

MASTER TERMS OF SERVICE

These Master Terms of Service (these "**Terms of Service**") set forth the terms and conditions upon which Patient Now, LLC or any of its applicable affiliated companies, including without limitation, Crystal Clear Digital Marketing, LLC (d/b/a RxMarketing), AppWorx, LLC (d/b/a RxPhoto) and Ennoview, LLC (collectively, as applicable, "**Company**", "**PatientNow**", "**we**" or "**us**") offers you, our customers ("**Customer**", "**you**" or "**your**"), access to Company's proprietary cloud-based software-as-a-service platform made available through the website located at uniform resource locator <https://www.patientnow.com/legal/> and/or any Company mobile application (collectively, the "**Site**"), along with all Company Products (as defined below) and related Services (as defined below). Access to the Company Platform (as defined below) and Services is provided solely in accordance with, and subject to, these Terms of Service, the Order Form (as defined below), any additional services agreement, other terms and conditions or terms of service applicable to specific Company Products or Services and any other applicable terms and conditions entered into by you and Company in writing or otherwise as made available by Company through the Site from time to time (collectively, the "**Additional Terms**").

This is a legally enforceable contract between you and the Company entity identified on the applicable Order Form. By submitting or otherwise agreeing to an Order Form, clicking "I Agree" or by accessing or otherwise using the Company Products, you agree to be bound by these Terms of Service, the Order Form, and any applicable Additional Terms, all of which are hereby incorporated into these Terms of Service by reference. If you do not agree to these Terms of Service and such Order Form and Additional Terms, do not access or use the Company Products.

From time to time, Company may modify these Terms of Service, effective immediately upon posting such modified Terms of Service on the Site. While we may note the date of the last update to these Terms of Service on the Site and provide additional notice of such modifications, you acknowledge and agree that you must periodically check the Site for any updates. For any Order Forms that are entered into after the time of us posting any modifications to these Terms of Service, such new Order Forms shall be subject to the modified Terms of Service. For any Order Forms that were in effect at the time of us implementing such modifications that do not specify a subscription or service term length or other minimum subscription or service period, your continued access to or use of the Company Platform constitutes your immediate acceptance of the modified Terms of Service. For any Order Forms that were in effect at the time of us implementing such modifications that specify an initial subscription or service term length or other minimum subscription or service period, unless otherwise expressly agreed by the parties, such modifications to these Terms of Service shall become effective for any renewal period under such Order Forms. Except to the extent expressly contemplated by these Terms of Service, no other amendment, modification or supplement of any provision of these Terms of Service will be valid or effective unless made in writing and signed by duly authorized representatives of both parties.

1. DEFINITIONS.

- 1.1** "**Affiliate**" means, with respect to any entity, any other present or future entity Controlling, Controlled by, or under common Control with such entity, where the term "Control," and its derivatives, of an entity means the legal, beneficial, or equitable ownership, directly or indirectly, of at least fifty percent (50%) of the capital stock or other ownership interest of such entity ordinarily having voting rights, or the power in fact to direct or cause the direction of the management of such entity or to elect the majority of such entity's board members or other directors or managers.

- 1.2 “**Agreement**” means these Terms of Service along with all Order Forms and Statements of Work, any applicable Additional Terms, and all exhibits or attachments hereto or thereto, all of which are hereby incorporated herein by reference.
- 1.3 “**Authorized Users**” means those employees, consultants, contractors, agents, or third parties with which Customer transacts business, in each case for which Customer is authorized to grant access to and permit use of the Company Property and Services in accordance with the terms of the applicable Order Form and the Documentation applicable to the Company Products or Services.
- 1.4 “**Client Application**” means any software application and associated software, code, application programming interfaces, and user interfaces, downloaded by Customer from the Site or the Company Platform or otherwise made available by Company in connection with the Company Platform, along with any Updates thereto made available to Customer by Company.
- 1.5 “**Company Platform**” means the cloud-based servers, and associated software, code, application programming interfaces, user interfaces, and other applications that are made available by Company through the Site and/or Client Application (or such successor websites or applications as selected by Company of which Customer is notified) as may be further described in the applicable Order Form, including each Company Product for which you have a current subscription from Company pursuant to an applicable Order Form, in each case along with any Updates thereto made available to Customer by Company.
- 1.6 “**Company Products**” means the Company’s proprietary cloud-based software-as-a-service applications, modules and products made available by Company through the Company Platform for subscription by Company customers pursuant to an Order Form, along with any Updates thereto made available to Customer by Company.
- 1.7 “**Company Property**” means the Company Platform, Client Application, Documentation and Output (excluding Customer Data), all as defined herein.
- 1.8 “**Customer Data**” means all data, content, media, photographs, images and information submitted by Customer or its Authorized Users to Company through the Company Platform.
- 1.9 “**Deliverable(s)**” means deliverables specifically identified in any Order Form or Statement of Work or otherwise made available to Customer in connection with any Professional Services under this Agreement, as applicable.
- 1.10 “**Documentation**” means any user guides, technical manuals, operating rules, acceptable use policies and other materials provided or made available by Company for use by Customer.
- 1.11 “**Intellectual Property Rights**” means any and all tangible and intangible: (a) rights associated with works of authorship throughout the world, including but not limited to copyrights, neighboring rights, moral rights, and mask works, and all derivative works thereof; (b) trademark and trade name rights and similar rights; (c) trade secret rights, (d) patents, patent applications, designs, algorithms and other industrial property rights; and (e) other intellectual and industrial property rights (of every kind and nature throughout the

world and however designated) whether arising by operation of law, contract, license, or otherwise.

- 1.12 **“Order Form”** means the sales order or other ordering documents for purchases hereunder, including addenda thereto, that are entered into between Company and Customer from time to time in writing or electronically (including through Company’s customer relationship management system or through the Site). Each Order Form will be deemed incorporated into this Agreement by reference.
- 1.13 **“Output”** means the information, content, media, photographs, images and data, excluding Customer Data, developed or collected by Company or otherwise generated by, residing in or resulting from the Company Platform, Client Application or Services.
- 1.14 **“Personal Information”** means any piece of information that, individually or in combination, identifies a specific individual, or from which a specific individual may be identified, contacted or located.
- 1.15 **“Services”** means, collectively, the Support Services and any applicable Professional Services as set forth in an Order Form or Statement of Work hereunder, in each case including any Deliverables provided in connection therewith.
- 1.16 **“Statement of Work”** means a written statement of work attached to an Order Form and/or signed by both parties to which these Terms of Services are incorporated that sets forth the commercial terms, service descriptions and any other additional terms and conditions of certain Services to be provided by Company to Customer under this Agreement.

2. LICENSE AND RESTRICTIONS.

- 2.1 **Limited License.** Subject to the terms and conditions of this Agreement and the payment of all applicable Fees, Company hereby grants to the Customer a limited, non-exclusive, revocable, non-sublicensable and non-transferable license, during the applicable Subscription Term, to access and use, for internal purposes only, the Company Products; and use the Documentation to facilitate the use of the Company Platform, in each case in accordance with the applicable Documentation, any applicable Additional Terms, and the terms and conditions of this Agreement.
- 2.2 **License Restrictions.** Customer will not (and will not permit any third party to): (a) make the Company Property or Services available to, or use any Company Property or Service for the benefit of, anyone other than Customer or its Authorized Users, unless expressly stated otherwise in an Order Form or the Documentation or Additional Terms for the applicable Company Products or Services, (b) sell, resell, license, sublicense, distribute, make available, rent or lease any Company Property or Service, or include any Company Property or Services in a service bureau or outsourcing offering, (c) use any Company Property to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third party privacy rights, (d) use any Company Property or Service to store or transmit any virus, Trojan horse, worm, time bomb, or other routine, mechanism or code designed to disable, erase, alter, or otherwise harm any computer system, program, database, data, hardware or communications system, (e) interfere with or disrupt the integrity or performance of any Company Property or Service (or third party data contained therein), (f) attempt to gain unauthorized access to any Company Property or Service or its related systems, networks or data, (g) permit direct

or indirect access to or use of any Company Property or Service in a way that circumvents a contractual usage limit or security mechanism, procedure, or protocol, or to any of Company's (or Company's licensors') Intellectual Property Rights, (h) copy any Company Property or Service or any part, feature, function or user interface thereof, (i) use the Company Property or any Service other than (1) for its intended purpose, (2) in strict accordance with the Documentation and all applicable federal, state and local laws, rules, regulations, ordinances, statutes, treaties or orders ("**Applicable Laws**") and (3) as authorized pursuant to this Agreement, (j) frame or mirror any part of any Company Property, other than as expressly permitted in the Documentation, (k) reverse engineer any Company Property or Service (except to the extent such restriction is permitted by Applicable Laws), or (l) use the Company Products to generate or facilitate unsolicited bulk commercial email.

