

## TERMS AND CONDITIONS

These Terms and Conditions (this “*Agreement*”) concern the <https://www.medicalofficeconnect.com:8444/PatientPortal> website (together with its pages and features, the “*Site*”) and any possible mobile applications (together with their pages and features, the “*App*” and, together with the Site, the “*Platform*”), as well as those certain products and services provided on, through or in relation to the Platform. This Agreement is made and entered into by and between you and any person helping you visit, access, register with and/or use the Platform (collectively, “*you*” or “*your*”), on the one side, and Conceptual MindWorks, Inc. (together with its affiliates, agents, and any of its business partners and contractors, “*Company*”), which provides the Sevocity electronic medical record system and the Medical Office Connect patient portal, on the other side. You and Company are sometimes referred to herein each as a “*Party*” and together as the “*Parties*.”

PLEASE READ THIS AGREEMENT CAREFULLY BEFORE ACCESSING OR USING THE PLATFORM BECAUSE IT CONSTITUTES A LEGALLY BINDING AGREEMENT BETWEEN YOU AND COMPANY.

WHEN YOU CREATE, REGISTER OR LOG INTO AN ACCOUNT THROUGH THE PLATFORM, YOU ARE AUTOMATICALLY ACCEPTING AND AGREEING TO THE MOST-RECENT VERSION OF THIS AGREEMENT.

SIMILARLY, BY VISITING, ACCESSING, REGISTERING WITH OR USING THE PLATFORM, YOU ARE AUTOMATICALLY ACCEPTING AND AGREEING TO THE MOST-RECENT VERSION OF THIS AGREEMENT, AND YOUR CONTINUING VISIT, ACCESS, REGISTRATION WITH OR USE OF THE PLATFORM REAFFIRMS YOUR ACCEPTANCE AND AGREEMENT IN EACH INSTANCE.

IF YOU DO NOT ACCEPT AND AGREE TO THIS AGREEMENT IN ITS ENTIRETY, THEN YOU ARE STRICTLY PROHIBITED FROM VISITING, ACCESSING, REGISTERING WITH AND/OR USING THE PLATFORM.

COMPANY MAY SUPPLEMENT, AMEND OR OTHERWISE MODIFY THIS AGREEMENT AT ANY TIME. SUCH MODIFICATIONS WILL BE POSTED ON THIS OR A SIMILAR PAGE OF THE PLATFORM, E-MAILED TO THE E-MAIL ADDRESS ASSOCIATED WITH YOUR USER ACCOUNT (AS DEFINED BELOW), OR POSTED TO YOUR USER ACCOUNT, AND SHALL BE DEEMED EFFECTIVE AS OF THEIR STATED EFFECTIVE OR MODIFICATION DATES. IT IS YOUR RESPONSIBILITY TO CAREFULLY REVIEW THIS AGREEMENT AND YOUR USER ACCOUNT EACH TIME YOU VISIT, ACCESS, REGISTER WITH, OR USE THE PLATFORM.

1. Eligibility. The Platform is offered only to users eighteen (18) years of age or older, or otherwise the age of majority in their respective jurisdictions, and who have accepted this Agreement, except where the minor’s parent or guardian has approved of the minor’s inclusion. By visiting, accessing, registering with, or using the Platform, you represent and warrant to Company that you meet these eligibility requirements. You agree to comply with all applicable laws for visiting, accessing, registering with and using the Platform, and you may only use the Platform for lawful purposes.
2. For Non-Emergency Use Only. The Platform is for non-emergency use only. If you are experiencing a medical emergency, then call 911. Please see your regular physician for all of your health-related issues.
3. Privacy. Company respects your privacy and the use and protection of your personal information. Company’s policies concerning the collection and use of your personal

information in connection with the Platform set forth in Company's [Privacy Policy](#), which you should carefully review each time you visit, access or use the Platform.

4. **Your Devices.** Certain portions of the Platform may be configured for, and Company may offer the Platform through, computers, tablets, smart phones and/or other electronic devices ("**Device(s)**"), and this Agreement shall apply with equal force and measure to your visit, access, registration with and use of the Platform through such Devices. You are responsible for obtaining and updating the Device, software, operating system, carrier and network access necessary to properly access and use the Platform. Company does not guarantee that the Platform or any portions thereof will function on or in connection with any particular Device, software, operating system, carrier, or network. If you visit, access or use the Platform through a particular Device, then you hereby acknowledge and agree that information about your use of the Platform through that Device or its carrier or network (such as, by way of example only, the identity of your Device or its carrier or network) may be communicated to Company and/or certain third parties. **ALL OR ANY PART OF THE VOICE, MESSAGE, AND DATA FEES, RATES, CHARGES AND TAXES OF YOUR DEVICE'S CARRIER OR NETWORK, OR ANOTHER THIRD PARTY, MAY APPLY TO YOUR VISIT, ACCESS, REGISTRATION WITH AND/OR USE OF THE PLATFORM. COMPANY IS NOT RESPONSIBLE FOR, AND YOU FURTHER ACCEPT FULL RESPONSIBILITY FOR, ALL DEVICE, CARRIER AND NETWORK FEES, RATES, CHARGES AND TAXES WHICH MAY APPLY, IF ANY.**
5. **Ownership.** The Platform and all elements and derivatives thereof (including, without limitation, all content, information, source codes, object codes, data, instructions, documentation and expressions), as well as all copyrights, trademarks, trade secrets and other intellectual properties of the foregoing, are owned, licensed or permissibly used by Company. In no event shall you have or retain any rights, titles or interests in or to the foregoing other than those limited rights expressly granted to you under this Agreement. No rights or permissions granted to you under this Agreement are coupled with an interest. Nothing contained in this Agreement shall be construed as a waiver or limitation of Company's or its licensors' respective rights and remedies under applicable law.
6. **Rights, Permissions, and Consents.**
  - a. **License of the Site.** Subject to the terms and conditions of this Agreement, and any associated payment and registration obligations as imposed by or with the prior consent of Company, Company grants you a limited, non-exclusive, personal, freely-revocable, non-transferable and non-sub-licensable license to access and view the various publicly displayed pages of the Site, and to view the information and content found thereon. If you have a User Account in good standing, then said license shall extend to the registration-only pages of the Site. Your unauthorized use of the Site or the App, or any breach by you of this Agreement, automatically terminates this license.
  - b. **License of the App.** Subject to the terms and conditions of this Agreement, and any associated registration obligations as imposed by or with the prior consent of Company, if you download a genuine copy of the App to your Device, and if you further acknowledge your acceptance of and agreement to this Agreement, as well as those additional terms, conditions and policies referenced herein, as Company may require from time-to-time, then

Company grants you a limited, non-exclusive, personal, freely-revocable, non-transferable and non-sub-licensable license to access and use the App on said Device for the purpose of using the App as Company intends for end users of the App. You may not rent, lease, lend, sell, transfer, redistribute or sublicense the App; and if you sell or otherwise transfer to a third party a Device on which the App is installed, then you must remove the App from such Device before doing so. If you have a User Account in good standing, then said license shall extend to the registration-only sections of the App. Your unauthorized use of the Site or the App, or any breach by you of this Agreement, automatically terminates this license.

