

Client Terms and Conditions

Care Daily



These Terms and Conditions (these "Terms") apply to each Order Form executed by Customer and Company (the "Order Form") to which this Agreement is attached or referenced. Capitalized terms not defined in these Terms have the meanings given in the applicable Order Form. Customer and Company are each a "Party" and together, the "Parties".

1. Definitions

Affiliate	means, with respect to a Party, an entity that controls, is controlled by, or is under common control with such Party, where "control" means the direct and indirect ownership of more than 50% of the voting securities or the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through the ownership of voting securities, by contract, or otherwise.
Confidential Information	means any non-public material or information relating to a Party, which it discloses or makes available to the other Party in connection with this Agreement including, without limitation, (a) this Agreement and discussions and negotiations surrounding it; (b) trade secrets; (c) information related to the disclosing Party's business practices and operations including proprietary training information, employee information, contractor information, and marketing plans and techniques; (d) released and unreleased products and information related thereto; (e) information relating to the disclosing Party's business or financial affairs, such as financial and business records of a Party or its subcontractors, financial results, business methods, pricing, and competitors; and (f) any and all other information, knowledge, or data, in whatever form or medium, concerning or relating to the business affairs of the disclosing Party or of any other person or entity that has entrusted information to the disclosing Party in confidence that is not generally known by the public at large and that should reasonably have been understood by the receiving Party (because of legends or other markings, the circumstances of disclosure, or the nature of the information itself) to be proprietary or confidential to the disclosing Party. Company's Confidential Information also includes the Platform and any related Documentation. Customer's Confidential Information includes Customer Data and Customer Materials.
Customer Data	means the non-public data, information, and materials related to Customer provided by or on behalf of Customer under this Agreement or through the Company Services, including, but not limited to, Personal Data. Customer Data does not include Usage Data.
Customer Materials	means the Customer Data and other computer facilities, computer systems, network and systems, files, documentation, sample output, or other information, data, and resources of Customer required for the performance of the Services.
Customizations	has the meaning given in Section 3.1.

Documentation	means any user documentation, in paper or electronic form, made available to Customer by Company to customers of the Platform describing the features, functions, or use of the Platform.
EULA	means Company's standard terms and conditions governing a User's access to and use of the Platform.
Hardware	means any physical device or equipment provided by Company under an Order Form for use with the Company Services.
Improvement	means any enhancement, error correction, update, upgrade, modification, revision, addition to, or derivative work of the Platform that Company makes generally available to its customers at no additional charge.
Intellectual Property Rights	means trade secret rights, rights in know-how, moral rights, copyrights, patents, trademarks (and the goodwill represented thereby), and similar rights of any type under the laws of any governmental authority, domestic or foreign, including all applications for and registrations of any of the foregoing.
Personal Data	means any personal information that individually identifies a User, any of Customer's clients, customers, employees, or contractors (or any of their respective users), or any other individual.
Platform	means Company's Care Daily software and related applications, including any Improvements and Customizations.
Services	means the services provided to Customer under an Order Form, including, as applicable, access to and use of the Platform and its Documentation, Professional Services, Installation Services, support, and the provision of Hardware. Any reference to the Services in an individual Order Form will be limited to the Services provided pursuant to such Order Form.
Usage Data	has the meaning given in Section 2.4.
User	means any individual authorized, by virtue of such individual's relationship to, or permissions from, Customer to access the Platform.

2. Platform License and Usage

2.1 Order Forms. Each Order Form will be separately signed by an authorized representative of each Party. Access to the Platform is purchased as subscriptions and subject to any and all limitations identified in this Agreement or the Order Form. If Customer grants access to any Users, such access shall be subject to this Agreement and the EULA. If Customer exceeds a contractual usage limit, Company will invoice Customer for such excess usage, and Customer will pay any such invoice in accordance with this Agreement.

2.2 Grant of License. Subject to Customer's full and ongoing compliance with this Agreement, Company grants Customer and Customer accepts a limited, non-exclusive, non-transferable, non-sublicensable, non-assignable, revocable license during the License Term to access and use the Platform and Documentation.

2.3 Restrictions. Except as expressly permitted in this Agreement or an applicable Order Form, Customer will not: (a) copy or reproduce the Platform in whole or in part or access or use the Platform in any way other than as expressly permitted in this Agreement or an applicable Order Form, including exceeding any usage limits set forth on the Order Form; (b) modify, translate, or create derivative works of the Platform or any portion thereof; (c) reverse engineer, decompile, disassemble, decrypt, or otherwise attempt to gain the source code

to the Platform, or attempt, directly or indirectly, to violate any security feature on the Company Services, or otherwise attempt to recreate all or any portion of the Company Services, except and only to the extent otherwise expressly permitted under applicable law; (d) except as enabled through the Platform, distribute, sublicense, assign, share, timeshare, sell, rent, lease, loan, grant a security interest in, use for service bureau purposes or otherwise transfer the Platform; (e) export, re-export, divert, or transfer the Company Services to any country that is embargoed by the United States or designated by the U.S. Government as a "terrorist supporting" country; (f) unless expressly authorized by Company in writing, access or use the Platform for purposes of monitoring its availability, performance, or functionality, or for any other benchmarking purpose, including authorizing or undertaking a penetration test, vulnerability scan, social engineering test, or any other similar activity against the Platform or Company; (g) interfere with or attempt to interfere with the proper functioning of the Platform; (h) access or use the Company Services to develop a service, functionality, data, or content similar to or competitive with any component of the Platform; (i) remove, alter, cover, or obfuscate any copyright notices or other proprietary rights notices placed or embedded on or in the Company Services; or (j) cause, authorize, or assist any third party to do any of the foregoing. Notwithstanding anything contained in this Agreement or an Order Form to the contrary, under no circumstances may Customer use the Company Services as a life-saving device or a replacement for any life-saving devices.