2.3 Updates. Company reserves the right to make updates, modifications and enhancements of the Client Application, Company Platform and Documentation ("**Updates**") in its discretion during the Term provided that the terms and conditions of this Agreement shall continue to apply to any such Updates made available to Customer by Company. Customer agrees that Customer's purchases hereunder are neither contingent on the delivery of any future Company Platform, Client Application or Service functionality or features nor dependent on any oral or written public comments made by Company regarding future functionality or features of the Company Platform, Client Application or Services.

2.4 Copyright. The compilation of all content on the Company Platform and Client Application is the exclusive property of Company and protected by United States and international copyright laws. All Company Products and other software used to provide the Company Platform is the property of Company or its software suppliers and protected by United States and international copyright laws. Permission is granted to electronically copy and to print in hard copy portions of the Company Property for the sole purpose as expressly authorized in this Agreement. Any other use of Company Property, including reproduction, modification, distribution, republishing, republishing on third party sites, transmission, display or performance, in each case other than those as expressly authorized in this Agreement without the prior written permission of Company is strictly prohibited. You agree not to change or delete any proprietary notices from any Company Property. We respect the Intellectual Property Rights of others and we expect our Authorized Users to do the same. If you believe any content or materials displayed through the Company Platform or Client Application infringes upon your or a third party's copyrights, please follow the steps outlined in Section 4.9 below.

3. SERVICES.

3.1 Availability. Subject to the terms and conditions of this Agreement and the payment of all applicable Fees, Company will make available the Company Platform for remote electronic access and use by Customer solely in accordance with the terms of this Agreement during the applicable Subscription Term. Company will make the Company Platform available to Customer consistent with the manner in which Company makes the Company Platform generally available to other Company customers. Company will use its good faith, commercially reasonable efforts to ensure that the Company Platform is available for its intended use; however, Company does not make any representations, warranties or guarantees regarding uptime or availability of the Company Platform. For example, the Company Platform may be unavailable during scheduled maintenance, or as a result of system failures, or service downtime caused by Company's third party suppliers

or force majeure events. Company will use commercially reasonable efforts, circumstances permitting, to provide information regarding any access interruptions and the restoration of access to the Company Platform, including by information posted on the Site or sent by email. Notwithstanding the foregoing, in the event that any Order Form, Statement of Work or Additional Terms applicable to any specific Company Product set forth specific availability and/or uptime terms and conditions, such commitment shall apply solely with respect to such Company Product.

- 3.2 Professional Services.** From time to time, Company and Customer may enter into Order Forms and/or Statements of Work that relate to professional services in addition to the Support Services to be provided by Company (“**Professional Services**”). Each Order Form or Statement of Work will set forth the Professional Services to be provided together with the applicable Fees, Deliverables, milestones and other pertinent information related to the scope of such Professional Services. Except to the extent expressly set forth otherwise in the applicable Order Form or Statement of Work, Company retains ownership of all Intellectual Property Rights in, to or associated with the Professional Services, including all Deliverables.
- 3.3 Support Services.** In addition, subject to the terms and conditions of this Agreement and the payment of all applicable Fees, Company may provide additional technical support and maintenance services for the Client Application and Company Platform during the applicable Subscription Term (the “**Support Services**”) to the extent indicated in any applicable Additional Terms, Order Forms and/or Statements of Work.
- 3.4 Information Security.** Company will implement and maintain information security controls, policies and procedures that include administrative, technical and physical safeguards designed to: (a) maintain the security and integrity of Customer Data in Company’s possession or control; (b) protect against anticipated threats or hazards to the security or integrity of the Company Platform; and (c) protect against unauthorized access or use of such Customer Data. Except to the extent prohibited by Applicable Law or Company’s contractual obligations to third parties, Company shall promptly notify Customer upon becoming aware of any confirmed unauthorized access to or disclosure of Customer Data (i) residing on any Company system, (ii) under the control of Company, or (iii) for which Company is responsible for managing in connection with the Services (a “**Security Event**”) and shall take action as reasonably determined by Company reasonably designed to remediate, mitigate and respond to any such Security Event.
- 3.5 Customer Materials.** Except as otherwise expressly set forth in this Agreement, Customer shall be responsible for the provision of all Customer Data and any other data, information, resources and materials that are required or reasonably requested by Company in connection with Company’s provision of the Company Platform and Services (the “**Customer Materials**”). Customer understands and agrees that Company’s ability to provide the Company Platform and Services required under this Agreement is directly related to and dependent upon Customer’s ability to provide Customer Materials that are accurate and complete to Company on a timely basis. Company shall not be in breach of this Agreement for any failure to perform under this Agreement if Customer does not deliver accurate and complete Customer Materials to Company on a timely basis.

4. ACCESS AND USE OF THE COMPANY PLATFORM.

- 4.1 Access.** Authorized Users may be required to meet certain conditions or qualifications in order to use certain Company Products or Services, which conditions or qualifications, if applicable, will be identified in the Order Form or the Documentation applicable to the Company Products or Services. Customer will not permit Authorized Users to access and use the Company Property except solely during the Subscription Term specified in the applicable Order Form. Company has no obligation to verify the identity of any person who gains access to the Company Platform by means of user identifications and passwords (“**Access IDs**”) by Customer (or by Company at Customer’s request). Customer is solely responsible for monitoring its Authorized Users’ access to and use of the Company Platform, and for any failure by any Authorized User to comply with this Agreement; a failure to comply with this Agreement by an Authorized User is a failure by Customer. Customer must immediately take all necessary steps, including providing notice to Company, to effect the termination of an Access ID for any Authorized User if there is any compromise in the security of that Access ID or if unauthorized use is suspected or has occurred. Customer shall use, safeguard and periodically change passwords in a commercially reasonable manner and time, to prevent unauthorized access to the Company Platform. Company is not liable to Customer or any third party for damages arising from Customer’s use of multiple Access IDs.
- 4.2 Additional Terms for Authorized Users.** As a condition of using the Company Platform, Authorized Users may be required to agree to the terms and conditions of an applicable End User License Agreement (“**EULA**”), which, if applicable, will be made available to the Authorized User at the time of accessing the Company Platform. Customer is responsible for ensuring that all Authorized Users comply with the terms of any applicable EULA. Without limitation of Customer’s payment obligations under this Agreement, Company will not require any Authorized User to make any payment for accessing or using the Company Platform as authorized by Customer pursuant to this Agreement. The EULA is not intended to affect the terms of this Agreement as between Company and Customer; in the event of any conflict between the EULA and the terms of this Agreement, the terms of this Agreement shall prevail as between the parties. To the extent any Authorized User is required to provide their own Personal Information to Company in connection with their use of the Company Platform or Services (e.g., their first and last name, telephone number, or e-mail address), Company will only use such personally identifiable information in accordance with the terms of Company’s privacy policy (the “**Privacy Policy**”) available on the Site.
- 4.3 Security.** Customer will implement and maintain commercially reasonable security procedures for the transmission of Customer Data to the Company Platform or otherwise to Company. Customer will notify Company promptly upon becoming aware of any suspected security breach regarding transmissions to or from the Company Platform or Company.
- 4.4 Suspension of Access.** Company may in its discretion suspend Customer’s access to, or reasonably restrict any use of, the Company Platform temporarily, in whole or in part, if, and so long as, in Company’s sole judgment, there is a security risk that may interfere with the proper continued hosting or provision of the Company Platform or Customer is misusing the Company Platform, has breached this Agreement, or is or may be engaged in illegal activity. Company will use commercially reasonable efforts under the circumstances

to provide Customer with notice and an opportunity to remedy such violation or threat at Customer's cost.

