

PODIATRY CONTENT CONNECTION
SERVICE AGREEMENT

This Service Agreement ("Agreement") is made and entered into as of the Effective Date (defined below) by and between Clearwater Marketing Group, LLC, a New Jersey Limited Liability Company doing business as Podiatry Content Connection ("Company") and the undersigned subscriber ("Subscriber"). This Agreement sets forth the terms pursuant to which Subscriber shall be permitted to use certain of the Company's web-based and professional services. The parties agree as follows:

1. DEFINITIONS

- 1.1. "Account" means a unique account created for Subscriber to access the Services.
- 1.2. "Additional Services" means additional services that may be added to the Subscription Services.
- 1.3. "Effective Date" means the date when the Subscriber has made the Initial Payment and this Agreement has been signed by the Company.
- 1.4. "Initial Payment" means the one-time setup fee and the first month's fee for Services as provided in the Subscriber's initial Service Order.
- 1.5. "Monthly Payment" means the recurring monthly payment Subscriber must pay to Company to continue Services as provided in all applicable Service Orders.
- 1.6. "Scope Limitations" means the limitations on Subscriber's use of the Subscription Services specified on the Service Order and other limitations.
 - 1.6.1 Other limitations as outlined in "Use Restrictions"
- 1.7. "Protected Information" means any passwords, credit card or debit card information, personal financial account information, personal health information, social security numbers, passport numbers, driver's license numbers, employment records, physical or mental health condition or information, or any other information that would be subject to Health Insurance Portability and Accountability Act (HIPAA), the Payment Card Industry Data Security Standards (PCI DSS), or other laws, regulations, or industry standards designed to protect similar information.
- 1.8. "Services" means, collectively, Subscription Services, Additional Services, and Professional Services, as stated in and subject to the terms of one or more applicable Service Orders.
- 1.9. "Service Order" means a document stating the details of one or more specific Services to be provided to Subscriber, which is agreed upon and signed by both parties.
- 1.10. "Sites" means <https://www.podiatrycontentconnection.com>, and such other or different web-address as the Company may designate for its web-based services, as well as each and every third-party website the Company may access and use on behalf of the Subscriber in connection with the Services, including, but not limited to, <https://www.facebook.com>, <https://twitter.com>, <https://plus.google.com>, and the like.
- 1.11. "Subscription Services" means the web-based content, related services, and technical support the Company shall provide to the Subscriber on a subscription basis as stated in and subject to the terms of one or more Service Orders.
- 1.12. "Initial Subscription Term" means the initial 12-month period commencing on the Effective Date, during which the Company shall provide the Services to the Subscriber, as stated in and subject to the terms of one or more Service Orders.
- 1.13. "Renewal Term" means the three-month period that shall automatically commence at the end of the Initial Subscription Term, during which the Company shall provide the Services to the Subscriber, as stated in and subject to the terms of one or more Service Orders, and each three-month automatic renewal period thereafter.

2. SERVICE ORDERS

- 2.1. Once executed by both parties, each Service Order shall be a unique agreement that incorporates the terms of this Agreement and stands alone with respect to all other Service Orders. If there is a conflict between the terms of this Agreement and the terms of a Service Order, the terms of this Agreement shall control unless the Service Order states that a specific provision of this Agreement shall be superseded by a specific provision of the Service Order. Company shall provide, and Subscriber shall pay for, all Services set out in each Service Order, subject to the terms of the Service Order and this Agreement.