- c. License of User Materials. All names, photographs, information, communications and any other content that you submit to or publish on or through the Platform, or that you submit to or publish on an online social media account (e.g., Facebook, Twitter, Instagram) that you own and link or otherwise associate with the Platform or your User Account, including any medical information you provide via the Platform is hereinafter defined as the “**User Materials.**” You hereby grant Company an irrevocable, non-exclusive, royalty-free, fully-paid, transferable, sub-licensable, perpetual and universe-wide license for Company to host, store, reproduce, transmit, distribute, sell, resell, license, sublicense, market, modify, adapt, create derivative works, communicate, publish, syndicate, publicly perform, publicly display, archive and otherwise use and exploit all or any part of such User Materials and any elements and derivatives thereof in any manner, medium or form, whether now known or hereinafter devised, as Company sees fit in its sole discretion. As further described in the Platform’s [Privacy Policy](#), Company may dispose of or delete any such personal information or non-personal information at any time, except as set forth in any other agreement or document executed by Company or as required by law.
- d. Reservation of Rights. Nothing in this Agreement shall restrict or limit Company’s rights, titles or interests in or to the Platform, the User Materials, or any elements or derivatives of the foregoing.
- e. Warnings; Disclaimers. PLEASE NOTE THAT THE USER MATERIALS MIGHT BECOME THE SUBJECT OF PUBLIC DISCLOSURE. THUS, OTHER THAN AS SET FORTH IN ANY OTHER AGREEMENT EXECUTED BY COMPANY OR AS REQUIRED BY LAW, NEITHER COMPANY NOR ITS SUCCESSORS, ASSIGNS, TRANSFEREES, OR LICENSEES ARE RESPONSIBLE FOR, AND EXPRESSLY DISCLAIM ANY LIABILITY ARISING FROM OR IN CONNECTION WITH, ITS/THEIR USE OF ANY USER MATERIALS IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THIS AGREEMENT.
- f. Additional Considerations for Certain Users of the Platform. You understand, acknowledge, and agree that the Platform serves as an intermediary platform pursuant to which certain physician practice customers of Company (each, a “**Practice**”) contract with Company for the purposes of having access to the Platform to input information about the Practice’s patients. If you are a patient of such a Practice, you acknowledge and agree that certain information set forth on the Platform under your User Account is provided directly to Company from the Practice. In the event the arrangement between Company and such Practice terminates, you acknowledge and agree that such information in your User Account may no longer be updated or may be removed and/or deleted altogether. Company has no obligation to retain any such information or provide you with any warning or notice of any such deletion.

7. Suspension or Termination of Service. Company has the right, but not the obligation, to suspend or terminate the function or existence of all or any part of the Platform and/or your User Account at any time, and without notice or recourse, as Company deems advisable in its sole discretion. **COMPANY SHALL NOT BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY LOSS OR DAMAGE THAT IS CAUSED BY OR ARISES FROM OR IN CONNECTION WITH ANY SUCH SUSPENSIONS OR TERMINATIONS (INCLUDING, WITHOUT LIMITATION AND BY WAY OF EXAMPLE ONLY, REFUNDS, LOST PROFITS, LOST OPPORTUNITIES, MONETARY DAMAGES, DISRUPTION IN THE PROVISION OF HEALTH CARE SERVICES, DISRUPTION IN OR LOSS OF SERVICE, OR LOSS OF CONTENT).**
  
8. User Account.
  - a. Registration. As explained further above, to secure the right to access and use any registration-only pages of the Platform, you may be required to register with and create a personal user account with Company through the Platform (a “*User Account*”), as well as further acknowledge your acceptance of and agreement to this Agreement and those additional terms, conditions and policies referenced herein, as Company may require from time-to-time. As part of such registration process, you may be required to satisfy certain conditions precedent imposed by Company (including, for example, providing additional information to Company, and entering into additional agreements with Company). Unless otherwise permitted by Company in writing, you may only have one (1) non-transferable User Account.
  
  - b. User Account Activity and Information. You are responsible for all activity that occurs under your User Account and are prohibited from authorizing or allowing any third party to access or use your User Account. Accordingly, you should take all steps necessary to protect and keep secret your User Account details and access information (including your login name and password). You should also maintain accurate, complete, and up-to-date information in your User Account because your failure to do so may result in your inability to access, use, and/or receive all or any part of the Platform and/or Company’s termination of this Agreement. For security purposes, you shall immediately notify Company if you suspect a third party has gained access to or is using your User Account without authorization. For the avoidance of doubt, Company has the unencumbered right to access and use, and to allow its agents, employees, representatives, contractors, and vendors to access and use, the information in your User Account in order to facilitate the exercise and performance of Company’s rights and obligations under this Agreement, the operation of the Platform, and/or any other rights, obligations, and services related to the subject matter of this Agreement.
  
  - c. Indemnification. IF YOU FAIL TO COMPLY WITH ANY TERMS OR CONDITIONS OF SECTION 8(B) ABOVE (WHETHER INTENTIONALLY OR UNINTENTIONALLY), THEN YOU ACCEPT FULL RESPONSIBILITY FOR THE CONSEQUENCES THEREOF (INCLUDING, WITHOUT LIMITATION, ANY UNAUTHORIZED CHANGES TO YOUR USER ACCOUNT INFORMATION AND SETTINGS AND ANY UNAUTHORIZED ACCESS OR USE OF YOUR USER ACCOUNT), AND AGREE TO INDEMNIFY, RELEASE AND HOLD HARMLESS COMPANY AND COMPANY’S OFFICERS, DIRECTORS, MEMBERS, MANAGERS, OWNERS, PARTNERS, AGENTS, EMPLOYEES, REPRESENTATIVES, PARENTS, SUBSIDIARIES, AFFILIATES, SUCCESSORS, TRUSTEES, ASSIGNS, TRANSFEREES,

CONTRACTORS, VENDORS AND LICENSEES FROM AND AGAINST ANY AND ALL LIABILITIES, CLAIMS, SUITS, DEMANDS, ACTIONS, JUDGMENTS, LOSSES, DAMAGES, FINES, PENALTIES AND EXPENSES (INCLUDING COSTS AND REASONABLE OUTSIDE ATTORNEY FEES) INCURRED BY SUCH INDEMNITEES, OR ASSERTED AGAINST SUCH INDEMNITEES BY THIRD PARTIES, ARISING OUT OF OR IN CONNECTION WITH YOUR FAILURE TO COMPLY WITH SUCH TERMS OR CONDITIONS.