4.5 Technical Requirements. Customer is responsible at its own cost and expense for procuring any necessary third party components or services required to use the Company Platform and Services as specified in the applicable Documentation. Company disclaims all liability arising from any Company Platform or Service performance-related issues or other negative effects, losses or damages to the extent caused by: (a) any failure by Customer to operate the Company Platform or Service in accordance with the technical requirements; or (b) any other products, services, or technology used by Customer in connection with the Company Platform or Service.

4.6 Third Party Offerings.

4.6.1 Company may directly or indirectly use certain third party providers (“**Third Party Providers**”) and/or provide or make available content, data, materials, products, hardware, software, and services from third parties (collectively, “**Third Party Offerings**”), including without limitation through an Order Form or links to or integrations with third-party websites or applications. The Third Party Offerings will not be deemed part of the Company Platform or Company Products. Customer acknowledges and agrees that (a) without limitation of Section 4.6.3 below, access and use of Third Party Offerings, and any exchange of data between Customer and any Third Party Provider, is solely between Customer and the applicable Third Party Provider and is subject to any terms of use or service, end-user license agreement or other additional terms and conditions as made available by such Third Party Providers (the “**Customer Third Party Agreement**”); (b) access and use of Third Party Offerings may be subject to additional terms and conditions as made available by such Third Party Providers and Customer shall comply with all of the obligations relating to Third Party Providers and Third Party Offerings under the terms of any Customer Third Party Agreement; (c) Company does not warrant or support Third Party Offerings, whether or not they are designated by Company as “certified” or otherwise; and (d) Company is not responsible for the availability or content of any such Third Party Offerings, including any related opinions, advice, statements or advertisements. Further, without limitation of the foregoing, to the extent that any Third Party Offerings are made available directly to Customer by Company or as part of the Company Products, subject to the terms and conditions of this Agreement, Company grants to Customer a limited, non-exclusive, revocable, non-sublicensable and non-transferable sub-license, during the applicable Subscription Term, to access and use, for internal purposes only, such Third Party Offerings in connection with the Company Products, subject to and in accordance with any terms and conditions of the terms of service or use, license agreement or other applicable agreements for the Third Party Offerings between Company and the third party (“**Third Party Terms**”), provided that Company reserves the right to modify the Third Party Terms in the event Company adds or replaces Third Party Offerings or as modified by the third party pursuant to the Third Party Terms. Company will use commercially reasonable efforts to post the current Third Party Terms on the Company Platform and notify Customer through an alert on the Company Platform when Company has posted revised Third Party Terms. All sublicenses granted hereunder are solely for Customer’s use in connection with the Company Products and will terminate on the earlier of

expiration or termination of (i) this Agreement or (ii) the applicable Third Party Terms.

4.6.2 Company may, at any time in its discretion, modify, cancel or discontinue any available interoperability or integrations for the Company Platform and Services with any Third Party Offerings, or any other support or assistance provided by Company in connection with any Third Party Providers or Third Party Offerings.

4.6.3 If Customer installs or enables Third Party Offerings for use with the Company Platform or Services, Customer acknowledges that Company may allow providers of those Third-Party Offerings to access Customer Data as required for the interoperation of such Third-Party Offerings with the Company Platform and Services. Company shall not be responsible for any disclosure, modification or deletion of Customer Data resulting from any such access by providers of Third Party Offerings.

4.7 Professional Responsibility. Customer acknowledges that the professional duty to the patient in providing healthcare services lies solely with the healthcare professional providing patient care services. As between the parties, Customer takes full responsibility for the use of all information provided through the Company Platform and Services in providing patient care. Clinical information, if any, provided through the Company Platform and Services is intended as a supplement to, and not a substitute for, the knowledge, expertise and judgment of professional personnel. Company and its suppliers disclaim all liability for the use of any information or results provided by, or obtained through, the Company Platform and Services and used by professional personnel. Company and its suppliers are not liable for actions of Customer (including its Authorized Users) which may result in any liability due to malpractice or failure to warn. Company and its suppliers provide no medical or other professional advice in connection with this Agreement, the Company Platform and Services and the information contained therein. Customer acknowledges and agrees that a licensed professional is responsible for independently reaching any medical or other professional judgment, and for any resulting diagnosis and treatments, notwithstanding any use of the Company Platform and Services by such professional. The absence of a warning for a given drug or drug combination should not be construed to indicate that the drug or drug combination is safe, appropriate, or effective in any given patient.

4.8 User-Submitted Content.

4.8.1 The Company Products may, from time to time, offer interactive features that allow Authorized Users to submit content, including but not limited to text, materials, media, photographs, images, text, audio files, or other materials, to the Company Platform (collectively, “**User Content**”). Company does not and cannot review all such User Content and is not responsible for such User Content.

4.8.2 You acknowledge that by providing the ability to view and distribute User Content on the Company Platform, Company is merely acting as a passive conduit for such distribution and is not undertaking any obligation or liability related thereto. However, Company reserves the right to block or remove User Content that it determines to be unacceptable to Company in its sole discretion.

- 4.8.3** Harassment in any manner or form on the Company Platform, including via email, chat, or by use of obscene or abusive language, is strictly forbidden. Impersonation of others, including a Company employee, host, or representative, as well as other members or visitors on the Company Platform, is prohibited. You may not upload to, distribute, transmit or otherwise publish through the Company Platform any User Content that (a) is infringing, libelous, or otherwise unlawful or tortious or otherwise in violation of third party privacy rights or applicable laws, rules or regulations, or which may otherwise constitute or encourage a criminal offense, (b) contains any virus, Trojan horse, worm, time bomb, or other routine, mechanism or code designed to disable, erase, alter, or otherwise harm any computer system, program, database, data, hardware or communications system, or (c) is otherwise in violation of the restrictions set forth in Section 2.2.
- 4.8.4** Any User Content received by Company through the Company Platform or Client Application will be deemed to include, and you hereby grant to Company, a royalty-free, perpetual, irrevocable, nonexclusive right and license for Company to adopt, publish, reproduce, disseminate, transmit, distribute, copy, use, create derivative works of, display (in whole or part) worldwide, or act on such User Content without additional approval or consideration, in any form, media, or technology now known or later developed for the full term of any rights that may exist in such User Content. You expressly acknowledge and agree that you waive any claim to the contrary. Company may, but will not be obligated to, use and/or provide any author attributions related to, any User Content. Any use of User Content by Company will be subject to the Privacy Policy, as applicable.
- 4.8.5** By submitting any User Content through the Company Platform or Client Application, or otherwise making any User Content available to Company, you hereby represent, warrant, and covenant that (a) you have full power and authority, and have obtained all necessary rights, approvals, authorizations and consents, including without limitation any individual consents and Intellectual Property Rights, as applicable, to provide such User Content to Company and permit Company to use and disclose all User Content in accordance with the terms of these Terms of Service and the Privacy Policy; (b) such provision or making available of User Content to Company is in compliance with all applicable laws, rules, and regulations; (c) all such User Content is accurate and complete; and (d) you will not directly or indirectly circumvent any digital rights management measure or other standard technical measures applicable to any User Content.
- 4.8.6** Without limiting the prior paragraph, you hereby acknowledge and agree that Company and its third-party hosting partners and Third Party Providers, as applicable, may have access to User Content immediately upon your submitting such User Content through the Company Platform or Client Application, regardless of whether any purpose for which such User Content is submitted has been completed and submitted and, as such, you shall be solely responsible for obtaining all consents and authorizations required in connection with the submission of such User Content in advance of uploading, submitting, or otherwise making available such User Content to Company.