2.4 Usage Data. The Platform may automatically report back to Company or its licensors information related to usage of the Platform and other Services ("Usage Data"), without notice to Customer or a User. Usage Data may be used by Company and its licensors for any legally permitted purposes, including helping diagnose and resolve technical and performance issues in relation to the Platform, improving the Platform and other Company Services, developing metrics and analytic algorithms, or developing additional use cases for the Company Services. Moreover, Company may use aggregated and anonymized Customer Data to develop, train, or enhance artificial intelligence or machine learning models for improving Company's products and services. Company will use commercially reasonable efforts to deidentify data before such use and comply with all applicable data protection laws.

2.5 Personal Data. The role of Company and its licensors is that of a "processor" where applicable under law. Company will process Personal Data (a) solely as necessary to provide the Services and at the direction of Customer and (b) in compliance with all applicable laws and governmental rules and regulations. Notwithstanding the foregoing, under no circumstances should Customer provide any sensitive identifying information regarding individuals to Company, including Social Security Numbers.

3. Additional Services

3.1 Professional Services. Customer and Company may enter into one or more statements of work (each, an "SOW") for the performance of certain professional services ("Professional Services"), which may include development work to add new features or enhancements to the Platform or any portion thereof ("Customizations"). Each SOW shall provide, among other things: (a) a description of the scope of work to be performed by Company; (b) a description of Customer obligations and dependencies; (c) a schedule for performance of each party's obligations; and (d) the applicable fees, reimbursable expenses, and payment terms for the Professional Services. In the event of a conflict between this Agreement and the terms of an SOW, the terms of this Agreement shall govern unless expressly provided otherwise in the SOW. The provisions of each SOW will control solely with respect to the Professional Services performed within its scope.

3.2 Delivery and Installation Services. Hardware shall be delivered and installed by Company according to the schedule and at the location set forth in the Order Form or otherwise in an SOW ("Installation Services").

Title passes to Customer upon Company's receipt of payment in full for the Hardware. Risk of loss to the Hardware passes to Customer upon installation of the Hardware at the designated location.

Any changes or modifications to the scope of Installation Services requested by Customer or required based on the conditions of the installation location that result in additional time or expenses for Company shall be subject to additional fees, to be agreed upon by both Parties in writing.

In connection with Installation Services, Customer shall provide Company with all information, data, and assistance that Company may reasonably request, or that otherwise may reasonably be required, to enable Company to perform the Installation, including:

- reasonable, uninterrupted access, both physical and virtual, to Customer's premises, systems, networks, and facilities
- a safe working environment
- reasonable access to the appropriate Customer personnel, including network, systems, operations, and applications personnel; and
- all necessary authorizations and consents, whether from third parties or otherwise, in connection with any of the foregoing.

Customer shall promptly provide Company with all necessary information, data, and assistance reasonably required for the Installation. Any delays caused by the Customer's failure to provide such information or assistance shall not be the responsibility of Company.

3.3 Performance of Services. Professional Services and Installation Services may be performed by Company's Affiliates or through one or more third-party subcontractors. Company shall be responsible for any breach of this Agreement caused by such third-party subcontractors as though the breach was committed by Company.

4. Fees and Payments

4.1 Fees. Company shall invoice Customer and Customer shall pay the amounts set forth in each Order Form. Except as otherwise provided in any applicable Order Form, all undisputed amounts due hereunder will be due and payable upon receipt of the invoice.

4.2 Payment Method. All payments made to Company under this Agreement will be made in United States currency via methods made available by Company.

4.3 Disputed Charges. Customer must notify Company in writing of any charges it wishes to dispute in good faith within ten (10) days after the date of invoice. Absent such notice, Customer will be deemed to have agreed to the charges as invoiced upon expiration of such time period and such invoice will be deemed to be correct and binding on Customer.

4.4 Late Fees. Fees payable hereunder that are not paid when due and are not being disputed in good faith will accrue interest at 1.5% per month or the maximum rate permitted by applicable law, whichever is less, from the due date until paid.

4.5 Suspension. If Customer fails to pay undisputed amounts in accordance with this Agreement Company may, in addition to any of its other rights or remedies, suspend access to the Platform without liability to Customer until such amounts are paid in full.

4.6 Taxes. All amounts payable under this Agreement will exclude all applicable sales, use, and other taxes and all applicable export and import fees, customs duties, and similar charges. Customer will be responsible for payment of all such taxes (other than taxes based on Company's income), fees, duties, and charges, and any related penalties and interest, arising from the payment of any fees hereunder, the grant of license rights hereunder, or the delivery of services. Customer will make all payments required hereunder to Company free and clear of, and without reduction for, any withholding taxes. Any such taxes imposed on any payments hereunder to Company will be Customer's sole responsibility, including taxes that become known by Company after invoicing Customer (such as Customer's use of the Services in different taxing jurisdictions or otherwise).

4.7 No Refund. All fees paid to Company under this Agreement are non-cancelable and non-refundable once paid or incurred. This includes any one-time charges and recurring payments. If Customer terminates its subscription to the Platform, Customer retains ownership of any purchased Hardware but is not entitled to any refund or return of previously paid fees or charges.

5. User Accounts and Security

5.1 Account Security and Access. Customer is responsible for maintaining the confidentiality of Customer's account credentials, including but not limited to usernames and passwords. Customer shall ensure that all Users associated with Customer's account take appropriate security measures to protect their login information from unauthorized access. Company is not responsible for any loss or damage resulting from unauthorized access to Customer's or its Users' accounts due to weak passwords, credential sharing, or other security failures caused by Customer or its Users.