9. Electronic Communications.

- a. Express Consent. YOU HEREBY EXPRESSLY CONSENT TO COMPANY SENDING OR OTHERWISE COMMUNICATING WITH YOU FOR ANY PURPOSE (INCLUDING, WITHOUT LIMITATION, FOR ADVERTISING, TELEMARKETING, OR OTHER MARKETING OR PROMOTIONAL PURPOSES, OR FOR SENDING OR NOTIFYING YOU ABOUT SPECIAL OFFERS, UPDATES, NEWSLETTERS OR OTHER INFORMATIONAL PURPOSES) VIA ANY ELECTRONIC MEANS OR FORMS AS COMPANY DEEMS APPROPRIATE IN ITS SOLE DISCRETION, WHETHER THROUGH THE PLATFORM, THROUGH YOUR USER ACCOUNT, BY PERSONAL COMMUNICATION, BY E-MAIL, BY AUTOMATIC TELEPHONE DIALING SYSTEM, BY ARTIFICIAL OR PRERECORDED VOICE, BY ONLINE SOCIAL MEDIA, BY TEXT MESSAGE (E.G., SHORT MESSAGE SERVICE A/K/A SMS, AND MULTIMEDIA MESSAGING SERVICE A/K/A MMS) OR BY OTHER ELECTRONIC MEDIA MEANS OR FORMS. BY GIVING SUCH CONSENT, YOU AGREE THAT NO SUCH COMMUNICATION SHALL VIOLATE THE TELEPHONE CONSUMER PROTECTION ACT, THE CAN-SPAM ACT, OR ANY OTHER APPLICABLE LAWS, RULES, OR REGULATIONS. VOICE, MESSAGE, AND DATA FEES, RATES, CHARGES, AND TAXES MAY APPLY TO YOU, AND YOU ARE RESPONSIBLE FOR PAYMENT OF THE SAME. YOU ARE NOT REQUIRED TO GRANT THE FOREGOING CONSENT AS A CONDITION FOR THE ACCESS, USE, OR LICENSE OF ANY COMPANY PRODUCTS OR SERVICES.
- b. E-mail Opt-Out. You may opt-out of receiving any e-mails as described in Section 9(a) above any time by following the opt-out instructions in any such e-mails you have received and would like to opt-out of. You may also opt-out of receiving certain e-mails by managing your electronic communication preferences through your User Account. You acknowledge that opting out of receiving any such communications may impact your receipt, the success, and/or the performance of all or any part of the Platform, your User Account, Company's products or services, and/or your ability to receive certain messages and/or notifications from Company.
- c. Text Message Opt-Out. You may opt-out of receiving any text messages (e.g., short message service a/k/a SMS, and multimedia messaging service a/k/a MMS) as described in Section 9(a) above at any time by following the opt-out instructions in any such text messages you have received and would like to opt-out of receiving. You may also opt-out of receiving certain text messages by managing your electronic communication preferences through your User Account. You acknowledge that opting out of receiving any such communications may impact your receipt, the success, and/or the performance of all or any part of the Platform, your User Account, Company's products or services, and/or your ability to receive certain messages and/or notifications from Company.
- d. Other Opt-Outs. You may opt-out of receiving any communications besides those described in Sections 9(b) and 9(c) above at any time by providing Company with an e-

mail to [finance@teamcmi.com](mailto:finance@teamcmi.com), with a subject line of “Opt-Out of Communications,” a list in the body of the e-mail that identifies the specific type of communication(s) that is the subject of your opt-out request (e.g., communications by automatic telephone dialing system), and a list in the body of the e-mail that identifies the telephone number(s) or e-mail address(es) (as applicable depending on the specific type of communication(s) that is the subject of your opt-out request) belonging to you that are the subject of your opt-out request. You may also opt-out of receiving certain of those communications by managing your electronic communication preferences through your User Account. Further, for certain telephone communications (e.g., communications by automatic telephone dialing system), you may opt-out by using any other reasonable method delivered to the appropriate department of Company. You acknowledge that opting out of receiving any of those communications may impact your receipt, the success, and/or the performance of all or any part of the Platform, your User Account, Company’s products or services, and/or your ability to receive certain messages and/or notifications from Company.

10. Prohibited Activities. You shall not engage in any of the following activities at any time with respect to the Platform: (a) the impersonation of any person or entity; (b) any act that infringes or otherwise violates the intellectual property, privacy or publicity rights of any person or entity (including, without limitation, the copyrights, trademarks, patents, and trade secrets held by Company or its licensors with respect to the Platform); (c) the reproduction of the Platform or any data or content found thereon or therein, in whole or in part, or the creation of any derivative works of the foregoing (unless expressly authorized by Company herein); (d) the publication of any content that is objectionable or illegal (including, without limitation, content that is indecent, obscene, infringing, an invasion of privacy, defamatory, disparaging, false, deceptive, misleading, untruthful, fraudulent, threatening or abusive); (e) the publication of a person’s or entity’s personal information or private facts without his/her/its prior written consent; (f) the publication of any machine, computer or randomly generated content; (g) supplying or publishing any information or statements to or through the Platform that is false, misleading, deceptive or incorrect; (h) any act that constitutes a commercial activity; (i) any act intended or designed to drive traffic to or boost the search rankings of third-party websites, networks, platforms, servers or applications; (j) the systematic retrieval or copying of any information or content found on or through the Platform or any servers which may host the Platform to directly or indirectly create or compile, in whole or in part, a collection, compilation, database or directory; (k) the use of any software, program, process, device, application or routine (including, by way of example only, robots, scrapers, spiders, viruses, spyware and malware) to monitor, copy, disrupt, damage, injure, interfere with or impermissibly access, in whole or in part, the Platform, any servers which may host the Platform, or any data or content found thereon or therein; (l) any act that involves or concerns decrypting, security bypassing or circumventing, hacking, data mining, data scraping, data harvesting, reverse engineering, decompiling, disassembling, attempting to derive source code, modifying, copying or the like in relation to the Platform, or any servers which may host the Platform; (m) any act that overloads, unreasonably disrupts, or unreasonably interferes with the infrastructure of the Platform or any servers which may host the Platform; (n) any act that gains or attempts to gain unauthorized access to computer systems, networks, information or materials through the Platform or any servers which may host the Platform; or (o) any other act that Company becomes aware of and believes in good faith is improper, illegal or harmful

to the Platform, any servers which may host the Platform, any person or entity or the property of any person or entity.