3. USE OF THE SERVICES

- 3.1. Use of the Services. Subject to the terms and conditions of this Agreement, Company grants to Subscriber a limited, non-exclusive, non-transferable, non-sublicensable right during the term of each Service Order to use the Services set forth therein. Subscriber's right to use the Services is subject to the Scope Limitations and contingent upon Subscriber's compliance with the Scope Limitations and the terms of the applicable Service Order and this Agreement. Subscriber agrees that Company can access its account information as necessary, in Company's sole discretion, to provide Subscriber with the Services and any related support. Company shall not disclose such information unless compelled by law or permitted by Subscriber to do so.
- 3.2. Use Restrictions. Subscriber may use the Services solely for its own internal business operations. Except as otherwise explicitly provided in this Agreement and/or applicable Service Order, Subscriber shall not, and shall not permit or authorize third parties to: (a) license, sublicense, sell, rent, lease, or otherwise permit third parties to use the Services; (b) use the Services to provide services to third parties (e.g., as a service bureau); (c) circumvent or disable any security or other technological features or measures of the Services; (d) reverse engineer any element of the Company, Service, or use the Services or any of Company's Confidential Information (as defined below) to compete with the Services; (e) modify, adapt or hack the Services to falsely imply any sponsorship or association with Company, or otherwise attempt to gain unauthorized access to the Services or its related systems or networks; (f) use the Services in any manner that interferes with or disrupts the integrity or performance of the Services or the components of the Services; (g) attempt to use any method to gain unauthorized access to any paid features of the Sites; (h) use automated scripts to collect information from or otherwise interact with the Sites or the Services; (i) deep-link to the Sites for any purpose (other than Company's home page), unless expressly authorized in writing by Company; (j) impersonate any other user of the Services; or (k) use the Services in violation of any social media network acceptable use, terms of use, or any related or similar policy or terms. Subscriber shall not use the Services for surveillance purposes or gathering intelligence, including but not limited to: (i) investigating or tracking individual social media users or their content, or to obtain information on social media users or their content, in a manner that would require a subpoena, court order, or other valid legal process; (ii) any unlawful or discriminatory purpose or in a manner that would be inconsistent with the individual social media users' reasonable expectations of privacy; (iii) targeting, segmenting, or profiling individuals based on health (including pregnancy), negative financial status or condition, political affiliation or beliefs, racial or ethnic origin, religious or philosophical affiliation or beliefs, sex life or sexual orientation, trade union membership, data relating to any alleged or actual commission of a crime, or any other sensitive categories of personal information prohibited by law. Company shall have the right to terminate this Agreement and any Service Order immediately, if Company reasonably suspects that Subscriber has violated any of the foregoing restrictions.
- 3.3. Compliance with Laws. Subscriber shall use the Services in compliance with all applicable laws and regulations and in a manner that does not infringe on the rights of any third party or violate any third party's privacy rights.
- 3.4. Use of Protected Information Prohibited. Subscriber warrants and covenants that neither Subscriber nor Subscriber's users shall transmit, upload, collect, manage, publish, post, or otherwise process any Protected Information in connection with the Services or the Sites. Subscriber acknowledges and agrees that Company shall not be liable for any damages that may result from Subscriber's use of the Services or the Sites in violation of this covenant.
- 3.5. Prevention of Unauthorized Use. Subscriber shall use reasonable efforts to prevent any unauthorized use of the Services and immediately notify Company in writing of any unauthorized use that comes to Subscriber's attention. If there is unauthorized use by anyone who obtained access to the Services directly or indirectly through Subscriber, Subscriber shall take all steps reasonably necessary to terminate the unauthorized use. Subscriber shall cooperate and assist with any actions taken by Company to prevent or terminate unauthorized use of the Services.
- 3.6. Right to Suspend Services. Company may suspend Subscriber's use of the Services if Company reasonably and in good faith believes such suspension is necessary to prevent unauthorized use of the Services or to prevent an ongoing violation of any applicable laws or regulations. Company shall use commercially reasonable efforts to notify Subscriber prior to any such suspension and shall only suspend the Services to the extent necessary to prevent such unauthorized use or violation. In addition, if Subscriber fails to timely pay any fees in accordance with the terms of this Agreement and/or any Service Order, Company may, without limitation to any of its other rights or remedies, suspend performance of the Services until it receives all amounts due. If service is suspended for more than 60 days due to non-payment or any other reason, then, in addition to paying in full all outstanding balances and taking corrective action as specified by Company, if applicable, Subscriber shall also pay a service restoration fee in the amount specified in the applicable Service Order(s).
- 3.7. Reservation of Rights. Company grants to Subscriber a limited right to use the Services under this Agreement. Subscriber shall not have any rights to the Services except as expressly granted in this Agreement. Company reserves to itself and its licensors all rights to the Services not expressly granted to Subscriber in accordance with this Agreement. Company and its licensors retain all Intellectual Property Rights in and to the Services.