5.2 User Access. Customer may invite Users to access and receive notifications through the Platform. Each User must create an individual sub-account under the Customer's account and accept the EULA before accessing the Company Services. The Customer retains full control over managing Users' access levels.

5.3 Customer Responsibility for Users. Customer acknowledges and agrees that it is solely responsible for the actions of all Users associated with its account, including ensuring Users' compliance with the EULA, and that any violation of this Agreement or the EULA by a User will be deemed a violation by the Customer. Company reserves the right to suspend or terminate any User's access if they violate the EULA or otherwise compromise the security or integrity of the Company Services

5.4 Unauthorized Access and Breach Notification. Customer must notify Company immediately if Customer becomes aware of any unauthorized access to Customer's account (including any Users), misuse of credentials, or any other security breach. If Company determines that a security incident has occurred that may compromise the confidentiality or integrity of Customer Data, Company will take commercially reasonable steps to mitigate the issue and will notify Customer as required by applicable law.

6. Confidentiality

6.1 Ownership of Confidential Information. The Parties acknowledge that during the performance of this Agreement, each Party will have access to certain of the other Party's Confidential Information or Confidential Information of third parties that the disclosing Party is required to maintain as confidential. Both Parties agree that all items of Confidential Information are proprietary to the disclosing Party or such third party, as applicable, and will remain the sole property of the disclosing Party or such third party.

6.2 Mutual Confidentiality Obligations. Each Party agrees as follows: (a) to use the Confidential Information only for the purposes described herein; (b) not to reproduce the Confidential Information and will hold in

confidence and protect the Confidential Information from dissemination to, and use by, any third party; (c) except as required in performance of a Party's obligations under this Agreement, or as otherwise permitted in this Agreement, it will not create any derivative work from Confidential Information disclosed to such Party by the other Party; (d) to restrict access to the Confidential Information to such of its Users, personnel, agents, and/or consultants, if any, who have a need to have access and who have been advised of and have agreed in writing or are otherwise bound to treat such information in accordance with the terms of this Agreement; (e) To ensure that all Users granted access to the Company Services under Customer's account comply with the confidentiality obligations set forth in this Agreement and the EULA; and (f) to return or destroy all Confidential Information of the other Party in its possession upon termination or expiration of this Agreement.

6.3 Shared Information with Users. Customer acknowledges that Customer Data may be shared with Users whom Customer grants access under Customer's account. By granting access to Users, Customer authorizes Company to provide those Users with relevant Customer Data regarding Customer's usage of the Company Services, including device activity and status updates. Customer is solely responsible for managing the level of access granted to each User and ensuring that Users do not share or disclose Confidential Information to unauthorized parties.

6.4 Prior Non-Disclosure Agreement. The terms of this Section (Confidentiality) supersede the terms of any agreement of confidentiality previously entered into between the Parties and any information required to be treated as confidential under such agreement will be treated as Confidential Information under the terms of this Agreement.

6.5 Confidentiality Exceptions. Notwithstanding the foregoing, the provisions of Sections 6.1 and 6.2 will not apply to Confidential Information that: (a) is publicly available or in the public domain at the time disclosed; (b) is or becomes publicly available or enters the public domain through no fault of the recipient; (c) is rightfully communicated to the recipient by persons not bound by confidentiality obligations with respect thereto; (d) is already in the recipient's possession free of any confidentiality obligations with respect thereto at the time of disclosure; (e) is independently developed by the recipient; or (f) is approved for release or disclosure by the disclosing Party without restriction. Notwithstanding the foregoing, each Party may disclose Confidential Information to the limited extent required (1) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the Party making the disclosure pursuant to the order will first have given written notice to the other Party and made a reasonable effort to obtain a protective order; or (2) to establish a Party's rights under this Agreement, including to make such court filings as it may be required to do.

7. Rights and Obligations

7.1 Customer Obligations.

Customer Materials. Certain Customer Materials may be required for the proper operation of the Company Services. Customer will be responsible for, and assumes the risk of, any problems resulting from, the content, accuracy, completeness, or consistency of all Customer Materials. Customer will, at its own expense, obtain all third-party consents or permissions that may be necessary and appropriate for Company's use and display of the Customer Materials in accordance with this Agreement and any Order Form. Customer acknowledges and agrees that the timely performance by Company of the Company Services is dependent upon Customer performing its obligations under this Agreement, the Order Form, and any SOW, and that any delay or failure to perform by Customer will extend the time for Company to perform. Customer acknowledges and agrees that Company will have no obligation to archive or back-up Customer

Data, nor will Company have any liability for any loss or corruption of Customer Data (except as otherwise set forth herein), nor will Company have any obligation under this Agreement to retain any Customer Data after the expiration or termination of the Services Term.

Customer Infrastructure. Customer is responsible for acquiring and maintaining, at its sole cost and expense, all telecommunications and Internet services and other hardware and software required to access and use the Services. Customer acknowledges that the Services require a stable internet connection, functioning mobile service, and properly maintained Hardware for full functionality. Any interruptions or failures in these elements may impact or prevent service performance, and Company is not responsible for such disruptions.

User Compliance. Customer acknowledges and agrees that Customer is solely responsible for the actions of all Users associated with its account, including ensuring that all Users comply with the EULA. Any violation of this Agreement or the EULA by a User will be considered a violation by the Customer. Company reserves the right to suspend or terminate any User's access if they fail to comply with the EULA or otherwise compromise the security or integrity of the Company Services.