4.9 Intellectual Property Rights Compliance.

- 4.9.1 Company will take down works in response to valid Digital Millennium Copy Right Act (“DMCA”) takedown notices and/or other intellectual property infringement claims and will terminate an Authorized User's access to the Company Property if the Authorized User is determined to be a repeat infringer. If you believe that your content has been copied in a way that constitutes copyright or trademark infringement, or violates your publicity or other Intellectual Property Rights, please email us Copyrightmanager@PatientNow.com or you may submit written notice to our designated copyright agent at:

PatientNow Copyright Compliance Team
6833 South Dayton Street #1016
Greenwood Village, CO_80112
Copyrightmanager@PatientNow.com
800-436-3150

- 4.9.2 For us to process your infringement claim regarding content on the Site, Company Platform or Company Products, you must be the rightsholder or someone authorized to act on behalf of the rightsholder. Your notice must include:

- Identification of the copyrighted work(s), trademark, publicity rights, or other Intellectual Property Right that you claim is being infringed;
- Identification of the allegedly infringing material that is requested to be removed, including a description of the specific location (i.e., urls) on the Site, Company Platform or Company Products of the material claimed to be infringing, so that we may locate the material;
- Your contact information – at a minimum, your full legal name (not pseudonym) and email address;
- A declaration that contains all of the following:
 - A statement that you have a good faith belief that use of the material in the manner complained of is not authorized by the Intellectual Property Rights owner, its agent, or the law;
 - A statement that the information in the notice is accurate; and
 - A statement under penalty of perjury that you are authorized to act on behalf of the owner of the intellectual property that is allegedly being infringed.
 - Your physical or electronic signature (of your full legal name).

- 4.9.3 Please note that we will forward your notice of intellectual property infringement, including your contact information, to the party who will have their content removed so they understand why it is no longer available and can also contact you to resolve any dispute.

5. FEES AND PAYMENT TERMS.

- 5.1 **Fees.** Customer agrees to pay the fees indicated in each applicable Order Form (the “Fees”) in accordance with the terms and conditions set forth therein and this Article 5. Unless otherwise expressly set forth in the applicable Order Form, all Fees are quoted and payable in United States dollars.

- 5.2 **Invoicing and Payment.** All payment obligations are non-cancelable and non-refundable. Customer will provide Company with valid, complete and accurate credit card information

at the time of signing its initial Order Form or through a third party payment processing portal, and shall be responsible for providing any updated credit card information to Company during the Term. By executing any Order Form and/or Statement of Work or otherwise providing its credit card information, Customer hereby explicitly authorizes Company to charge such credit card for all Fees for Company Products and Services listed in the Order Form for the Initial Subscription Term and any Renewal Subscription Term(s), as well as for any additional Fees applicable to additional Company Products or Services or other amendments to such Order Form mutually agreed by the parties. Such authorization shall remain in effect throughout the Term unless Company receives written notification from Customer expressly indicating Customer's revocation of such authorization. Unless otherwise stated in the applicable Order Form, all payments shall be made in advance, either annually or in accordance with any different billing frequency stated in the applicable Order Form. If the Order Form specifies that payment will be by a method other than a credit card, Company will invoice Customer in advance and otherwise in accordance with the relevant Order Form. The Company invoices Customers on a calendar month basis. The initial invoice the Customer receives will include (a) a prorated monthly amount relating for any partial calendar month of the Subscription Term based on the Subscription Start Date or, if no such Subscription Start Date is so indicated in the Order, the Order Effective Date; (b) an amount equal to the first full calendar month of service; and (c) any amounts relating to any one time fees as applicable in the Order Form. Unless otherwise expressly set forth in the applicable Order Form or Additional Terms, all invoiced Fees will be due and payable by Customer within ten (10) days after their respective invoice date. Customer is solely responsible for maintaining complete and accurate billing and contact information with Company. Should a payment be returned for any reason, including chargebacks or insufficient funds, you will be subject to a return item fee of \$30 per item.

- 5.3 Taxes.** All Fees do not include any applicable taxes, and Customer will be responsible for paying any and all applicable sales, software license, use, value added, excise, property, withholding tax or any other taxes due in connection with the performance of this Agreement (“**Taxes**”) whether imposed on Customer or Company; provided, however, that Customer shall not be required to pay any Taxes applicable to Company's net income. If Company pays any Tax that is payable by Customer in accordance with the foregoing, Customer shall reimburse Company for the amount of such Tax upon receiving an invoice therefor.
- 5.4 Fee Increases.** Unless otherwise expressly set forth in the applicable Order Form, Statement of Work or Additional Terms, in a provision specifically referencing and overriding this Section, Fees may be increased or otherwise modified from time to time by Company. Any such increases or modifications to the Fees shall take effect thirty (30) days following notification to you via email (the “**Notification Period**”). If you do not agree to such increased or modified Fees, you may terminate the Subscription Term for the applicable Company Products and/or Services for which the Fees have been increase or modified by providing notice to Company during the Notification Period. You acknowledge and agree that your continued access to or use of the Company Platform after the Notification Period constitutes your immediate acceptance of any such modified Fees.
- 5.5 Notice of Disputed Charges; No Setoff.** All charges and invoices shall be deemed accurate and valid unless Customer notifies Company in writing within ninety (90) days of the date of the processing of the charge or date of the invoice, as applicable, and Customer hereby waives any and all rights to later dispute any such charges or invoices. All amounts

due under this Agreement to be paid by Customer to Company will be paid in full and Customer will not be entitled to assert any credit, set-off or counterclaim against Company in order to justify withholding payment of any such amount in whole or in part.

- 5.6 Overdue Charges.** If any Fees are not paid by Customer by the due date, Company may, without prejudice to any other right or remedy, (a) charge interest on a day to day basis both before and after any judgment at a rate equal to the lesser of 1.5% per month or the maximum amount permitted by Applicable Law, from the due date for payment to the date of actual payment, and/or (b) condition future subscription renewals and Order Forms on payment terms shorter than those specified in Section 5.2 (Invoicing and Payment). Without limitation of the foregoing, Customer shall pay on demand all of Company's reasonable attorney fees and other costs incurred by Company to collect any fees or charges due to Company under this Agreement following Customer's breach of Section 5.2 (Invoicing and Payment). For the avoidance of doubt, Fees assessed on a periodic basis (e.g., annually) shall be payable by Customer throughout the applicable Subscription Term, in accordance with this Agreement, regardless of whether Customer has used any Company Products or Services.
- 5.7 Suspension of Service and Acceleration.** If any amount owing by Customer under this Agreement or any other agreement between Customer and Company is thirty (30) or more days overdue (or 10 or more days overdue in the case of amounts Customer has authorized Company to charge to Customer's credit card), Company may, without limiting Company's other rights and remedies, accelerate Customer's entire unpaid Fee obligations under this Agreement or such agreements so that all such obligations become immediately due and payable, and suspend the Company Platform, Services and any other services to Customer until such amounts are paid in full.
- 5.8 Credit Checks.** Customer acknowledges and agrees that, as a condition to Company entering into any Order Form or otherwise providing Company Property to Customer under this Agreement, Customer may be subject to Company's standard credit and risk underwriting policies and procedures prior to the Order Effective Date and periodically thereafter at Company's discretion, and Customer hereby expressly authorizes Company to conduct any credit checks or similar searches of Customer in connection therewith. Customer will cooperate in good faith with any requests by Company in connection with the implementation of such policies and procedures, including by providing to Company financial documentation reasonably requested for such purposes.

6. PROPRIETARY RIGHTS.

- 6.1 Ownership of Company Property.** This is a subscription agreement for use of the Company Platform and applicable Services and not an agreement for purchase or sale. Customer acknowledges that: (a) it is obtaining only a limited right to use the Company Platform and applicable Services and that irrespective of any use of the words "purchase", "sale" or like terms hereunder, no ownership rights are being conveyed to Customer under this Agreement; and (b) the Company Platform is offered as an online, hosted solution and Customer has no right to obtain a copy of the Company Property used to provide the Company Platform. Customer acknowledges and agrees that Company and its licensors shall retain all ownership right, title, and interest in and to the Company Property and all Intellectual Property Rights embodied therein or associated therewith. Customer shall have no right, title, or interest in or to the Company Property other than the limited license rights expressly set forth in this Agreement.