4. THIRD PARTY SERVICES

- 4.1. External Sites. The Services may contain links to, or otherwise may allow Subscriber to connect to and use one or more of the Sites and certain third party products, services, or software under separate terms and conditions (collectively, "Third-party Services") in conjunction with the Services. If Subscriber decides to access and use one or more Third-party Service, Subscriber acknowledges that its use of the applicable Third-party Service is governed solely by the terms and conditions of entity which provides the Third-party Service, and Company does not endorse, is not responsible for, and makes no representations as to such Third-party Service, its content, or the manner in which such Third-party Service handles Subscriber's data. Company is not liable for any damage or loss caused or alleged to be caused by or in connection with Subscriber's access or use of any such Third-party Service, or Subscriber's reliance on the privacy practices or other policies of such Third-party Service. Subscriber acknowledges that Company does not control the features and functionality of any Third-party Service and that such Third-party Service may change its features and functionality without any notice to Company. Company shall not be liable to Subscriber for any refunds or any damage or loss arising from or in connection with any changes made by a Third-party Service or any resulting changes

to the Service. The Company makes no claim as to where Google, Bing, or other search engines place links and has no control where and when Google, Bing or other search engines index the content. Media, if applicable, such as Google Ads, Facebook advertising, and other third party software costs, are marked-up based on service program selected.

4.2. Integration. The Services may contain features that enable various Third-party Services (such as, but not limited to, a social media service like Facebook and Twitter) to be directly integrated into Subscriber's account. To take advantage of these features, Subscriber shall be required to register for or log into such Third-party Service on their respective websites. By accessing/enabling a Third-party Service within the Services, Subscriber is allowing Company to pass Subscriber's log-in information to the Third-party Service for this purpose.

5. FEES AND PAYMENT

5.1. Fees. Subscriber shall pay Company the Initial Payment and Monthly Payment specified in each applicable Service Order. If Subscriber orders additional Services or changes the Services it is receiving, the fees for such additional or changed services shall be charged at the then-current pricing for such additional or changed services and commence on the date listed in the Service Order. Any resulting change in fees shall be reflected in future invoices. All amounts payable under this Agreement are denominated in United States dollars, and Subscriber shall pay all such amounts in United States dollars. Except as otherwise provided in this Agreement, fees are non-refundable. There are no refunds or credits for partial months of Services, plan downgrades, or refunds for unused time if Subscriber closes its account before the end of the term of any Service Order. Unless otherwise specified in the Service Order, the Services and any additional Services purchased by Subscriber during the Subscription Term, shall automatically renew for additional periods equal to the length of the Renewal Term unless either party provides written notice to the other party at least 30 days prior to the expiration of the Subscription Term or Renewal Term.

5.2. Payment Terms. Unless otherwise specified in the applicable Service Order, Subscriber shall pay all amounts due at the times specified in the Service Order, except for amounts subject to a good faith dispute, provided that (i) Subscriber notifies Company of any such dispute in writing prior to the date such amounts would otherwise be due; (ii) Subscriber pays any undisputed amounts in accordance with this Section; and (iii) Subscriber cooperates with Company to promptly resolve such dispute. Except for any amounts disputed by the Subscriber in good faith, any amount not paid when due shall be subject to finance charges equal to one and one-half percent (1.5%) of the unpaid balance per month or the highest rate permitted by applicable usury law, whichever is less, determined and compounded daily from the date due until the date paid. Subscriber shall reimburse any costs or expenses (including, but not limited to, cost of collection, costs of suit, and reasonable attorneys' fees) incurred by Company to collect any amount that is not paid when due. Amounts due from Subscriber under this Agreement may not be withheld or offset by Subscriber against amounts due to Subscriber for any reason.

6. TERM AND TERMINATION

6.1. Agreement Term. This Agreement commences on the Effective Date and shall remain in effect while any Service Orders are outstanding.

6.2. Service Order Term. Each Service Order shall be valid for the term specified on the Service Order unless the Service Order is terminated earlier in accordance with the terms of this Agreement.

6.3. Termination for Cause. Either party may terminate a Service Order or this Agreement (i) upon thirty (30) days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (ii) immediately upon written notice if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors. Company shall have the right to terminate a Service Order or this Agreement if Company determines that Subscriber is acting or has acted in a way that negatively impacts or reflects on Company or its current or prospective partners or customers.