Customer Data. Customer is solely responsible for all Customer Data that Customer or its Users may provide or upload to the Platform or otherwise generate through use of or access to the Platform. Customer represents and warrants that no Customer Data or the use of Customer Data by Company: (1) violates this Agreement or any requirements under applicable laws; (2) is libelous, defamatory, obscene, abusive, pornographic, threatening, or an invasion of privacy; (3) constitutes an infringement, misappropriation or violation of the Intellectual Property Rights or other rights of any third party; (4) is illegal in any way or advocates illegal activity; or (5) is false, misleading or inaccurate. Company is not responsible or liable for any deletion, correction, destruction, damage, loss, or failure to store, restore, or back-up any Customer Data. Company may remove or delete Customer Data without notice due to violation of this Section. Customer agrees that Customer has all right, title, interest, and consent in Customer Data necessary to allow Company to use Customer Data as set forth in this Agreement.

7.2 Company Rights and Obligations. Company shall provide Customer with access to the Company Services in accordance with this Agreement and each applicable Order Form and SOW.

Manage and Limit Use of Services. Company may limit any User's use of the Company Services, including but not limited to, restricting the total storage space available per account, the total amount of data uploaded over a given time period, or both. Recorded videos, data logs, and other stored content may exceed the available space allocated to an account. If such storage limits are exceeded, Company may delete or archive content unless Customer increases their storage limits or retrieves data through alternative methods. Periodic maintenance activities may also include purging deleted videos or archived content. Deleted content may not be immediately removed from Company's servers and may persist for a period of time before final deletion.

Alarm Response and Notifications. Upon receipt of an alarm signal from Customer's account, Company shall make commercially reasonable efforts to promptly transmit the alarm to the appropriate police, fire department, or other emergency response entity with jurisdiction. However, in order to avoid false alarms, Company reserves the right, in its sole judgment, to first investigate the cause of the signal, which may include attempting to contact Customer or dispatching a representative to verify whether an emergency condition exists before alerting emergency services. Additionally, Company may attempt to notify Customer's designated contacts of any genuine alarm event, unless instructed otherwise by Customer.

Audit Rights. Company shall have the right, upon notice to Customer, to conduct an audit ("Audit") of Customer's use of the Company Services to verify Customer's compliance with this Agreement and any applicable Order Forms. Company may also conduct an audit if it reasonably believes Customer has materially deviated from this Agreement in a way that could cause liability for Company.

7.3 Third-Party Components and Terms. Certain hardware, software, devices, sensors, integrations, connectivity services, APIs, data sources, and other third-party components may be offered, recommended, resold, enabled, connected to, or used with the Company Services. Customer acknowledges and agrees that any such third-party component, whether obtained by Customer from Company, directly from the applicable third-party provider, or otherwise, may be subject to terms, conditions, licenses, warranties, restrictions, disclaimers, or other requirements of the applicable third-party provider. If Company identifies such third-party provider terms by provider name and URL in this Agreement, an Order Form, or in written notice provided at or before activation, enablement, connection, or use of the applicable third-party component, such third-party terms are incorporated into and form part of this Agreement solely with respect to that applicable third-party component. By ordering, purchasing, activating, enabling, connecting to, using, or continuing to use the applicable third-party component after such notice, Customer agrees to the applicable third-party terms. Any such third-party terms will apply only to the specific third-party component to which they relate and will not expand Company's warranties, indemnities, service levels, support obligations, refund obligations, or liability beyond what is expressly stated in this Agreement. Except as expressly stated in an applicable Order Form, Company is not responsible for the availability, performance, accuracy, security, legality, regulatory status, support, maintenance, pricing, or continued availability of any third-party component, or for any act, omission, change, defect, failure, or discontinuation by its provider, and Company may suspend, limit, replace, discontinue, or cease supporting any third-party component or related integration if continued support becomes commercially impracticable, technically infeasible, insecure, non-compliant, or legally risky. Without limiting the foregoing, Pontosense-enabled features or components made available through the Company Services are subject, solely with respect to the Pontosense-enabled component, to the then-current Pontosense MSA available at <https://www.pontosense.com/master-servicesagreement>.

8. Ownership and Proprietary Rights

8.1 Company. Company retains all right, title and interest in and to the Platform (including all Customizations), Documentation, and associated Intellectual Property Rights; and all Improvements, enhancements, and modifications thereto, and Customer acknowledges that it neither owns nor acquires any rights in any of the foregoing. Customer further acknowledges that Company retains the right to use the Platform for any purpose in Company's sole discretion, and Company reserves all rights not expressly granted in this Agreement. Except as expressly set forth in an Order Form, Customer acknowledges that as between the parties, Company and its licensors own all Intellectual Property Rights in and to the Company Services (including all components of each of the Company Services) and any other work product, developments, inventions, technology, or materials provided under this Agreement, except for any Customer Materials contained therein. Company expressly retains all right, title, and interest in and to the Company Services and all rights not expressly granted to Customer in this Agreement are reserved. Customer will not engage in any act or omission that would impair Company's or its licensors' Intellectual Property Rights in the Company Services, and any other materials, information, processes, or subject matter proprietary to Company. Customer further acknowledges that Company retains the right to use the foregoing for any purpose in Company's sole discretion.

8.2 Customer Materials Ownership. Customer retains all right, title, and interest in and to Customer Materials, and Company acknowledges that it neither owns nor acquires any additional rights in and to Customer Materials not expressly granted by this Agreement. Company further acknowledges that Customer retains the right to use the Customer Materials for any purpose in Customer's sole discretion.