11. Links to Other Sites, Apps or Networks.

- a. Linked Technologies. The Platform may contain links to third-party websites, networks, platforms, servers and/or applications (“*Linked Technologies*”). The Linked Technologies are not under the control of Company. The Platform only contains these links as a convenience to you.
- b. Disclaimer About Linked Technologies. COMPANY IS NOT RESPONSIBLE FOR ANY INFORMATION, CONTENT, GOODS, SERVICES, PROMOTIONS, ADVERTISEMENTS, PROGRAMS, CODES OR OTHER ITEMS WHICH MAY BE FOUND ON OR EXCLUDED FROM THE LINKED TECHNOLOGIES (INCLUDING, WITHOUT LIMITATION AND BY WAY OF EXAMPLE ONLY, MALICIOUS SOFTWARE, SPYWARE PROGRAMS, INACCURATE INFORMATION AND ILLEGAL CONTENT). COMPANY DOES NOT MAKE, NOR HAS COMPANY MADE, ANY REPRESENTATIONS OR WARRANTIES (WHETHER EXPRESS, IMPLIED OR OTHERWISE) CONCERNING THE TERMS OF USE OR SERVICE, PRIVACY POLICIES, AGREEMENTS, INFORMATION, CONTENT, GOODS, SERVICES, PROMOTIONS, ADVERTISEMENTS, PROGRAMS, CODES OR OTHER ITEMS WHICH MAY BE FOUND ON OR EXCLUDED FROM THE LINKED TECHNOLOGIES; NOR SHALL THE FACT THAT THE PLATFORM LINK TO ANY LINKED TECHNOLOGIES CONSTITUTE AN AFFILIATION WITH, ASSOCIATION WITH OR ENDORSEMENT OF SUCH LINKED TECHNOLOGIES OR ANY INFORMATION, CONTENT, GOODS, SERVICES, PROMOTIONS, ADVERTISEMENTS, PROGRAMS, CODES OR OTHER ITEMS WHICH MAY BE FOUND ON OR EXCLUDED FROM SUCH LINKED TECHNOLOGIES. IF YOU DECIDE TO ACCESS ANY LINKED TECHNOLOGIES, THEN YOU DO SO AT YOUR OWN RISK.

12. Take Down. Company reserves the right, but not the obligation, to take down or otherwise exclude from the Platform, without notice or recourse, any communications, names, photographs, information and/or content made or submitted by you or others on or through the Platform that Company believes at any time and in its sole discretion to be infringing or otherwise in violation of the proprietary, privacy or publicity rights of any person or entity; plagiarizing; defamatory; disparaging; embarrassing towards any person or entity; disclosing of confidential, private or personal information about or belonging to any person or entity; profane; indecent; obscene; racist, sexist, or otherwise derogatory in terms of race, nationality, religion, gender, gender identification, sexual orientation or otherwise; threatening; abusive; illegal; false; misleading; deceptive; inciting violence; hate speech; and/or a political attack on a group or individual.

13. User Representations, Warranties, and Covenants. You represent, warrant and covenant to Company that: (a) you are a natural person and of eighteen (18) years of age or older, or otherwise the age of majority in your jurisdiction, except in instances when you are a minor whose parent or guardian has approved of your inclusion; (b) you have read and understand this Agreement in its entirety; (c) you have the full right and authority to enter into and abide by the terms and conditions of this Agreement; (d) you understand and acknowledge that by accepting this Agreement you are giving up certain legal rights and remedies; (e) you voluntarily accept and agree to, and will fully comply with, the terms and conditions of this

Agreement; (f) you will not violate any applicable international, federal, state or local laws which may concern the Platform, any servers that may host the Platform or any information, communications or content found on or through them; (g) you are the exclusive owner of all rights, titles and interests in and to the User Materials (including, without limitation, all copyrights, trademarks, patents, trade secrets, rights of publicity and rights of privacy) and/or, if applicable, have secured all necessary rights and permissions from all subjects depicted in, and all persons and entities who contributed to, the User Materials to allow for your performance and grant of rights hereunder; (h) the User Materials are wholly original to you; (i) the User Materials do not and will not infringe upon or otherwise violate the proprietary, publicity, or privacy rights of any person or entity; (j) the User Materials do not and will not defame, disparage, embarrass or disclose confidential, private or personal information about or belonging to any person or entity; (k) nothing contained in the User Materials is or will be, or contains or will contain, links to material that is profane, indecent, obscene, threatening, abusive, illegal, false, misleading or any form of spam, malware, virus, bug, bot, spyware or other malicious or tracking technology; (l) Company is not required to seek the permission of or compensate any third party(s) to exercise any of the rights granted by you under this Agreement; (m) no obligation, disability, agreement or adverse claim exists that may restrict your performance or grant of rights hereunder; (n) all information you provide to Company in connection with your access or use of the Platform is truthful and accurate; and (o) you are not listed on any United States government list of prohibited or restricted parties.

#### 14. Disclaimers and Limitations.

- a. General Disclaimer. YOUR VISIT, ACCESS, REGISTRATION WITH, OR USE OF THE PLATFORM IN ANY WAY IS DONE AT YOUR OWN RISK. THE PLATFORM, THE SUCCESS OR PERFORMANCE OF THE PLATFORM, AND ALL INFORMATION, COMMUNICATIONS, CONTENT, FEATURES, PRODUCTS AND SERVICES OFFERED, SOLD AND/OR LICENSED ON OR THROUGH THE PLATFORM ARE PROVIDED TO YOU ON AN “AS IS,” “WHERE IS,” “AS AVAILABLE,” AND “WITH ALL FAULTS” BASIS. COMPANY DOES NOT MAKE, NOR HAS COMPANY MADE, ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND OR NATURE (WHETHER DIRECT OR INDIRECT, ORAL OR WRITTEN OR EXPRESS OR IMPLIED) TO YOU WITH RESPECT TO THE PLATFORM, THE SUCCESS, PERFORMANCE, FUNCTIONALITY, RELIABILITY OR SAFETY OF THE PLATFORM OR ANY SUCH INFORMATION, COMMUNICATIONS, CONTENT, FEATURES, PRODUCTS, OR SERVICES. COMPANY EXPRESSLY DISCLAIMS ANY AND ALL EXPRESS WARRANTIES, IMPLIED WARRANTIES (INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, GOOD FAITH AND FAIR DEALING, TITLE, NON-INFRINGEMENT, QUALITY, ACCURACY, RELIABILITY AND PERFORMANCE) AND WARRANTIES ARISING FROM CONDUCT, COURSE OF DEALING, CUSTOM AND USAGE IN TRADE WITH RESPECT TO THE PLATFORM, THE SUCCESS, PERFORMANCE, FUNCTIONALITY, RELIABILITY OR SAFETY OF THE PLATFORM AND ANY SUCH INFORMATION, COMMUNICATIONS, CONTENT, FEATURES, PRODUCTS AND SERVICES. COMPANY DOES NOT MAKE, NOR HAS COMPANY MADE, ANY AFFIRMATION OF FACT OR PROMISE RELATING TO THE PLATFORM, THE SUCCESS, PERFORMANCE, FUNCTIONALITY, RELIABILITY OR SAFETY OF THE PLATFORM OR ANY SUCH INFORMATION, COMMUNICATIONS, CONTENT, FEATURES, PRODUCTS OR SERVICES THAT HAS BECOME ANY BASIS OF THIS BARGAIN. THERE ARE NO WARRANTIES (WHETHER EXPRESS, IMPLIED, OR OTHERWISE) CONCERNING THE PLATFORM THE SUCCESS, PERFORMANCE, FUNCTIONALITY, RELIABILITY OR SAFETY OF THE PLATFORM



OR ANY SUCH INFORMATION, COMMUNICATIONS, CONTENT, FEATURES, PRODUCTS OR SERVICES THAT EXTEND BEYOND THE FACE OF THIS AGREEMENT.