6.4. Post-Termination Obligations. If this Agreement or a Service Order is terminated for any reason, (a) Subscriber shall pay to Company any fees or other amounts that have accrued prior to the effective date of the termination, (b) any and all liabilities accrued prior to the effective date of the termination shall survive, and (c) Subscriber shall discontinue all use of the Services. Upon termination of this Agreement or any Service Order, Company shall have the right to remove Subscriber's account information and account settings after thirty (30) days, Subscriber shall not be able to recover this data or content (except that content stored/published to third-party websites, that data shall remain on said third-party websites pursuant to those website's terms and conditions). All provisions of this Agreement which, by their nature, are intended to survive termination (including those related to third party claims and limitations on liability) shall remain in effect.

7. CONFIDENTIALITY

7.1. Definition of Confidential Information. For the purpose of this Agreement, "Confidential Information" means technical and non-technical non-public information of Company disclosed by Company, either directly or indirectly, in writing, orally, or by inspection of tangible objects or other materials, or to which the Subscriber may have access. "Confidential Information" includes all information which (i) a reasonable person would consider confidential or (ii) is marked "confidential" or "proprietary" or some similar designation by the disclosing party. Confidential Information shall not, however, include any information that (i) was publicly known and made generally available in the public domain prior to the time of its disclosure by the Company; (ii) becomes publicly known and made generally available after disclosure by the Company to the Subscriber other than as a result of a violation of this Agreement by the Subscriber; (iii) is already in the possession of the Subscriber at the time of disclosure by Company, as shown by the Subscriber's files and records; (iv) is obtained by Subscriber from a third party without a breach of the third party's obligations of confidentiality; or (v) is independently developed by the Subscriber without use of or reference to the Company's Confidential Information, as shown by documents and other competent evidence in the Subscriber's possession.

7.2. Protection of Confidential Information. The Subscriber shall not disclose, use, transmit, inform or make available to any entity, person or body any of the Confidential Information, except as a necessary part of performing its obligations hereunder, and shall take all such actions as are reasonably necessary and appropriate to preserve and protect the Confidential Information and the Company's rights therein, at all times exercising at least a reasonable level of care. Subscriber agrees to restrict access to the Confidential Information of the Company to those employees, advisors, agents and other representatives who require access in order to perform its obligations hereunder and who agreed to be bound by these obligations of confidentiality and non-disclosure.

7.3. Disclosure of Medical Information Prohibited. SUBSCRIBER ACKNOWLEDGES THAT AS THE SERVICES PROVIDED BY COMPANY PURSUANT TO THIS AGREEMENT ARE SPECIFICALLY INTENDED TO BE ACCESSED AND VIEWED BY THE PUBLIC AT LARGE. ACCORDINGLY, THE SUBSCRIBER WARRANTS AND COVENANTS THAT IT SHALL PROTECT ALL OF ITS PATIENT INFORMATION FROM UNAUTHORIZED DISCLOSURE, THAT NEITHER THE SUBSCRIBER NOR ANY PERSON ACTING ON ITS BEHALF SHALL DISCLOSE PATIENT INFORMATION TO THE COMPANY OR ON THE SITES AT ANY TIME OR FOR ANY PURPOSE WHATSOEVER, AND THAT THE SUBSCRIBER AND EVERY PERSON ACTING ON ITS BEHALF SHALL AT ALL TIMES COMPLY WITH ALL LOCAL, STATE, AND FEDERAL REGULATIONS, LAWS, REGULATIONS, RULES, STANDARDS, AND INDUSTRY PRACTICES GOVERNING THE PROTECTION OF PATIENT INFORMATION INCLUDING, BUT NOT LIMITED TO HIPAA.

8. WARRANTIES AND DISCLAIMERS

8.1. Mutual Warranties. Each party represents and warrants to the other that: (a) this Agreement has been duly executed and delivered and constitutes a valid and binding agreement enforceable against such party in accordance with its terms; and (b) no authorization or approval from any third party is required in connection with such party's execution, delivery, or performance of this Agreement.