Notwithstanding the foregoing, Customer grants to Company a limited, non-exclusive, non-transferable, non-sublicensable, non-assignable, revocable license during the License Term to use, reproduce, modify, and distribute Customer Materials solely for the purpose of providing and improving the Company Services.

8.3 Feedback. Company, in its sole discretion, may utilize all comments and suggestions, whether written or oral, furnished by Customer or its employees or Users to Company in connection with their use or access of any Company Services (all such reports, comments, or suggestions, collectively, "Feedback"). Customer hereby grants Company a worldwide, non-exclusive, irrevocable, perpetual, sub-licensable, transferable, royalty-free right and license to incorporate the Feedback into Company products and services and to otherwise commercially exploit it in any manner.

9. Technical Assistance

9.1 Technical Assistance. Subject to the terms and conditions of this Agreement, including the payment of the applicable fees, Company will provide certain limited support services as part of the Company Services, including using reasonable efforts to provide telephone and email support to Customer personnel during its normal business hours (8:00 AM EST to 5:00 PM EST) in accordance with Company's then-standard support policies, with the understanding that such policies do not provide for any on-site support. Customer can designate up to two (2) persons, which designees will be eligible to receive technical assistance from Company ("Eligible Support Recipients"). Such designees may be changed at any time by written notice. Except for such Eligible Support Recipients, Customer will be solely responsible for the support of all Customer personnel and Users using Company Services.

10. Warranties

10.1 Mutual. Each Party represents and warrants to the other that (a) the execution and performance of this Agreement does not and will not violate any other contract, obligation, or instrument to which it is a party, or that is binding upon it, including terms relating to covenants not to compete and confidentiality obligations; (b) it has the right and authority to enter into this Agreement and, with respect to Customer, that the signatory hereunder has the right and authority to enter into this Agreement; and (c) the execution, delivery, and performance of this Agreement and the consummation of the transactions contemplated by this Agreement have been duly authorized by the requisite corporate action on the part of such Party, and this Agreement constitutes the valid and binding obligation of such Party enforceable against it in accordance with the terms hereof. Each Party acknowledges that this Agreement may be subject to certain additional representations and warranties that may be set forth in one or more Order Form to this Agreement or SOW, as applicable.

10.2 Company Warranties. During the License Term, Company warrants, for the benefit of Customer only, that the Platform, as made available by Company to Customer, will conform in all material respects to the then-current Documentation. Customer's sole and exclusive remedy for any breach of the foregoing warranty shall be: (a) repair or replacement of the non-conforming Platform to make it conforming or, at Company's option (b) refund of the amounts prepaid but unused and termination of this Agreement without further liability hereunder. Company further represents and warrants that its provision of the Company Services will comply with all applicable state and federal laws, rules, and regulations.

10.3 Hardware Warranty. Company does not manufacture the Hardware (including any associated software or software services) and expressly disclaims all warranties related to the Hardware, except to the extent provided by the original manufacturer. Company will pass through to Customer the benefit of any manufacturer's warranty applicable to the Hardware for the duration of the applicable warranty period. Company shall have no liability arising from any Hardware defect, including any defect in design, manufacturing, or failure to warn. Customer's sole remedy for any Hardware defect shall be through the applicable manufacturer's warranty, and Company shall have no obligation to repair or replace any Hardware beyond the terms of the manufacturer's warranty. Company does not guarantee the continued availability of specific Hardware models or components and shall not be liable for any Hardware delays, malfunctions, or discontinuations that are outside of Company's control.

10.4 Customer Warranties. Customer represents and warrants that: (a) it will, at its own expense, obtain sufficient rights and all third-party consents and permissions that may be necessary and appropriate to permit Company's access to and use of the Customer Materials; (b) its use of the Company Services will comply with all applicable state and federal laws, rules, and regulations and not violate any person's right of privacy or publicity; and (c) Customer is not located in a country that is subject to a U.S. Government embargo or that has been designated by the U.S. Government as a "terrorist supporting" country, Customer is not listed on any U.S. Government list of prohibited or restricted parties, nor will Company allow any User to violate the foregoing.

10.5 No Other Warranties. Subject to any applicable warranties expressly set forth in any Order Form to this Agreement, except as expressly warranted in this Agreement, the Company Services and any other materials, software, data, or services provided by Company are provided "as is" and "with all faults," and Company, on behalf of itself and its licensors, expressly disclaims all other warranties of any kind or nature, whether express, implied, or statutory, including but not limited to, any additional or implied warranties of non-infringement, merchantability, or fitness for a particular purpose. No warranty is made by Company on the basis of trade usage, course of dealing, or course of performance. Company does not warrant that the Company Services or any software, other information, materials, technology, or services provided under this Agreement will meet Customer's requirements or that the operation thereof will be uninterrupted or error-free, or that all errors will be corrected. Customer acknowledges that Company's obligations under this Agreement are for the benefit of Customer only. The Company Services may be subject to limitations, delays, and other problems inherent in the use of the Internet and electronic communications and Company is not responsible for any delays, delivery failures, or other damage resulting from such problems. No oral or written information given by Company, its employees, agents, licensors, or the like will create a warranty, except for the Warranties expressly set forth in this Agreement or an Order Form. In certain jurisdictions, the law may not permit or may limit the disclaimer of warranties, so the disclaimer in this Section may not apply to you or may be limited in its application.

