent to the Company's copyright agent at [support@journeylabs.io](mailto:support@journeylabs.io). It is the Company's policy, in appropriate circumstances, to terminate the account of any Clinician or Patient who has committed multiple infringements.

**23. Limited Warranty.** The Company represents and warrants that the Services will: (i) conform to all material operational features as described in the applicable Quotation Sheet and (ii) be free of errors and defects that materially affect the performance of such features ("**Limited Warranty**"), provided that the Clinician



notifies the Company of any such non-conformity, error, or defect. The Clinician's sole and exclusive remedy for breach of this Limited Warranty will be the prompt correction of material, non-conforming Services at the Company's expense.

**24. Warranty Disclaimers.** Except for the Limited Warranty provided above, neither the Company nor any of its suppliers or resellers makes any warranty of any kind, express or implied, and the Company and its suppliers specifically disclaim the implied warranties of title, non-infringement, merchantability, fitness for a particular purpose, system integration, and data accuracy. Some jurisdictions do not allow disclaimers of implied warranties so the above limitation may not apply. The Clinician acknowledges that no representations other than those contained in this Agreement have been made respecting the Service and that the Clinician has not relied on any representation not expressly set out in this Agreement. The Company does not warrant that the Services or the Portal will operation in combinations which the Clinician may select for use, or that the operation of the Services or the Portal will be uninterrupted or error-free. Furthermore, the Clinician acknowledges and agrees that the Company has no control over the Internet, and that the Company is not liable for the discontinuance of operation of any portion of the Internet or possible regulation of the Internet which might restrict or prohibit the operation of the Services.

**25. Disclaimer of Actions of Third Parties.** The Company does not and cannot control the flow of data to or from the Company's Technology and other parts of the Internet. Such flow of data depends on the performance of the Internet services provided or controlled by third parties. At times, actions or inactions of such third parties can impair or disrupt Clinician's connections of the Internet (or portions thereof). Although the Company will use commercially reasonable efforts to take all actions it deems appropriate to remedy and avoid such events, the Company cannot guarantee that such events will not occur. The Company disclaims any and all liability resulting from or related to the performance or non-performance of Internet services, software components, or operation systems provided or controlled by third parties, including, but not limited to, Apple and Android, which are not the Company's subcontractors.

**26. Intellectual Property Indemnity.** Except for third-party software including, but not limited to, open source software, the Company shall indemnify, defend, and hold harmless the Clinician from and against any lawsuit, liabilities, loss, cost, or expense arising out of a third-party claim made against the Clinician that the Technology or Services infringe on any U.S. intellectual property right of a third party; provided, however, that the Company is notified in writing of such claim promptly after such claim is made upon the Clinician. The Company will have the right to control any defense of the claim. In no event shall the Clinician settle any such claim without the Company's prior written approval. The Company will have no liability or obligation if the claim arises from (i) any alteration or

modification to the Technology or Services other than by the Company, (ii) any combination of the Technology or Services by the Clinician with other programs or data not furnished by the Company, or (iii) any use by the Clinician of the Technology or Services that is prohibited by this Agreement or otherwise outside the scope of use for which the Technology or Services are intended.

**27. Options for Infringement Claims.** If any party is enjoined from using the Technology, or if the Company believes that the Technology may become the subject of a claim of intellectual property infringement, the Company, at its option and expense, may: (i) procure the right for the Clinician to continue to use the Services; (ii) replace or modify the Technology so as to make it non-infringing; provided, however, that the Services continue to conform to the descriptions and/or specifications provided in the applicable Quotation Sheet; or (iii) terminate this Agreement, in which case the Company shall refund to the Clinician any and all subscription fees paid in advance by the Clinician for those Services not provided by the Company and provide, at the Clinician's request and free of charge, the Clinician Data in a database document format. This Section and the preceding Section set forth the entire liability of the Company to the Clinician for any infringement by the Technology or Services of any intellectual property of a third party. Despite the foregoing, this Section does not apply to third-party software including, but not limited to, open source software.

**28. Disclaimer of Incidental and Consequential Damages.** Except for indemnity obligations expressly provided in this Agreement and any violation of confidentiality obligations, to the fullest extent permitted by law, the Company is not liable for any direct, indirect, punitive, special, incidental, consequential, or exemplary damages (whether in contract, tort (including negligence), or otherwise) which includes, but is not limited to, damages for personal injury or wrongful death, damages resulting from lost data, failures in communication or response issues regarding medical emergencies, or the use or inability to use the Services, arising out of or in connection with the Services, even if the Company has previously been advised of, or could have reasonably foreseen, the possibility of such damages. These limitations will apply notwithstanding any failure of the essential purpose of any limited remedy. Because some jurisdictions do not allow the exclusion or limitation of liability for consequential or incidental damages, the above limitations may not apply to you. In no event will the Company's total liability to you for all damages, losses, and cause of action, whether in contract, tort (including, but not limited to negligence), or otherwise exceed \$1,000.