- 6.2 License to Output and Deliverables.** Subject to the terms and conditions of this Agreement, Company hereby grants to Customer a limited, revocable, non-exclusive, non-sublicensable, non-transferrable license to use the Output and, unless otherwise expressly set forth in the applicable Order Form, Statement or Work or Additional Terms, any Deliverables, provided or otherwise made available to Customer by Company in connection with this Agreement for Customer's internal business purposes in accordance with the applicable Documentation and any usage limitations set forth in the Order Form, Statement or Work and/or Additional Terms.
- 6.3 Ownership of Customer Data and Customer Materials.** Customer owns and shall retain all ownership right, title, and interest in and to the Customer Data and Customer Materials and any and all Intellectual Property Rights embodied therein. Company shall have no right, title, or interest in or to the Customer Data or Customer Materials other than the rights expressly set forth in this Agreement.
- 6.4 License to Company.** Customer hereby grants to Company and its Affiliates a fully-paid up, nonexclusive, irrevocable, transferrable, worldwide license to process, reproduce, store, display, modify, translate, create derivative works from, make available and otherwise use Customer Data and Customer Materials during the Term in connection with the performance of Company's obligations under this Agreement and for purposes of developing, maintaining and improving the Company Property and Services.
- 6.5 Aggregated Data.** Customer hereby acknowledges and agrees that, without limitation of the license granted under Section 6.4 or Company's obligations under the BAA, Company and its Affiliates shall have the right to collect and analyze Customer Data and other data and other information relating to the provision, use, and performance of various aspects of the Company Property and Services (collectively, "**Compiled Data**") and, that once any such Customer Data and/or Compiled Data is aggregated and de-identified or anonymized in a manner that does not designate or identify Customer or its Authorized Users as the source of such data ("**Aggregated Data**"), Company owns and shall retain all ownership right, title, and interest in and to the Aggregated Data and any and all Intellectual Property Rights embodied therein. Customer hereby irrevocably assigns to Company any and all right, title or interest that it may have in or to the Aggregated Data. For clarity, Company shall be entitled to process, reproduce, store, distribute, display, modify, translate, transmit, create derivative works from, make available, sell, license, commercialize and otherwise use the Aggregated Data during the Term and after any expiration or termination of this Agreement for any and all purposes and applications, including without limitation advertising, marketing, developing, maintaining, improving, offering and delivering Company's current and future products and services.
- 6.6 Feedback.** If Customer (including any Authorized User) provides any comments, questions, recommendations, suggestions, ideas, documents, proposals or related information to Company, by any means, concerning the Company Property or Services (collectively, "**Feedback**"), Customer hereby grants Company a perpetual, irrevocable, royalty-free, fully paid-up, worldwide, transferable, sublicensable license to use, copy, modify, create derivative works of, publicly display, publicly perform, distribute and otherwise exploit, without any attribution or compensation to Customer (including any Authorized User), any and all Feedback for any and all purposes and applications, including without limitation in connection with the Company Property and Services or any of Company's other products or services, without any compensation or reimbursement of

any kind from Company, provided that, for clarity, Customer has no right to compel any such use.

7. REPRESENTATIONS AND WARRANTIES; DISCLAIMERS.

7.1 Mutual Representations and Warranties. Each party represents and warrants to the other party that (a) it has the full power and authority to enter into this Agreement; (b) the individual entering into this Agreement on its behalf is authorized to do so; and (c) this Agreement constitutes a valid and legally binding obligation of such party, enforceable against such party in accordance with its terms.

7.2 Additional Representations and Warranties of Company. Company represents, warrants and covenants that: (a) the Company Platform and Client Application will perform substantially in accordance with the then-currently applicable Documentation when used in accordance with the terms and conditions of this Agreement, and (b) the Services will be provided in a professional, workmanlike manner with reasonable care and skill. For any breach of the foregoing warranties, Customer's sole and exclusive remedy is that Company will, at Company's sole option, (i) make such alterations, modifications or adjustments to the Company Property or Services to cure the breach without materially reducing the features or functionality thereof, (ii) replace the Company Property or Services with a substantially similar substitute that conforms to such warranty; or (iii) if none of the foregoing remedies can be achieved after the exercise of commercially reasonable efforts, terminate this Agreement or the applicable Order Form and refund to the Customer: (A) all amounts paid by the Customer to Company as Fees attribution to the license or subscription with respect to the affected Company Property, less an amount equal to depreciation of such license or subscription Fees calculated on a three-year straight-line basis from the date of applicable Order Form, and (B) if applicable, a pro rata portion of any prepaid Fees for Support Services for the then-current annual Support Services period terminated in accordance therewith.

7.3 Additional Representations and Warranties of Customer. Customer hereby represents, warrants and covenants to Company that: (a) Customer has collected, compiled and generated all the Customer Data in compliance with all Applicable Laws and any applicable privacy policies; (b) the provision of all Customer Data and Customer Materials to Company hereunder is in compliance with all Applicable Laws and any applicable privacy policies; (c) Customer has all rights necessary to grant Company the right to use and disclose all Customer Data and Customer Materials in accordance with the terms of this Agreement; (d) all Customer Data and Customer Materials provided or otherwise made available to Company is accurate and complete and (e) unless otherwise expressly indicated in the Documentation for the particular Company Product, or to the extent reasonably necessary to utilize the Company Platform for its intended purpose in accordance with the terms and conditions of this Agreement, Customer Data shall not contain any Personal Information.

7.4 Warranty Disclaimer. EXCEPT AS EXPRESSLY PROVIDED UNDER THIS AGREEMENT, NEITHER PARTY MAKES ANY WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. COMPANY WILL NOT BE RESPONSIBLE

FOR ANY THIRD PARTY OFFERINGS OR OTHER THIRD PARTY SOFTWARE, SERVICE OR HARDWARE COMPANY PROVIDES OR USES IN THE PERFORMANCE OF ITS OBLIGATIONS UNDER THIS AGREEMENT. EXCEPT AS EXPRESSLY PROVIDED UNDER THIS AGREEMENT, COMPANY DOES NOT MAKE ANY WARRANTY OR OTHER COMMITMENT (A) THAT THE OPERATION OF THE COMPANY PROPERTY OR SERVICES WILL MEET CUSTOMER'S REQUIREMENTS OR BE UNINTERRUPTED OR ERROR FREE; (B) THAT ANY DEFECT, ERROR OR MALFUNCTION IN THE COMPANY PROPERTY OR SERVICES IS CORRECTABLE OR WILL BE CORRECTED; (C) REGARDING THE USE, OR THE RESULTS OF, USE OF THE COMPANY PROPERTY OR SERVICES IN TERMS OF THEIR ACCURACY, QUALITY, RELIABILITY, CORRECTNESS, TIMELINESS, COMPLETENESS, AVAILABILITY OR OTHERWISE.

- 7.5 Customer Solely Responsible for Equipment, Hardware and Third Party Materials.** Customer acknowledges and agrees that Customer retains sole and exclusive responsibility for any equipment, hardware or other devices used by Customer in connection with the Company Platform and Services (“**Underlying Equipment**”). Company is not responsible for and hereby disclaims all responsibility and liability for the Underlying Equipment or for any loss, damage, injury, malfunction, interruption or claim arising therefrom or related thereto. Customer acknowledges and agrees that the Underlying Equipment is solely within Customer's control. Further, Company shall not be liable or responsible for any Third Party Provider or any Third Party Offering, or for any loss, damage, injury, malfunction, interruption or claim arising therefrom or related thereto.