10.6 ADDITIONAL DISCLAIMERS. COMPANY SERVICES ARE NOT DESIGNED OR INTENDED FOR USE IN ANY MEDICAL, LIFE-SAVING, OR LIFE-SUSTAINING SYSTEMS, OR FOR ANY OTHER MISSION CRITICAL APPLICATION IN WHICH THE FAILURE OF THE COMPANY SERVICES COULD CREATE A SITUATION IN WHICH SUBSTANTIAL PROPERTY DAMAGE, PERSONAL INJURY, OR DEATH MAY OCCUR. CUSTOMER ACKNOWLEDGES AND AGREES THAT THE COMPANY SERVICES ARE NOT MEDICAL SERVICES. NEITHER THE PLATFORM OR THE SERVICES INCLUDE, OR ARE INTENDED TO INTEROPERATE WITH, ANY MEDICAL DEVICES. THEY ARE NOT DESIGNED OR INTENDED FOR USE IN THE DETECTION, DIAGNOSIS, CURE, MITIGATION, TREATMENT, OR PREVENTION OF ANY DISEASE, MEDICAL CONDITION, OR MEDICAL

EMERGENCY. CUSTOMER SHALL NOT MAKE ANY REPRESENTATION OR WARRANTY TO THE CONTRARY AND SHALL COMMUNICATE THE SAME TO EACH OF ITS USERS. COMPANY RECOMMENDS AGAINST, AND DISCLAIMS ANY LIABILITY FOR, USE OF THE PRODUCTS IN ANY SUCH MANNER.

11. Limitations of Liability

11.1 NO CONSEQUENTIAL DAMAGES. EXCEPT AS PROVIDED IN SECTION 11.3 AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT WILL EITHER PARTY (AND IN THE CASE OF COMPANY, ITS LICENSORS) BE LIABLE TO OTHER PARTY FOR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, REGARDLESS OF THE NATURE OF THE CLAIM, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, COSTS OF DELAY, ANY FAILURE OF DELIVERY, BUSINESS INTERRUPTION, COSTS OF LOST OR DAMAGED DATA OR DOCUMENTATION, OR LIABILITIES TO THIRD PARTIES ARISING FROM ANY SOURCE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

11.2 LIMIT ON DIRECT DAMAGES. EXCEPT AS PROVIDED IN SECTION 11.3 AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE CUMULATIVE LIABILITY OF EITHER PARTY (AND IN THE CASE OF COMPANY, ITS LICENSORS) TO THE OTHER PARTY FOR ALL CLAIMS ARISING FROM OR RELATING TO THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY CAUSE OF ACTION SOUNDING IN CONTRACT, TORT, OR STRICT LIABILITY, WILL NOT EXCEED THE GREATER OF (A) U.S. \$5,000.00, OR (B) THE TOTAL AMOUNT OF ALL FEES PAID TO COMPANY BY CUSTOMER IN THE SIX (6) MONTHS PRECEDING THE DATE ON WHICH THE APPLICABLE CLAIM AROSE UNDER THE APPLICABLE ORDER FORM.

11.3 EXCEPTIONS. THE FOREGOING EXCLUSIONS AND LIMITATIONS OF LIABILITY SHALL NOT APPLY TO (I) A BREACH BY A PARTY OF ITS CONFIDENTIALITY OBLIGATIONS; (II) A PARTY'S INDEMNIFICATION OBLIGATIONS; OR (III) A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

11.4 Essential Basis. The disclaimers, exclusions, and limitations of liability set forth in this Agreement form an essential basis of the bargain between the Parties, and, absent any of such disclaimers, exclusions, or limitations of liability, the provisions of this Agreement, including, without limitation, the economic terms, would be substantially different.

12. Indemnification

12.1 By Company. Company shall indemnify and hold harmless Customer against any liability, damage, judgment, or expense (including reasonable attorneys' fees and expenses of litigation) (collectively, "Losses") incurred by or imposed upon it in connection with, and defend it from and against, any third-party claim, suit, action, demand, or proceeding (each, a "Claim") alleging that the Platform, as made available by Company and to the extent used in accordance with this Agreement and all applicable Documentation, infringes or violates the Intellectual Property Rights of any third party. Notwithstanding the foregoing, Company will have no obligation or liability to the extent that the alleged infringement arises from a Customer Indemnity Responsibility. Upon the occurrence of a claim for which indemnity is or may be due under this Section 12.1, or in the event that Company believes that such a claim is likely, Company may, at its option (a) modify the Company Services so that it becomes non-infringing, or substitute functionally equivalent software or services; (b) procure the rights to use such infringing component(s); or (c) terminate this Agreement on written notice to Customer and refund to Customer any prepaid but unused fees. The obligations set forth in this Section 12 (Indemnification) will constitute Company's entire liability and Customer's sole remedy for any actual or alleged infringement or misappropriation.

12.2 Indemnification by Customer. Customer shall indemnify and hold harmless Company against any Losses incurred or imposed upon it in connection with, and defend it from and against, any third-party Claim arising from or relating to: (a) Customer's breach of any representation or warranty under this Agreement; (b) the Customer Materials; (c) Customer's use of the Company Services in breach of this Agreement or as specified in any Documentation; or (d) modification of the Company Services by any person other than Company or its authorized agents (circumstances under clauses (a) through (d), each, a, "Customer Indemnity Responsibility").

12.3 Procedures. The indemnification obligations set forth above are conditioned on the indemnified Party: (a) promptly notifying the indemnifying Party of any claim that may be subject to an indemnification obligation; (b) granting the indemnifying Party sole control over the defense and settlement of any such claim; and (c) assisting the indemnifying Party as reasonably requested and at the indemnifying Party's sole expense. Notwithstanding the foregoing, the indemnifying Party will not settle any third-party claim against the indemnified Party unless such settlement completely and forever releases the indemnified Party with respect thereto or unless the indemnified Party provides its prior written consent to such settlement.