You and the Company agree that the warranty disclaimers and limitations of liability in this Agreement are material, bargained-for bases of this Agreement, and that they have been taken into account in determining the consideration to be given by each party under this Agreement and in the decision by each party to enter into this Agreement. You and the Company

**agree that the warranty disclaimers and limitations of liability in this Agreement are fair and reasonable.**

**29. Liability Cap.** Except for the Company's indemnity expressly provided for by this Agreement and the Company's confidentiality obligations, in no event will the Company's aggregate liability, if any, including liability arising out of contract, negligence, strict liability in tort or warranty, or otherwise, exceed one (1) month of a subscription fee.

**30. Term and Termination.**

- a. **Term of Agreement.** The initial term of this Agreement will commence as of the Effective Date and will continue for a period of one (1) year. The initial term will automatically renew for successive one (1) year terms unless either Party notifies the other in writing, not less than thirty (30) days prior to the expiration of the current term, of its intention not to renew. Both the initial term and any renewal term are subject to earlier termination as otherwise provided for by this Agreement. Either Party may choose not to renew this Agreement without cause for any reason.
- b. **Term of Quotation Sheet.** Any Quotation Sheet created under this Agreement will commence immediately upon execution by both Parties and will continue thereafter as provided in the Quotation Sheet; provided, however, that despite any other provision of this Agreement or in any Quotation Sheet, all existing Quotation Sheets will also terminate upon the expiration or termination of this Agreement.
- c. **Automatic Termination.** Unless the Company promptly upon discovery of the relevant facts notifies the Clinician to the contrary, in writing, this Agreement and all Quotation Sheets will terminate immediately, without notice, upon the institution of insolvency, bankruptcy, or similar proceedings by or against the Company, any assignment or attempted assignment by the Company for the benefit of creditors, or any appointment, or application for such appointment, or a receiver for the Company.
- d. **Termination for Cause.** If either Party fails to comply with any of the material terms and conditions of this Agreement or Quotation Sheet including, but not limited to, the payment of any subscription fee or reimbursement due and payable to the Company under this Agreement, the non-defaulting Party may terminate this Agreement and/or all Quotation Sheets upon twenty (20) days' written notice to the defaulting Party specifying any such breach, unless within the period of such notice, all breaches specified have been remedied.

- e. Effect of Termination. Upon any termination of this Agreement, the Clinician will be denied access to the Portal. Termination will not relieve the Clinician of its obligation to pay any undisputed fees accrued or payable to the Company prior to the effective date of termination. Under no circumstances will the Company refund any fees already paid by the Clinician.

**31. Termination by the Company for End of Life.** The Company intends to continue to provide and support the Services for as long as the Clinician renews in accordance with the applicable Quotation Sheet; provided, however, if the Company determines, in its sole discretion, that it is no longer feasible to support the Services, the Company may terminate this Agreement for end-of-life at any time by providing thirty (30) days' written notice to the Clinician. In the event of such termination, the Company shall reimburse, on a prorated basis, any subscription fees paid by the Clinician.

**32. Transition Services.** If the Clinician is current in all payments due to the Company at the time of expiration or termination of this Agreement, the Company shall provide to the Clinician its Clinician Data in a standard database document format readily available to the Company at no additional charge. If the Clinician requests the Clinician Data in a non-standard format, the Clinician shall pay the Company a reasonable fee for technical services as determined by the Company.

**33. Designed for Use Only Within Legal Jurisdictions**

Access to this Software from locations where its use or contents are illegal is not authorized. The Clinician acknowledges and agrees that its access and use of the Services is of its own volition and it is responsible for compliance with local law.

**34. User Suggestions to Company**

The Company welcomes the Clinician's feedback with regard to the Portal and the Services. However, the Company will not accept any creative ideas, suggestions, inventions, or materials other than those the Company has specifically requested ("Suggestions"). If the Clinician submits these Suggestions regardless of this stated policy, the Suggestions will automatically become the property of the Company. None of the Suggestions will be subject to any obligation of confidentiality and the Company shall not be liable for its disclosure or use. The Company will have exclusive ownership of all now known or later discovered rights to the Suggestions and will be entitled to unrestricted use of the Suggestions for any purpose whatsoever, commercial or otherwise, without compensation to the Clinician.