8. INDEMNIFICATION.

- 8.1 Indemnification by Company.** Company will indemnify, defend, and hold harmless Customer and its Affiliates and each of their respective officers, directors, employees, and agents (collectively, the “**Customer Indemnified Parties**”) from and against all third-party claims, suits, demands and actions (collectively, “**Claims**”) brought against the Customer Indemnified Parties and for all resulting damages, fines, penalties, judgements, assessments, losses, liabilities, costs and expenses (including reasonable attorney and professional fees) (collectively “**Losses**”) reasonably incurred by the Customer Indemnified Parties in connection with such Claims, to the extent resulting from a claim that the Company Property or Services infringe, misappropriate or violate any Intellectual Property Rights of any third party. Notwithstanding the foregoing, Company shall have no liability to the Customer for any Claim to the extent that such Claim: (a) arises out of Customer's use of the Company Property or Services other than as expressly permitted under this Agreement and the Documentation or any other unauthorized use, reproduction, or distribution of the Company Property or Services; (b) arises out of any modification or alteration of the Company Property or Services by anyone other than Company; (c) arises out of the use of Company Property in combination with any other software or equipment not approved in writing by Company; or (d) would have been avoided by use of the then-current release of any software or if the Customer had followed Company's reasonable written instructions ((a) through (d), collectively, “**Excluded Claims**”).
- 8.2 Indemnification by Customer.** Customer will indemnify, defend, and hold harmless Company and its Affiliates and each of their respective officers, directors, employees, agents, licensors and licensees (collectively the “**Company Indemnified Parties**”) from any and against all Claims brought against the Company Indemnified Parties, and for all resulting Losses incurred by the Company Indemnified Parties in connection with such

Claims, to the extent resulting from: (a) a claim that the Customer Data or Customer Materials, Customer's provision of the Customer Data or Customer Materials to Company in connection with this Agreement or Company's use of the Customer Data or Customer Materials pursuant to the rights granted under this Agreement, fails to comply with Applicable Law or otherwise infringes, misappropriates or violates any rights of a third party, including any privacy rights or Intellectual Property Rights of any third parties; (b) Customer's (including its Authorized Users') use of the Company Property or Services other than Claims subject to indemnification by Company under Section 8.1; (c) Customer's (including its Authorized Users') interactions with patients, physicians, laboratories, pharmacies, medical professionals and other third parties or any other claims relating to Customer's (including its Authorized Users') treatment activities or services provided to any patients or other third parties; (d) Excluded Claims; or (e) Customer's (including its Authorized Users') failure to comply with Applicable Laws in connection with its performance under this Agreement.

8.3 Terms of Defense and Indemnification. The party seeking indemnification pursuant to this Article 8 (as applicable, the "**Indemnified Party**"), will promptly notify the other party from whom indemnification is sought (as applicable, the "**Indemnifying Party**"), in writing, of any Claim for which the Indemnified Party believes that it is entitled to indemnification (provided that the Indemnified Party's failure to provide such notice or to provide it promptly will relieve the Indemnifying Party of its indemnification obligations only if and to the extent that such failure actually prejudices the Indemnifying Party's ability to defend the Claims). The Indemnifying Party shall control the defense and settlement of such Claims, provided, however, that the Indemnifying Party shall not agree to any settlement that admits fault of or otherwise creates liability of the Indemnified Party without the Indemnified Party's express prior written consent (such consent not to be unreasonably withheld, conditioned or delayed). The Indemnified Party shall, at the Indemnifying Party's sole cost and expense, upon reasonable request of the Indemnifying Party provide reasonable assistance and cooperation with the Indemnifying Party's defense of such Claims. The Indemnified Party may employ counsel at its own expense to assist it with respect to any such Claim; provided, however, that if such counsel is necessary because of a conflict of interest of the Indemnifying Party or its counsel or because the Indemnifying Party does not assume control, the Indemnifying Party will bear the expense of such counsel.

8.4 Options Upon Infringement Claim. In addition, if any of the Company Property or Services becomes, or in Company's opinion is likely to become, the subject of an infringement or misappropriation Claim, Company may, at its own expense and option, elect to either:

8.4.1 procure the right for the Customer to continue using the Company Property or Services in accordance with the provisions of this Agreement;

8.4.2 make such alterations, modifications or adjustments to the Company Property or Services so that the infringing product or technology becomes non-infringing without a material reduction in features or functionality thereof;

8.4.3 replace the Company Property or Services with a non-infringing substantially similar substitute; or

8.4.4 terminate this Agreement or the applicable Order Form and refund to the Customer: (a) all amounts paid by the Customer to Company as Fees attributable to the license or subscription with respect to the affected Company Property, less an amount equal to depreciation of such license or subscription Fees calculated on a three-year straight-line basis from the date of the applicable Order Form, and (b) if applicable, a pro rata portion of any prepaid Fees for Support Services for the then-current annual Support Services period terminated in accordance therewith.

8.5 Sole Remedy. THIS ARTICLE 8 STATES COMPANY'S ENTIRE LIABILITY, AND CUSTOMER'S SOLE REMEDIES, FOR ANY INFRINGEMENT OR ALLEGED INFRINGEMENT OF THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS IN RELATION TO THE COMPANY PROPERTY OR SERVICES.

9. CONFIDENTIALITY.

9.1 Definition. "Confidential Information" means all confidential or proprietary information disclosed by or on behalf of a party (in this capacity, the "Disclosing Party") to the other party (in this capacity, the "Receiving Party") or its Representatives (as defined below), whether orally, in writing or in any other format or medium, in connection with the performance of this Agreement, that is identified as confidential or is reasonably apparent to be confidential given the nature of such information and the circumstances of disclosure. Confidential Information will not, however, include any information that (a) at the time of disclosure hereunder is generally known to the public or thereafter becomes generally known to the public without breach of this Agreement by the Receiving Party or any of its Representatives, (b) was known to the Receiving Party at the time of its disclosure by or on behalf of the Disclosing Party hereunder without breach of any obligation owed to the Disclosing Party, (c) is received by the Receiving Party or any of its Representatives from a third party without breach of any obligation of confidentiality owed to the Disclosing Party with respect to such disclosure or (d) was independently developed by the Receiving Party or any of its Representatives without reference to or use of the Disclosing Party's Confidential Information. For the avoidance of doubt, (i) the terms and conditions of this Agreement will be deemed the Confidential Information of Company, (ii) the Company Property is the Confidential Information of Company, and (iii) without limitation of the rights granted under Section 6.4, the Customer Data is the Confidential Information of Customer.

9.2 Permitted Use. The Receiving Party shall: (a) use the Disclosing Party's Confidential Information solely to accomplish the purpose of this Agreement or as otherwise permitted under the express terms of this Agreement; (b) not disclose the Disclosing Party's Confidential Information to any third party without first obtaining the written consent of the Disclosing Party, except as otherwise expressly permitted in this Agreement; and (c) protect the confidentiality of the Disclosing Party's Confidential Information with at least the same degree of care used to protect its own confidential and/or proprietary information from unauthorized use or disclosure, but in no event with less than reasonable care. The Receiving Party will be permitted to disclose the Disclosing Party's Confidential Information to its Affiliates and those of its and its Affiliates' respective directors, officers, employees, agents, subcontractors and consultants (with respect to a Party, together with such Party's affiliates, collectively, such Party's "Representatives") who need to know such Confidential Information in order to accomplish the purpose of this Agreement; provided, that such persons or entities are bound to the Receiving Party by obligations of confidentiality and non-use with respect to such Confidential Information that are

substantially similar to those contained herein. The Receiving Party shall be liable for any unauthorized use or disclosure of the Disclosing Party's Confidential Information by any of the Receiving Party's Representatives. The Receiving Party shall notify the Disclosing Party in writing promptly upon learning of any such unauthorized use or disclosure of the Disclosing Party's Confidential Information and shall use all reasonable efforts to mitigate such unauthorized use or disclosure and prevent any further unauthorized use or disclosure of the Disclosing Party's Confidential Information. Notwithstanding anything in this Agreement to the contrary, Company shall (y) be permitted to (i) disclose Customer's Confidential Information, on a limited basis, to Company's lender(s) or prospective acquirer(s), provided that any such lender or prospective acquirer is bound by obligations of nondisclosure and limited use at least as stringent as those contained herein and (ii) use the Customer Data in accordance with Section 6.4; and (z) own all Aggregated Data in accordance with Section 6.5.

9.3 Compelled Disclosure. The Receiving Party may disclose the Disclosing Party's Confidential Information to the extent that such disclosure is required pursuant to Applicable Law, or by order of a court or governmental or regulatory body of competent jurisdiction; provided, that the Receiving Party promptly notifies the Disclosing Party of such disclosure in writing and provides reasonable assistance to the Disclosing Party in seeking such protective action as it deems appropriate. Thereupon, the Receiving Party may only disclose such Confidential Information as is legally required and only to an authorized person, entity or agency, to the extent required by Applicable Law and subject to the maximum available confidentiality restrictions.