- b. Disclaimer About Company Products and Services. ALL DESCRIPTIONS, IMAGES, REFERENCES, FEATURES, CONTENT, AND/OR SPECIFICATIONS OF ANY PRODUCTS OR SERVICES OFFERED BY COMPANY ON OR THROUGH THE PLATFORM ARE SUBJECT TO CHANGE AT ANY TIME AND WITHOUT NOTICE TO YOU. THE INCLUSION OF ANY PRODUCTS OR SERVICES THROUGH THE PLATFORM DOES NOT IMPLY OR WARRANT THAT THEY WILL BE AVAILABLE. IT IS YOUR RESPONSIBILITY TO ASCERTAIN AND OBEY ALL APPLICABLE LOCAL, STATE, FEDERAL, AND INTERNATIONAL LAWS (INCLUDING MINIMUM AGE REQUIREMENTS) IN REGARD TO THE RECEIPT, POSSESSION, AND USE OF ANY PRODUCT OR SERVICE. COMPANY RESERVES THE RIGHT, WITH OR WITHOUT PRIOR NOTICE TO YOU, TO DO ANY ONE OR MORE OF THE FOLLOWING: (I) LIMIT THE AVAILABLE QUANTITY OF OR DISCONTINUE ANY SUCH PRODUCT OR SERVICE; AND (II) REFUSE TO PROVIDE YOU WITH ANY SUCH PRODUCT OR SERVICE.
  
- c. Disclaimer About System Delays. YOU UNDERSTAND AND ACKNOWLEDGE THAT THE PLATFORM MAY BE SUBJECT TO LIMITATIONS, DELAYS AND OTHER PROBLEMS INHERENT IN THE USE OF THIRD-PARTY COMMUNICATION NETWORKS AND FACILITIES THAT ARE OUTSIDE OF COMPANY'S CONTROL. ACCORDINGLY, COMPANY SHALL NOT BE RESPONSIBLE FOR, AND EXPRESSLY DISCLAIMS, ANY DELAYS, FAILURES, LOSSES, INJURIES, LIABILITIES OR DAMAGES ASSOCIATED WITH THE PLATFORM WHICH RESULT FROM ANY SYSTEM DELAYS, DOWNTIMES, INTERRUPTIONS OR OTHER FAILURES OF OR PROBLEMS WITH THE PLATFORM WHICH ARE OUTSIDE OF COMPANY'S CONTROL (INCLUDING, WITHOUT LIMITATION, SCHEDULED MAINTENANCE OR NETWORK FAILURE).
  
- d. Disclaimer About Certain Information, Communications and Content. ANY OPINIONS, ADVICE, REVIEWS, STATEMENTS, OFFERS OR OTHER INFORMATION, COMMUNICATIONS OR CONTENT FOUND ON, THROUGH OR IN RELATION TO THE PLATFORM, IN ANY MARKETING OR PROMOTIONAL MATERIALS CONCERNING COMPANY, THE PLATFORM OR ANY THIRD-PARTY PROVIDERS (INCLUDING, WITHOUT LIMITATION, ADVERTISEMENTS AND SOCIAL MEDIA PAGES) OR MADE OR PROVIDED DURING THE COURSE OF YOUR VISIT, ACCESS, REGISTRATION WITH OR USE OF THE PLATFORM ARE THOSE OF THEIR RESPECTIVE AUTHORS, AND NOT NECESSARILY THOSE OF COMPANY, AND, THUS, SHOULD NOT NECESSARILY BE RELIED UPON. SUCH AUTHORS ARE SOLELY RESPONSIBLE FOR THE ACCURACY OF SUCH INFORMATION, COMMUNICATIONS OR CONTENT. COMPANY DOES NOT GUARANTEE, ADOPT OR ENDORSE THE ACCURACY, COMPLETENESS, RELIABILITY OR USEFULNESS OF ANY SUCH INFORMATION, COMMUNICATIONS OR CONTENT, EVEN IF COMPANY IS THE AUTHOR. COMPANY IS NOT RESPONSIBLE FOR THE ACCURACY, COMPLETENESS, RELIABILITY OR USEFULNESS OF ANY SUCH INFORMATION, COMMUNICATIONS OR CONTENT. UNDER NO CIRCUMSTANCES SHALL COMPANY BE LIABLE TO YOU OR ANY THIRD PARTIES FOR ANY LOSS OR DAMAGE CAUSED BY OR ARISING FROM OR IN CONNECTION WITH YOUR RELIANCE ON ANY SUCH INFORMATION, COMMUNICATIONS OR CONTENT. COMPANY DOES NOT PROVIDE ANY SERVICES FOR WHICH A MEDICAL LICENSE IS REQUIRED.