13. Term and Termination

13.1 Term. Unless earlier terminated as provided herein, the Agreement will commence on the Effective Date and continue through the Initial Term. Thereafter, this Agreement will automatically renew for successive 12-month periods (each a "Renewal Term"), unless either Party provides the other Party with written notice of non-renewal at least thirty (30) days before the end of the then current Term. The Initial Term and any Renewal Terms are collectively referred to herein as the "Services Term."

13.2 Termination for Breach. Either Party may terminate this Agreement immediately upon written notice if the other Party materially breaches this Agreement and fails to cure such breach (or to commence diligent efforts, which are reasonably acceptable to the Party that first provided notice, to cure such breach) within thirty (30) days after receiving written notice thereof.

13.3 Termination Upon Bankruptcy. Either Party may terminate this Agreement immediately upon written notice after the other Party has (a) executed an assignment for the benefit of creditors; or (b) filed for relief under any applicable bankruptcy, reorganization, moratorium, or similar debtor relief laws; or (c) in the event that a receiver has been appointed for the other Party or any of its assets or properties; or (d) an involuntary petition in bankruptcy has been filed against such other Party, which proceeding or petition has not been dismissed, vacated, or stayed within thirty (30) days.

13.4 Termination of Individual Order Form. In addition to each Party's rights under Sections 13.2 (Termination for Breach) and 13.3 (Termination Upon Bankruptcy), each Party may terminate any particular Order Form according to any provision therein permitting such termination, provided that this Agreement will remain in full force and effect in accordance with their respective terms.

13.5 Suspension. Company may suspend Customer's or any one or more of its User's access to the Platform, in its sole discretion, if Company reasonably believes that Customer or anyone accessing the Platform is engaged in (a) any activity that may harm Company or its licensors, its systems, or any third-party systems; or (b) any fraudulent or illegal activity or any activity that could result in legal liability to Company or its licensors. Company will use commercially reasonable efforts to limit the scope of such suspension to the extent necessary to mitigate the potential harm. Any such suspension may continue until the event causing such suspension has been cured or until Company has received satisfactory assurances that such event will not recur.

13.6 Accrued Obligations. Termination of this Agreement or any Order Form will not release the Parties from any liability that, at the time of termination, has already accrued or that thereafter may accrue with respect to any act or omission before termination, or from any obligation that is expressly stated in this Agreement or any applicable Order Form to survive termination. Notwithstanding the foregoing, the Party terminating this Agreement or any Order Form as permitted by any provision in this Section 13 will incur no additional liability merely by virtue of such termination. Termination of this Agreement or any applicable Order Form, regardless of cause or nature, will be without prejudice to any other rights or remedies of the Parties and will be without liability for any loss or damage occasioned thereby.

13.7 Effect of Termination. Upon any termination of this Agreement, each Party will: (a) immediately discontinue all use of the other Party's Confidential Information; and (b) promptly pay all amounts due and remaining payable hereunder.

13.8 Survival of Obligations. Any provisions of this Agreement that, by their nature, are intended to survive termination or expiration shall remain in effect, including but not limited to those related to payment obligations, confidentiality, intellectual property, limitations of liability, indemnification, dispute resolution, and any other provisions necessary to enforce or interpret the rights and obligations of the Parties after termination.

14. General Terms

14.1 Dispute Resolution. If a claim, controversy, or dispute relating to this Agreement arises between the Parties, either Party will, by written notice, call a meeting regarding the dispute to be attended (in person or by phone) by executive officers of each Party, with authority to settle the dispute, who will attempt in good faith, to resolve the dispute. If the dispute cannot be resolved through good faith negotiations within forty-five (45) days from the initial meeting between the officers, then either Party may, subject to Section 14.5 (Binding Arbitration) pursue its remedies in arbitration. Before arbitration may be commenced against either Party, a Party will provide ten (10) days' written notice of the alleged default and its intent to file. All negotiations pursuant to this Section 14.1 will be confidential and will be treated as compromise and settlement negotiations for purposes of the applicable rules of evidence to the fullest extent permitted under such rules. For the avoidance of doubt, the negotiation process described in this Section 14.1 does not toll or extend the limitation period set forth in Section 14.3 (Causes of Action).

14.2 Equitable Relief. Notwithstanding Section 14.1 (Dispute Resolution), if a Party determines, in good faith, that a breach or threatened breach of the terms of this Agreement by the other Party would result in irreparable harm, such that a temporary restraining order or other form of injunctive relief is the only appropriate and adequate remedy, such Party may proceed directly to court and may obtain such relief, without having to post a bond or other security, and without having to prove the inadequacy of other available remedies.

14.3 Causes of Action. No action arising from or related to this Agreement may be brought by either Party more than two (2) years after the cause of action has accrued.

14.4 Entire Agreement. This Agreement, the Order Form, any SOW, and each of their attachments and exhibits, each incorporated herein and made part hereof, sets forth the entire agreement and understanding between the Parties with respect to the subject matter hereof and, except as specifically provided herein, supersedes and merges all prior oral and written agreements, discussions, and understandings between the Parties with respect to the subject matter hereof, and neither of the Parties will be bound by any conditions, inducements, or representations other than as expressly provided for herein.