9.4 Return of Confidential Information. Subject to the terms and conditions of Section 10.5, at any time upon the Disclosing Party's request, the Receiving Party shall, at the Disclosing Party's sole discretion: (a) return to the Disclosing Party all tangible or electronic Confidential Information of the Disclosing Party then in the possession of the Receiving Party or its Representatives, or (b) destroy all such Confidential Information, including any copies thereof, in accordance with the Disclosing Party's instructions (and confirm such destruction in writing to the Disclosing Party). Notwithstanding the foregoing, the Receiving Party may retain copies of the Disclosing Party's Confidential Information disclosed hereunder that are contained in routine system backups or are necessary to fulfill its ongoing obligations or exercise its ongoing rights under this Agreement (including without limitation the rights to Customer Data granted under Section 6.4), subject to the ongoing obligation to maintain the confidentiality of such information in accordance with the terms of this Section 9.

9.5 Business Associate Agreement. Notwithstanding any other term in this Agreement to the contrary, to the extent that Customer Data consists of 'Protected Health Information' as defined in Company's Business Associate Agreement made available at <https://www.patientnow.com/legal/baa/> (as such agreement may be updated from time to time in accordance with the terms thereof, the "BAA"), such Customer Data shall be subject to the terms of the BAA which constitutes an integral part of this Agreement. In the event of any conflict between the terms of the main body of this Agreement and the terms of the BAA, the terms of the BAA shall prevail for purposes of matters set forth in the BAA.

9.6 Publicity. Customer agrees that Company shall have the right, but not the obligation, to include Customer's name and logo on the Site and in other marketing materials and content promoting the Company Platform and Services. Customer shall not use Company's name,

logo, or other proprietary indicia in any public materials or releases except as expressly authorized under this Agreement or otherwise explicitly approved by a duly authorized representative of Company in each instance.

10. TERM AND TERMINATION.

- 10.1 Term and Renewal of Order Forms and Agreement.** Each Order Form shall begin on the subscription start date indicated in the Order Form (“**Subscription Start Date**”) or, if no such Subscription Start Date is so indicated, on the date upon which the Order Form is entered into by the parties (“**Order Effective Date**”) and continue for the initial term of access to the Company Platform or period for provision of Services as specified in the applicable Order Form (“**Initial Subscription Term**”). At the conclusion of the Initial Subscription Term, unless otherwise expressly stated in the Order Form, each Order Form shall automatically renew for additional periods equivalent to the Initial Subscription Term or one (1) year, whichever is shorter (each, a “**Renewal Subscription Term**” and together with the Initial Subscription Term, collectively, the “**Subscription Term**”), unless written notice of termination is given at least sixty (60) days prior to the expiration of the Initial Subscription Term or the then-current Renewal Subscription Term, as applicable. The pricing during any such Renewal Subscription Term shall be the same as that during the prior term unless Company has given Customer written notice of a pricing increase at least sixty (60) days before the end of such prior term, in which case the pricing increase shall be effective upon renewal and thereafter. The term of this Agreement shall continue for so long as any Order Form remains in effect, unless terminated as provided for herein (the “**Term**”).
- 10.2 Termination for Cause.** In the event that either party is in material breach of the terms of this Agreement, the non-breaching party may terminate this Agreement on sixty (60) days prior written notice; provided however, that this Agreement shall not be terminated as provided for herein in the event that the breaching party cures the breach to the reasonable satisfaction of the non-breaching party within such notice period or takes material steps reasonably satisfactory to the non-breaching party to do so within such notice period. Notwithstanding the foregoing, Company may terminate this Agreement (a) on ten (10) days prior written notice in the event of a breach of Customer’s payment obligations hereunder, or (b) immediately upon notice in the event that Company reasonably determines that Customer has violated any Applicable Laws.
- 10.3 Insolvency Event.** Either party may terminate this Agreement by delivering written notice to the other party upon the occurrence of any of the following events: (a) a receiver is appointed for the other party or its property; (b) the other party makes a general assignment for the benefit of its creditors; (c) the other party commences, or has commenced against it, proceedings under any bankruptcy, insolvency or debtor’s relief law, which proceedings are not dismissed within sixty (60) days; or (d) the other party becomes insolvent or is liquidating, dissolving or ceasing business operations.
- 10.4 Termination Without Cause.** Company may terminate this Agreement for any reason upon ninety (90) days written notice to Customer, provided that Customer shall not be required to pay any future Fees attributable to Services not yet performed as of the effective date of such termination without cause or for the remainder of the Subscription Term after the effective date of such termination without cause, and any prepaid Fees attributable to Services not yet performed as of the effective date of such termination without cause or for

the remainder of the Subscription Term after the effective date of such termination without cause will be refunded to Customer.

10.5 Effects of Termination. In the event of any expiration or termination of this Agreement, all Order Forms hereunder shall automatically terminate and Customer and its Affiliates shall immediately cease any access to or use of the Company Property. Upon written request by Customer made within ninety (90) days after the effective date of expiration or termination of an applicable Order Form, subject to Customer's payment of all amounts due in connection with this Agreement, Company or its designee will make available to Customer for download a file of Customer Data that is maintained by Company in the format that such Customer Data is maintained by Company or such other format as mutually agreed by the parties in writing, provided that Customer may, at Company's discretion, be required to pay certain fees and expenses relating to any custom or modified data format or retrieval requests that Company agrees to perform in accordance with the foregoing. Subject to the previous sentence, except as otherwise specified in the Order Form or applicable Documentation, Customer acknowledges that following expiration or termination of this Agreement or any Order Form it shall have no further access to any Customer Data from Company, and Company may delete all Customer Data that has been stored by Company pursuant to this Agreement or such applicable Order Form.

10.6 Survival. All rights and obligations that accrued prior to termination or expiration of this Agreement or by their nature are intended to survive the termination or expiration of this Agreement, shall survive expiration or termination of this Agreement, including without limitation the provisions of Sections 1, 2.2, 4.6, 4.7, 5, 6, 7.4, 7.5, 8, 9, 10.5, 10.6, 11, and 12.

11. LIMITATIONS OF LIABILITY.

11.1 Disclaimer of Damages. IN NO EVENT SHALL COMPANY BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL, OR PUNITIVE DAMAGES OR LOSSES OF ANY KIND ARISING UNDER ANY THEORY OF LIABILITY (INCLUDING TORT), OR FOR DAMAGES OR LOSSES FOR LOSS OF PROFITS, LOSS OF PRODUCTION OR EXPECTED SAVINGS, BUSINESS INTERRUPTION, COSTS OF PROCUREMENT OF SUBSTITUTE PRODUCTS OR SERVICES, LOSS OR CORRUPTION OF DATA OR INFORMATION, OR OTHER PECUNIARY LOSS, EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

11.2 Limitation of Liability. COMPANY'S MAXIMUM AGGREGATE LIABILITY UNDER THIS AGREEMENT (REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, OR OTHERWISE, AND UNDER ANY THEORY OF LIABILITY) SHALL BE LIMITED TO DIRECT DAMAGES NOT TO EXCEED THE AMOUNT OF FEES PAID BY THE CUSTOMER TO COMPANY UNDER THE ORDER FORM UNDER WHICH THE LIABILITY ARISES DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE CLAIM GIVING RISE TO SUCH LIABILITY.

11.3 Applicability. THE FOREGOING LIMITATIONS, EXCLUSIONS AND DISCLAIMERS SET FORTH IN THIS AGREEMENT SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

12. ADDITIONAL RESTRICTIONS ON CUSTOMER.

12.1 Non-Compete. In view of the knowledge which may be acquired by Customer of Company's internet sales and marketing techniques, formulas, patterns, concepts, approaches, designs, features, and recommendations, each of which has been developed by Company, and to induce Company to enter into this Agreement, Customer agrees that it and its shareholders, members, officers, managers, directors, employees, or agents will not during the Term of this Agreement, nor for one year after termination hereof, and without geographical limitation, directly or indirectly engage in the business, occupation, or trade of web-based marketing (including website design and development) or training either as owner, partner, employee, employer, director, officer, principal, agent, or in any other relation or capacity whatever, nor shall Customer offer for sale similar products or services, nor be similarly engaged for itself or for any other person, firm, or corporation engaged in a like or competing line of business in which Company is now or may during the Term be engaged. Customer acknowledges and agrees that monetary damages may not be a sufficient remedy for breach of this Section and that we shall be entitled, without waiving any other rights or remedies, to such injunctive or equitable relief as may be deemed proper by a court of competent jurisdiction.