- e. **Limitation of Liability.** IN NO EVENT SHALL COMPANY OR ANY OF COMPANY'S OFFICERS, DIRECTORS, MEMBERS, MANAGERS, OWNERS, PARTNERS, AGENTS, EMPLOYEES, REPRESENTATIVES, PARENTS, SUBSIDIARIES, AFFILIATES, SUCCESSORS, TRUSTEES, ASSIGNS, TRANSFEREES, CONTRACTORS, VENDORS OR LICENSEES BE HELD LIABLE TO (OR BE OBLIGATED TO INDEMNIFY) YOU OR ANY THIRD PARTY FOR ANY DIRECT, INDIRECT, PUNITIVE OR SPECIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LEGAL COSTS, ATTORNEY FEES, LOST PROFITS, REPLACEMENT COSTS OR REPAIR COSTS) CAUSED BY OR ARISING FROM OR IN CONNECTION WITH: (A) YOUR ACCESS, INABILITY TO ACCESS, REGISTRATION WITH, INABILITY TO REGISTER WITH, USE OR INABILITY TO USE THE PLATFORM; (B) THE UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR INFORMATION; (C) ANY STATEMENTS, CONTENT OR CONDUCT OF ANY THIRD PARTY ON, THROUGH OR IN RELATION TO THE PLATFORM OR MADE OR PROVIDED DURING THE COURSE OF YOUR VISIT, ACCESS, REGISTRATION WITH OR USE OF THE PLATFORM; (D) ANY HACKING, DENIAL OF SERVICE ATTACKS, DATA SECURITY BREACHES OR OTHER THIRD-PARTY CONDUCT THAT MAY LEAD TO A COMPROMISE OF YOUR PERSONAL INFORMATION OR DAMAGE TO YOUR DEVICE(S), SOFTWARE, OPERATING SYSTEM(S), FILE(S), CARRIER(S), NETWORK(S) OR USER ACCOUNT; (E) ANY TRANSMISSION, DOWNLOAD OR INFECTION OF ANY SOFTWARE, SYSTEM, PROGRAM, FILE, PROCESS, DEVICE, APPLICATION OR ROUTINE (INCLUDING, WITHOUT LIMITATION AND BY WAY OF EXAMPLE ONLY, ROBOTS, SCRAPERS, SPIDERS, VIRUSES, SPYWARE AND MALWARE) THAT MAY LEAD TO A COMPROMISE OF YOUR PERSONAL INFORMATION OR DAMAGE TO YOUR DEVICE(S), SOFTWARE, OPERATING SYSTEM(S), FILE(S), CARRIER(S), NETWORK(S) OR USER ACCOUNT; (F) THE FACT THAT YOU HAVE RELIED ON ANY INFORMATION OR CONTENT FOUND ON, THROUGH, OR IN RELATION TO THE PLATFORM OR MADE OR PROVIDED DURING THE COURSE OF YOUR VISIT, ACCESS, REGISTRATION WITH OR USE OF THE PLATFORM; OR (G) ANY PRODUCTS OR SERVICES OFFERED BY COMPANY ON OR THROUGH THE PLATFORM. IF YOU ARE DISSATISFIED WITH THE PLATFORM OR ANY PRODUCTS OR SERVICES OFFERED BY COMPANY ON OR THROUGH THE PLATFORM, THEN YOUR SOLE AND EXCLUSIVE REMEDY AGAINST COMPANY AND/OR COMPANY'S OFFICERS, DIRECTORS, MEMBERS, MANAGERS, OWNERS, PARTNERS, AGENTS, EMPLOYEES, REPRESENTATIVES, PARENTS, SUBSIDIARIES, AFFILIATES, SUCCESSORS, TRUSTEES, ASSIGNS, TRANSFEREES, CONTRACTORS, VENDORS OR LICENSEES IS TO DISCONTINUE YOUR ACCESS AND USE OF THE PLATFORM AND THOSE PRODUCTS AND SERVICES.
- f. **No Injunctive Relief.** IF COMPANY BREACHES OR OTHERWISE VIOLATES THIS AGREEMENT, THEN YOU SHALL NOT BE ENTITLED TO SEEK OR OBTAIN, AND YOU DO HEREBY WAIVE, ANY TYPE OF INJUNCTIVE RELIEF AGAINST THE PLATFORM AS A RESULT OF SUCH BREACH OR OTHER VIOLATION. FOR THE AVOIDANCE OF DOUBT, THE FOREGOING LIMITATION ON INJUNCTIVE RELIEF DOES NOT LIMIT YOUR ABILITY TO SEEK OR RECOVER ANY MONETARY REMEDIES AUTHORIZED BY LAW IN THE EVENT OF ANY SUCH BREACH OR OTHER VIOLATION (EXCEPT FOR THOSE WHICH ARE OTHERWISE EXPRESSLY PRECLUDED BY THIS AGREEMENT).
- g. **Limitation of Remedies.** IF COMPANY BREACHES OR OTHERWISE VIOLATES THIS AGREEMENT, THEN IN NO EVENT SHALL YOU BE ENTITLED TO RECOVER ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, SPECULATIVE OR PUNITIVE DAMAGES ARISING OUT OF OR IN RELATION TO SUCH BREACH OR OTHER VIOLATION, EVEN IF COMPANY HAS BEEN NOTIFIED OF THE POSSIBILITY OF SUCH DAMAGES.

h. Consumer Protections. The disclaimers and limitations set forth in this Section 14 are not intended to limit liability or alter your rights as a consumer that cannot be limited or altered under applicable law.

15. General Release of Claims. **YOU HEREBY RELEASE AND HOLD HARMLESS COMPANY AND COMPANY’S OFFICERS, DIRECTORS, OWNERS, PARTNERS, AGENTS, EMPLOYEES, REPRESENTATIVES, PARENTS, SUBSIDIARIES, AFFILIATES, SUCCESSORS, TRUSTEES, ASSIGNS, TRANSFEREES, CONTRACTORS, VENDORS AND LICENSEES FROM AND AGAINST ALL CLAIMS THAT YOU HAVE OR MAY HAVE AGAINST THEM FOR INFRINGEMENT, VIOLATION OF THE RIGHTS OF PRIVACY OR PUBLICITY, DEFAMATION, DISPARAGEMENT, PERSONAL INJURY, PROPERTY DAMAGE, NEGLIGENCE AND/OR ANY OTHER LEGAL THEORY ARISING FROM OR IN CONNECTION WITH THE PLATFORM, THE PRODUCTS OR SERVICES OFFERED OR PROVIDED ON OR THROUGH THE PLATFORM AND/OR THE RIGHTS AND PRIVILEGES GRANTED OR CONVEYED BY YOU UNDER THIS AGREEMENT (INCLUDING, WITHOUT LIMITATION, THOSE RIGHTS AND PRIVILEGES RELATING TO THE USER MATERIALS AND/OR ANY ELEMENTS, DERIVATIVES OR MARKETING OF THE FOREGOING). FURTHER, YOU WAIVE YOUR RIGHT TO, AND IN NO EVENT SHALL YOU SEEK TO, ENJOIN COMPANY, ANY OF COMPANY’S OFFICERS, DIRECTORS, OWNERS, PARTNERS, AGENTS, EMPLOYEES, REPRESENTATIVES, PARENTS, SUBSIDIARIES, AFFILIATES, SUCCESSORS, TRUSTEES, ASSIGNS, TRANSFEREES, CONTRACTORS, VENDORS OR LICENSEES OR ANY EXERCISE OF THE RIGHTS OR PRIVILEGES GRANTED OR CONVEYED BY YOU UNDER THIS AGREEMENT (INCLUDING, WITHOUT LIMITATION, THE USER MATERIALS).**

**YOU ALSO HEREBY WAIVE ANY RIGHTS YOU MAY HAVE UNDER SECTION 1542 OF THE CALIFORNIA CIVIL CODE AND ANY OTHER STATUTE OR COMMON LAW PRINCIPLE OF SIMILAR EFFECT, WHICH PROVIDES: “A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.”**