**35. Severability.** If any part of this Agreement is held to be unenforceable for any reason, the remainder of this Agreement will continue in full force and effect. If any provision of this Agreement is deemed invalid or unenforceable by any court

of competent jurisdiction, and if limiting such provisions would make the provision valid, then such provision will be deemed to be construed as so limited.

- 36. Entire Agreement.** This Agreement constitutes the entire agreement between the Parties and supersedes any prior understanding or representation of any kind preceding the date of this Agreement. There are no other promises, conditions, understandings, or other agreements, whether oral or written, relating to the subject matter of this Agreement. This Agreement may be modified in writing and must be signed by both Parties.
- 37. Governing Law.** This Agreement and the rights and obligations of the Parties under it are governed by and interpreted in accordance with the laws of the State of Florida without regard to principles of conflicts of law.
- 38. Dispute Resolution.** Except for actions to protect Proprietary Rights and to enforce an arbitrator's decision hereunder, all disputes, controversies, or claims arising out of or relating to this Agreement or a breach of this Agreement will be submitted to and finally decided by arbitration under the rules of the American Arbitration Association ("AAA") then in effect. There will be one arbitrator, and the arbitrator will be chosen by mutual agreement of the Parties in accordance with AAA rules. The arbitration will take place in Sanford, Florida. The arbitrator will apply the laws of the State of Florida to all issues in dispute. The findings of the arbitrator will be final and binding on the Parties and may be entered in any court of competent jurisdiction for enforcement. Legal fees will be awarded to the prevailing Party in the arbitration.
- 39. Venue and Jurisdiction.** The Parties are required by the terms of this Agreement to resolve claims through binding arbitration. Nonetheless, if suit is to be entered, the Parties agree to jurisdiction in Florida's Eighteenth Judicial Circuit sitting in Sanford, Florida, and/or the Seminole County Court as appropriate. Similarly, if jurisdiction lies in the Federal Court, the complaint will be filed in the United States District Court for the Middle District of Florida. Each Party waives the right to institute or maintain any suit, action, or proceeding in any other court or forum. Each Party, by executing this Agreement, consents and submits to the personal jurisdiction of such Court.
- 40. Attorneys' Fees.** In the event of any suit or action to enforce or interpret any provision of this Agreement (or that is based on this Agreement), the prevailing Party is entitled to recover, in addition to other costs, reasonable attorney fees in connection with the suit, action, or arbitration, and in any appeals. The determination of who is the prevailing party and the amount of reasonable attorneys' fees to be paid to the prevailing party will be decided by the court or courts, including any appellate court, in which the matter is tried, heard, or decided.

- 41. Notices.** Any notices required or permitted to be given under this Agreement will be given in writing and will be delivered (i) in person, (ii) by certified mail, postage prepaid, return receipt requested, or (iii) by commercial overnight courier that guarantees next day delivery and provides a receipt, and such notices will be addressed to the address of the Party as specified in this Agreement or to such other address as the Party may specify in writing.
- 42. Assignment.** The Clinician shall not assign this Agreement or any right or interest under this Agreement, nor delegate any work or obligation to be performed under this Agreement, without the Company's prior written consent. Any attempted assignment or delegation in contravention of this Section will be void and ineffective.
- 43. Continuing Obligations.** The following obligations will survive the expiration of termination of this Agreement and the distribution grace period provided above: (i) any and all warranty disclaimers, limitations of liability, and indemnities granted by either Party, (ii) any covenant granted in this Agreement for the purpose of determining ownership of, or protecting, the Proprietary Rights including, but not limited to, the Confidential Information of either Party, or any remedy for breach thereof, and (iii) the payment of taxes, duties, or any money to the Company owed under this Agreement.
- 44. Force Majeure.** Neither Party shall be liable for damages or any delay or failure of delivery arising out of causes beyond its reasonable control and without its fault or negligence including, but not limited to, Acts of God, acts of civil or military authority, fires, riots, wars, embargoes, Internet disruptions, hacker attacks, or communications failures. Despite any other provision of this Agreement, if either Party is unable to perform under this Agreement for a period of thirty (30) consecutive days, the other Party may terminate this Agreement immediately, without liability, by ten (10) days' written notice to the other.
- 45. U.S. Government End-Users.** The Technology and the Company software incorporated therein, this Portal, and the Services all consist of "commercial items," as that term is defined in 48 C.F.R. 2.101 (Oct. 1995), consisting of "commercial computer software" and "commercial computer software documentation," as such terms are used in 48 C.F.R. 12.212 (Sept. 1995). Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4 (June 1995), all U.S. Government End Users of this Portal acquire only those rights set forth therein.