12.2 Non-Hire. Customer agrees that during the Term and for a period of two (2) years following the expiration or termination of this Agreement for any reason, it shall not, directly or indirectly, solicit, offer employment to or hire any personnel employed by Company. Company reserves all rights and remedies for breach of this provision including, without limitation, the right to injunctive or equitable relief as may be deemed proper by a court of competent jurisdiction.

13. MISCELLANEOUS LEGAL TERMS.

13.1 Export Compliance. The Company Platform may be subject to U.S. and other national export controls and economic sanctions. Individuals or entities owned or controlled, registered in, or related to Cuba, Iran, Sudan, Syria, or North Korea are not permitted to access the Company Platform without prior written permission from Company once granted by the appropriate jurisdiction. The rights and obligations of Customer shall be subject to such United States laws and regulations as shall from time to time govern the license and delivery of technology abroad by persons subject to the jurisdiction of the United States, including the Export Administration Act of 1979, as amended, any successor legislation to the Export Administration Act of 1979, and the Export Administration regulations issued by the Department of Commerce, International Trade Administration, Office of Export Administration. Customer shall not, directly or indirectly, export, re-export or transship the Company Platform in such manner as to violate such laws or regulations in effect from time to time.

13.2 Audit Right. Upon Company's written request, Customer will furnish Company with a signed certification certifying that the Company Platform is being used by Customer and its Authorized Users pursuant to the terms of this Agreement, including any access and user limitations. With prior reasonable notice of at least ten (10) business days (but not more than once in any calendar year), Company (or its delegate) may audit Customer's use of the Company Platform; provided such audit is during regular business hours and Company complies with any reasonable confidentiality and security requirements of Customer in connection with such audit. Customer is responsible for Company's

reasonable, documented audit costs only in the event the audit reveals that Customer's use of the Company Platform is not materially in accordance with the terms of this Agreement.

- 13.3 Independent Contractors.** The parties to this Agreement are independent contractors. Neither party shall have any right to assume, create, or incur any expense, liability, or obligation, express or implied, on behalf of the other party. This Agreement is not intended to be nor shall it be construed as a joint venture, association, partnership or other form of a business organization or agency relationship.
- 13.4 Force Majeure.** Neither of the parties shall be considered in default of performance under this Agreement (other than performance of obligations to pay Fees) to the extent that such performance is delayed or prevented by circumstances or events beyond its reasonable control, including, without limitation, fire, flood, earthquake or similar natural disasters, riot, war, terrorism, civil strife, labor disputes or disturbances, material shortages or rationing, actions or requirements (including laws, regulations, orders, advisories, disapprovals or failure to approve) of any governmental or public health agencies or authorities (whether national, statewide, municipal, or otherwise), communication or utility failures, epidemic, public health emergency, quarantine restriction, or casualties.
- 13.5 Equitable Relief.** Each party acknowledges and agrees that its breach of any confidentiality or proprietary rights provision of this Agreement may cause the other party irreparable damage, for which the award of damages may not be adequate compensation. Consequently, the non-breaching party may institute an action to enjoin the breaching party from any and all acts in violation of those provisions, which remedy shall be cumulative and not exclusive, and a party may seek the entry of an injunction enjoining any breach or threatened breach of those provisions, in addition to any other relief to which the non-breaching party may be entitled at law or in equity.
- 13.6 Notices.** Except as otherwise set forth herein, any notice required or permitted to be given by either party under this Agreement shall be in writing and shall be personally delivered or sent by a reputable overnight courier service (e.g., Federal Express), or by first class mail (certified or registered), to the other party addressed as set forth on the Order Form or to such other address of which a party provides notice to the other party. In addition, Company may provide any such notices under this Agreement to you by email to the address as set forth on the Order Form (or to such other address of which you provide notice to Company). Notices will be effective upon receipt. You hereby acknowledge and agree that all agreements, notices, disclosures, and other communications that we provide to you electronically as permitted under this Agreement satisfy any legal requirement that such communications be in writing.
- 13.7 Waiver and Modification.** Failure by either party to enforce any provision of this Agreement will not be deemed a waiver of future enforcement of that or any other provision. Any waiver, amendment or other modification of any provision of this Agreement will be effective only if in writing and signed by the parties.
- 13.8 Assignment.** Customer shall have no right to transfer or assign this Agreement or any Order Form or the Customer's rights or obligations under this Agreement or any Order Form, whether by operation of law or otherwise, in whole or in part, without Company's express prior written consent, and any attempted transfer or assignment in violation of the foregoing shall be null and void. Company may transfer, assign or subcontract this Agreement or any Order Form or Company's rights or obligations under this Agreement

or any Order Form, in whole or in part, without the consent of Customer. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their permitted successors and assigns.

- 13.9 No Third Party Beneficiaries.** There are no third-party beneficiaries to this Agreement.
- 13.10 Severability.** If for any reason any provision of this Agreement is adjudicated to be unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible so as to affect the intent of the parties, and the remainder of this Agreement will continue in full force and effect.
- 13.11 Controlling Law and Venue; Limitations on Claims.** This Agreement shall be interpreted according to the laws of the State of Colorado without regard for or application of choice or conflict of law rules or principles. Customer and Company each hereby irrevocably agrees, for the sole benefit of Company that, subject as provided below, the state courts located in Douglas County, Colorado and the federal courts located in the State of Colorado shall have exclusive jurisdiction over any dispute or claim (including non-contractual disputes or claims) brought by or on behalf of Customer arising out of or in connection with this Agreement or its subject matter or formation. Nothing in this clause shall limit the right of Company to take proceedings against Customer in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction. The prevailing party in any action to enforce this Agreement will be entitled to recover its attorneys' fees and costs in connection with such action. ANY PROCEEDING TO RESOLVE OR LITIGATE ANY DISPUTE IN ANY FORUM RELATING TO THIS AGREEMENT SHALL BE CONDUCTED SOLELY ON AN INDIVIDUAL BASIS. NEITHER PARTY SHALL HAVE ANY DISPUTE HEARD AS A CLASS ACTION OR IN ANY OTHER PROCEEDING IN WHICH EITHER PARTY ACTS OR PROPOSES TO ACT IN A REPRESENTATIVE CAPACITY. FURTHER, THE PARTIES EXPRESSLY WAIVE TRIAL BY JURY IN ANY JUDICIAL PROCEEDING INVOLVING ANY DISPUTE, CONTROVERSY OR CLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT. WITHOUT LIMITATION OF THE FOREGOING, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NO CLAIM AGAINST COMPANY OF ANY KIND UNDER ANY CIRCUMSTANCES WILL BE FILED MORE THAN ONE YEAR AFTER CUSTOMER KNOWS OF, OR IN THE EXERCISE OF REASONABLE CARE COULD KNOW OF, SUCH CLAIM OR AN ACT OR OMISSION OF COMPANY THAT WOULD GIVE RISE TO SUCH CLAIM.
- 13.12 Headings.** Headings used in this Agreement are for ease of reference only and shall not be used to interpret any aspect of this Agreement.
- 13.13 Entire Agreement; Order of Precedence.** This Agreement, including all Additional Terms, Order Forms and Statements of Work, and exhibits or attachments hereto or thereto, all of which are hereby incorporated herein by reference, constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes and replaces all prior and contemporaneous understandings or agreements, written or oral, regarding such subject matter. Notwithstanding any language to the contrary therein, no terms or conditions stated in Customer's purchase order or other order documentation (excluding Order Forms) shall be incorporated into or form any part of this Agreement, and all such

terms or conditions shall be null and void. Except as explicitly stated elsewhere in the Agreement, in the event of a conflict or inconsistency between the provisions of the components of the Agreement, then the following order of precedence shall apply: (a) the Order Form's terms and conditions shall take precedence over any other component of the Agreement; (b) then the Additional Terms; and (c) then these Terms of Service.