16. Indemnification. **YOU HEREBY AGREE TO INDEMNIFY, RELEASE AND HOLD HARMLESS COMPANY AND COMPANY’S OFFICERS, DIRECTORS, OWNERS, PARTNERS, AGENTS, EMPLOYEES, REPRESENTATIVES, PARENTS, SUBSIDIARIES, AFFILIATES, SUCCESSORS, TRUSTEES, ASSIGNS, TRANSFEREES, CONTRACTORS, VENDORS AND LICENSEES FROM AND AGAINST ANY AND ALL LIABILITIES, CLAIMS, SUITS, DEMANDS, ACTIONS, JUDGMENTS, LOSSES, DAMAGES, FINES, PENALTIES AND EXPENSES (INCLUDING COSTS AND REASONABLE OUTSIDE ATTORNEYS’ FEES) INCURRED BY SUCH INDEMNITEES, OR ASSERTED AGAINST SUCH INDEMNITEES BY THIRD PARTIES, ARISING OUT OF OR IN CONNECTION WITH (A) YOUR ACTS, ERRORS OR OMISSIONS, (B) YOUR USE OF THE PLATFORM OR ANY PRODUCTS OR SERVICES OFFERED OR PROVIDED ON OR THROUGH THE PLATFORM IN ANY MANNER CONTRARY TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, (C) YOUR VIOLATION OF THE RIGHTS OF OR OTHER INJURY TO ANY THIRD PARTY, AND/OR (D) YOUR BREACH OF ALL OR ANY PART OF THIS AGREEMENT.**

17. Term; Termination; Survival. This Agreement shall continue and remain in effect until it is terminated in accordance with the terms and conditions of this Agreement. Company may terminate this Agreement at any time, for any or no reason, and without notice to you (including, without limitation, if Company believes that you have violated or acted

inconsistently with any term or condition of this Agreement). You may terminate this Agreement at any time and for any or no reason by ceasing to use the Platform. If this Agreement is terminated for any reason, then all rights granted to you under this Agreement shall automatically revert back to Company, and the following shall survive in perpetuity: (a) all defined terms under this Agreement; (b) all rights and privileges under this Agreement which were granted to and/or accrued in favor of Company and/or any of Company's officers, directors, owners, partners, agents, employees, representatives, parents, subsidiaries, affiliates, successors, trustees, assigns, transferees, contractors, vendors or licensees as of the date of this Agreement's termination; (c) all payments which accrued as of the date of termination; (d) all disclaimers, limitations of liability and limitations of remedies; and (e) all representations, warranties, covenants, certifications, releases, indemnifications and promises made by you under this Agreement.

18. Governing Law. This Agreement, the additional terms, conditions, and policies referenced herein (including, without limitation, the Platform's [Privacy Policy](#)), your access or use of the Platform, your use of any products or services offered, sold, marketed or provided on, through or in relation to the Platform, all information disclosed or received on, through or in relation to the Platform (including, without limitation, personal information and non-personal information), all content found on, through or in relation to the Platform, all information, communications and statements made on, through or in relation to the Platform (including, without limitation, your express consent to Company sending or otherwise communicating with you via any electronic means or forms, e.g., e-mail, telephone, text message), the Parties' relationship, and/or all disputes, controversies and claims arising from or concerning any or all of the foregoing (whether grounded in contract, tort, statute, law or equity) shall be governed, interpreted, construed and enforced in accordance with the laws of the State of Texas in the United States of America and applicable federal law of the United States of America, regardless of its place of execution, its place of performance and any conflicts of law analysis. For the avoidance of any doubt, the United Nations Convention on Contracts for the International Sale of Goods shall have no application whatsoever.

19. Dispute Resolution.

a. Binding Arbitration; Waiver. Each Party hereby irrevocably submits all disputes, controversies and claims arising from or concerning any or all of the following (whether grounded in contract, tort, statute, law or equity) (collectively, the "*Dispute(s)*") to binding arbitration administered by Judicial Arbitration and Mediation Services, Inc. (a/k/a JAMS) or its successor ("*JAMS*") for the resolution thereof, and such arbitration shall be the sole and exclusive method for resolving the Disputes: this Agreement; the additional terms, conditions, and policies referenced herein (including, without limitation, the Platform's [Privacy Policy](#)); your access or use of the Platform; all information disclosed or received on, through or in relation to the Platform (including, without limitation, personal information and non-personal information); all content found on, through or in relation to the Platform; all information, communications and statements made on, through or in relation to the Platform (including, without limitation, your express consent to Company sending or otherwise communicating with you via any electronic means or forms, e.g., e-mail, telephone, text message); and/or the Parties' relationship. The arbitration shall be binding, final and confidential. **EACH PARTY ACKNOWLEDGES AND AGREES THAT SUCH**

**PARTY IS WAIVING THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE AS THE MEMBER OF A CLASS IN ANY PURPORTED CLASS ACTION PROCEEDING.**

- b. Arbitration Rules. The arbitration shall be conducted before a single arbitrator under the then-current JAMS Comprehensive Arbitration Rules & Procedures (the “**JAMS Rules**”), as supplemented by the Federal Rules of Civil Procedure and the Federal Rules of Evidence if and where applicable as a gap-filler. If there is any conflict between a provision of the JAMS Rules, the Federal Rules of Civil Procedure, the Federal Rules of Evidence, or this Agreement, then the conflicting provision of this Agreement shall control and govern over the JAMS Rules, the Federal Rules of Civil Procedure and the Federal Rules of Evidence; and the JAMS Rules shall control and govern over the Federal Rules of Civil Procedure and the Federal Rules of Evidence. The construction, interpretation, and enforcement of this Section 19 is governed by the Federal Arbitration Act, 9 U.S.C. §§ 1 *et seq.*
- c. Arbitration Process, Location, and Procedures. The Party initiating the arbitration proceeding shall serve a written notice of arbitration on the other Party in accordance with the JAMS Rules. The arbitration shall be held in San Antonio, Texas, United States of America. The arbitration shall be conducted in the English language. The arbitrator shall be selected in accordance with the JAMS Rules, unless otherwise agreed to by the parties to the arbitration. All issues or questions concerning either the scope of this arbitration clause or the arbitrability of any of the Disputes shall be referred to and finally decided by the arbitrator. The arbitrator may construe or interpret, but shall not vary or ignore, the terms and conditions of this Agreement and shall be bound by applicable law.
- d. Arbitration Decisions and Awards. The arbitrator shall render a written final decision on the subject Dispute as soon as practicable and in any event not more than forty-five (45) days after the close of evidence and briefing. The arbitrator’s decision shall be written, shall be in accordance with applicable law, and shall be supported by written findings of fact and conclusions of law setting forth the basis for the arbitrator’s decision. The arbitrator shall have no authority to award punitive, exemplary or consequential damages, unless such an award is authorized by applicable law. The arbitrator shall have the authority to award attorney fees and expenses if such an award is permitted under this Agreement or applicable law. Subject to any applicable rights of appeal, the final decision of the arbitrator shall be binding and conclusive upon all of the Parties who have been served with proper written notice of the arbitration proceeding as required by this Section 19. Judgment on any award rendered by the arbitrator may be confirmed in any state or federal court having jurisdiction thereof that is located in the State of Texas, and may be entered in and enforced by any domestic, foreign, or international court having appropriate subject matter jurisdiction. Any decision, judgment, ruling, finding, award or other determination of the arbitrator and any information disclosed in the course of any arbitration hereunder shall be kept confidential by the Parties, and any court order to enforce the decision, judgment, ruling, finding, award or other determination of the arbitrator shall be filed under seal.
- e. Arbitration Fees and Expenses. JAMS’s administrative and filing fees, the arbitrator’s fees and expenses and all other fees and expenses charged by JAMS and/or the arbitrator to administer or conduct the arbitration shall be shared equally among all parties to the arbitration; provided, however, that the prevailing party of the arbitration may recover an

award of its share of such fees and expenses if such an award is permitted under this Agreement or applicable law.