14.5 Binding Arbitration. Any dispute, controversy, or claim arising out of or relating to this Agreement shall be finally resolved by binding arbitration conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA"). The Parties shall mutually select a single arbitrator within thirty (30) days of initiating arbitration, or the AAA shall appoint one if they cannot agree. The arbitration shall be held in King County, Washington, in English. The arbitrator shall have the power to rule on their own jurisdiction and on the validity of this Agreement. The award shall be final and binding, with judgment enforceable in any court of competent jurisdiction. Each Party shall bear its own costs and fees, equally sharing the arbitrator's fees and administrative costs. All matters relating to the arbitration shall remain confidential, except as required by law. The Parties agree to arbitrate solely on an individual basis, waiving any right to class arbitration. If any portion of this provision is deemed invalid, the remaining portions shall remain in force. By agreeing to this clause, the Parties waive their right to a jury trial and consent to binding arbitration as specified herein.

14.6 Class Action Waiver. The Parties agree to resolve any disputes on an individual basis only. By signing this Agreement, each Party expressly waives any right to participate in a class, collective, or representative action, whether in court or arbitration. This waiver extends to any claim, dispute, or controversy arising out of or relating to this Agreement or the Parties' relationship. The Parties acknowledge that they are giving up any right to serve as a representative or participate as a member of any class of claimants pertaining to any claim subject to this Agreement. This class action waiver shall survive the termination of this Agreement.

14.7 Applicable Law. This Agreement, including the arbitration agreement and class action waiver, and the rights and obligations of the Parties will be construed in accordance with, and will be governed by, the laws of the State of Washington, without giving effect to its rules regarding conflicts of laws. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

14.8 Force Majeure. Company will be excused from performance of its obligations and any liability under this Agreement if a failure to or delay in performing hereunder results from compliance with any requirement of applicable law, acts of God, fire, strike, embargo, terrorist attack, war, insurrection, riot, or other causes beyond the commercially reasonable control of Company, including widespread power failures or energy shortages; pandemics, epidemics, or public health emergencies; cyberattacks, including but not limited to hacking attempts, denial of service attacks, or malicious introduction of viruses or disabling devices; failures or interruptions of telecommunications, Internet service providers, or hosting facilities; or any other event that makes performance commercially impracticable. The obligations and rights of Company will be extended on a day-to-day basis for the period of time equal to that of the underlying cause of the delay as long as such delay remains beyond Company's commercially reasonable control.

14.9 Notices. All notices required by or relating to this Agreement will be in writing and will be sent by means of certified mail, postage prepaid, to the Customer at the address set forth on the Order Form, and to Company at 12423 NE 137th PL, Kirkland, WA 98034, to the attention of Contract Management, or any other address a party may subsequently designate to the other party. Such notices will be effective on the date indicated in such confirmation.

14.10 Assignment. Customer will not assign its rights or delegate its obligations under this Agreement without Company's prior written consent, and, absent such consent, any purported assignment or delegation by Customer will be null, void, and of no effect. Company may assign its rights or delegate its obligations, in whole or in part, to an Affiliate of Company or in connection with a merger, sale of all or substantially all of

Company's assets, or similar change of control transaction. This Agreement will be binding upon and inure to the benefit of Company and Customer and their successors and permitted assigns.

14.11 Independent Contractors. The Parties acknowledge and agree that the relationship arising from this Agreement does not constitute or create any joint venture, partnership, employment relationship, or franchise between them, and the Parties are acting as independent contractors in making and performing under this Agreement. Neither Party will have any authority to bind or make commitments on behalf of the other Party for any purpose, nor will any such Party hold itself out as having such authority.

14.12 Waiver. No waiver under this Agreement will be valid or binding unless set forth in writing and duly executed by the Party against whom enforcement of such waiver is sought. Any such waiver will constitute a waiver only with respect to the specific matter described therein and will in no way impair the rights of the Party granting such waiver in any other respect or at any other time. Any delay or forbearance by either Party in exercising any right hereunder will not be deemed a waiver of that right.

14.13 Severability. If any provision of this Agreement is invalid or unenforceable for any reason in any jurisdiction, such provision will be construed to have been adjusted to the minimum extent necessary to cure such invalidity or unenforceability. The invalidity or unenforceability of one or more of the provisions contained in this Agreement will not have the effect of rendering any such provision invalid or unenforceable in any other case, circumstance or jurisdiction, or of rendering any other provisions of this Agreement invalid or unenforceable whatsoever.

14.14 No Third-Party Beneficiaries. The Parties acknowledge that the covenants set forth in this Agreement are intended solely for the benefit of the Parties, their successors and permitted assigns, as expressly contemplated in Section 14.10. Nothing herein, whether express or implied, will confer upon any person or entity, other than the Parties, their successors and permitted assigns (as expressly contemplated in Section 14.10), any legal or equitable right whatsoever to enforce any provision of this Agreement.

14.15 Counterparts; Headings; Interpretation. This Agreement may be executed in any number of counterparts, each of which when so executed will be deemed to be an original and all of which when taken together will constitute one Agreement. Transmission by fax or electronic mail of an executed counterpart to this Agreement will be deemed due and sufficient delivery of such counterpart, and a photocopy of an executed counterpart sent by fax or electronic mail may be treated by the Parties as a duplicate original. The headings in this Agreement are inserted merely for the purpose of convenience and will not affect the meaning or interpretation of this Agreement. Unless the context suggests otherwise, the words "include", "includes," and "including" mean include, includes, and including "without limitation." Capitalized terms defined in the singular include the plural and vice versa. Reference to and the definition of any document will be deemed a reference to such document, including any schedules or exhibits thereto, as it may be amended, supplemented, revised, or modified.

14.16 Jointly Drafted. The Parties have participated jointly in the negotiation and drafting of this Agreement. If an ambiguity or question of intent or interpretation arises, this Agreement will be construed as if drafted jointly by the Parties, and no presumption or burden of proof will arise favoring or disfavoring either Party by virtue of the authorship of any of the provisions of this Agreement.