- f. Litigation; Waiver. In the event a particular Dispute is not subject to arbitration (whether by decision of an arbitrator with binding authority, or otherwise according to this Agreement or applicable law), each Party hereby irrevocably submits to the exclusive personal jurisdiction and venue of the state courts of the State of Texas in Bexar County, Texas, United States of America and the United States federal courts in the Western District of Texas, San Antonio Division, for the litigation of said Dispute, and covenant and agree that neither of the foregoing is an inconvenient venue or forum.
  - g. Waiver of Jury Trial and Class Action. **REGARDLESS OF WHETHER A PARTICULAR DISPUTE IS SUBJECT TO ARBITRATION OR LITIGATION, EACH PARTY DOES HEREBY WAIVE SUCH PARTY'S RIGHT TO A TRIAL BY JURY, TO PARTICIPATE AS THE MEMBER OF A CLASS IN ANY PURPORTED CLASS ACTION OR OTHER PROCEEDING OR TO NAME UNNAMED MEMBERS IN ANY PURPORTED CLASS ACTION OR OTHER PROCEEDINGS.**
20. Notice. Unless otherwise expressly stated in this Agreement, Company may give or deliver all other notices to you by means of a general notice posted on this or a similar page of the Platform, as applicable, by e-mail to the e-mail address associated with your User Account or by posting to your User Account, and shall be deemed effective as of their stated effective dates.
21. Relationship. In no event shall this Agreement, the performance of a Party's rights or obligations under this Agreement, the Platform, or a Party's visit to, access of, registration with or use of the Platform create any type of fiduciary, franchise, agency, employment, independent contractor, partnership or joint venture relationship between you or Company.
22. Several Notes About This Agreement And Apple. The following addresses certain matters with respect to Apple Inc. ("*Apple*") and/or the so-called "Usage Rules" set forth in Apple's App Store Terms and Conditions (located at <http://www.apple.com/legal/internet-services/itunes/us/terms.html>) as of the effective date hereof ("*Apple's Usage Rules*"):
- a. Acknowledgment. The Parties hereby acknowledge that:
    - i. This Agreement is between the Parties only and not with Apple;
    - ii. Apple is not responsible for the Platform or the content thereof;
    - iii. Apple has no obligation whatsoever to furnish any maintenance and support services with respect to the Platform;
    - iv. Apple is not responsible for addressing any claims you or any third party have or may have relating to the Platform or your possession and/or use of the Platform, including, without limitation, (i) product liability claims, (ii) any claim that such App fails to conform to any applicable legal or regulatory requirement, (iii) claims arising under consumer protection or similar legislation, and (iv) intellectual property infringement claims;

- v. This Agreement's usage rules for the Platform are not intended to be less restrictive than Apple's Usage Rules;
  - vi. Apple and Apple's subsidiaries are third-party beneficiaries of this Agreement; and
  - vii. Upon your acceptance of this Agreement, Apple will have the right (and will be deemed to have accepted the right) to enforce this Agreement against you as a third-party beneficiary hereof.
- b. Amended Scope of Limited License. If you download, access or use the Platform from or through Apple's App Store, then the limited license(s) granted to you hereunder with respect to the App (see Section 6(b) above) is/are hereby amended to add the following restriction: you may not use the Platform on any device other than the Apple-brand device (e.g., iPhone, iPod Touch, iPad) that you own or control or in any manner that is contrary to Apple's Usage Rules.

### 23. Miscellaneous.

- a. Excused Performance. Company is hereby excused for any failure to perform under this Agreement to the extent that its performance is prevented by any reason outside of its reasonable control or that may be characterized as a force majeure event. For the purposes of this Agreement, a force majeure event includes, without limitation, (i) natural phenomena, such as storms, hurricanes, floods, lightning, and earthquakes; (ii) explosions or fires arising from lightning or other causes unrelated to the acts or omissions of the Party seeking to be excused from performance; (iii) acts of war or public disorders, civil disturbances, riots, insurrection, sabotage, epidemics, pandemics, public health emergencies, terrorist acts, or rebellion; (iv) strikes or labor disputes; (v) action by a governmental authority, including a moratorium on any activities related to this Agreement; or (vi) the impossibility for Company, despite reasonable efforts, to obtain any approval necessary to enable Company to fulfill its obligations.
- b. Assignment and Delegation. You shall not assign, delegate, or otherwise transfer any of your rights or obligations under this Agreement without Company's prior written consent in each instance.
- c. Construction and Interpretation. This Agreement shall be construed to have been drafted by all of the Parties, so that any rule of construction or interpretation that construes or interprets ambiguities against the drafter shall have no force or effect.
- d. Headings. Section headings are inserted in this Agreement for reference and convenience only and shall not interpret, define, limit or describe the scope, intent, terms or conditions of this Agreement.
- e. Severability. If any term or condition of this Agreement is deemed invalid or unenforceable by a court of law or arbitrator (as applicable) with binding authority, then the remaining terms and conditions shall not be affected, and said court of law shall reform the invalidated

or unenforceable term or condition to the maximum extent permitted under the law and consistent with the intent of this Agreement.

- f. Entire Agreement. This Agreement, together with those additional terms, conditions, and policies referenced herein and/or made available herein by hyperlink (including, without limitation, the Platform's [Privacy Policy](#)), constitutes the entire agreement and understanding between the Parties with respect to the subject matter hereof; supersedes any prior agreements and understandings, if any, between the Parties with respect to such subject matter; and shall inure to the benefit of and be binding upon the Parties and their respective successors and assigns.

24. Contact Us. Please direct any questions you may have about the Platform or this Agreement to any one of the following:

By mail:           Conceptual MindWorks, Inc., 13409 NW Military Hwy, Suite 201, San Antonio, TX 78231, with a subject line of "Website Question."

By e-mail:        [finance@teamcmi.com](mailto:finance@teamcmi.com), with a subject line of "Website Question."

The foregoing contact information may change from time-to-time by supplementation, amendment or modification of this Agreement.

25. Last Modified. This Agreement was last modified on February 1, 2022.