8.2. Disclaimer. EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES STATED IN THIS SECTION 8, COMPANY MAKES NO ADDITIONAL REPRESENTATION OR WARRANTY OF ANY KIND WHETHER EXPRESS, IMPLIED (EITHER IN FACT OR BY OPERATION OF LAW), OR STATUTORY, AS TO ANY MATTER WHATSOEVER. COMPANY EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT ON ITS BEHALF AND ON BEHALF OF ITS LICENSORS. COMPANY RELIES ON THIRD PARTY DATA SOURCES FOR INFORMATION AND THEREFORE DOES NOT WARRANT THAT ANY INFORMATION PROVIDED THROUGH THE SERVICES IS ACCURATE OR COMPLETE OR THAT ANY INFORMATION PROVIDED THROUGH THE SERVICES OR THIRD-PARTY DATA SHALL ALWAYS BE AVAILABLE. COMPANY DISCLAIMS ALL LIABILITY FOR ANY MALFUNCTIONING, IMPOSSIBILITY OF ACCESS, OR POOR USE CONDITIONS OF THE SERVICES DUE TO INAPPROPRIATE EQUIPMENT, DISTURBANCES RELATED TO INTERNET SERVICE PROVIDERS, TO THE SATURATION OF THE INTERNET NETWORK OR ANY OTHER ERROR, OMISSION, INTERRUPTION, DELETION, DEFECT, DELAY IN OPERATION OR TRANSMISSION, COMMUNICATIONS LINE FAILURE, THEFT OR DESTRUCTION OR UNAUTHORIZED ACCESS TO, OR ALTERATION OF, USER COMMUNICATIONS, PROBLEMS RELATED TO THE SERVICES OR ITS USE, LOSS OF PERSONAL CONTENT ON THE SITES NOT WITHIN COMPANY'S REASONABLE CONTROL.

8.3. Subscriber acknowledges and agrees that the Company makes no representation about and has no control over where and how Google™, Bing™, or any other search engine may place links for the Subscriber, or where and when any search engine indexes media content, including the Subscriber's Content.

9. INTELLECTUAL PROPERTY

9.1. What You Own. You own all of the information, data, messages, images, materials, or other content (collectively, "Content") which you may provide to Company. You grant Company a nonexclusive, revocable, worldwide, perpetual, fully paid-up and royalty-free right to Company to use, copy, prepare derivative works of, distribute, publish, remove, retain, add, process, or analyze this information for the sole purpose of providing the Services to Subscriber. Subscriber represents and warrants that it is entitled to and authorized to submit the Content and that such Content you submit is accurate and not in violation of any contractual restrictions or third-party rights.

9.2. What We Own. Company owns and retains all rights, title, and interest in and to the Services along with all patents, inventions, copyrights, trademarks, domain names, trade secrets, know-how, and any other intellectual property and/or proprietary rights ("Intellectual Property Rights") related to the Services. Subscriber's use of the Services under this Agreement does not give Subscriber additional rights in the Services or ownership of any Intellectual Property Rights associated with the Services. Subject to Subscriber's compliance with and limitations set forth in this Agreement and upon subscription to the Services, Company grants you a non-exclusive, non-transferable, non-sublicensable, revocable license to access and use Company's Services.

9.3. Statistical Data. Subscriber acknowledges and agrees that Company shall have the right to utilize data capture, syndication, and analysis tools, and other similar tools, to extract, compile, synthesize, and analyze any non-personally and non-Subscriber identifiable data or information resulting from Subscriber's use of the Services ("Statistical Data"). Statistical Data may be collected by Company for any lawful business purpose without a duty of accounting to Subscriber, provided that the Statistical Data is used only in an anonymized, aggregated form, without specifically identifying the source of the Statistical Data. On creation, Company shall own all Intellectual Property Rights in the Statistical Data.

9.4. Feedback. Company shall have a royalty-free, worldwide, transferable, sub- licensable, irrevocable and perpetual license to incorporate into the Services or otherwise use any suggestions, enhancement requests, recommendations or other feedback Company receives from Subscriber.

10. INTELLECTUAL PROPERTY INFRINGEMENT

10.1. Exclusions from Obligations. Company shall have no obligation under this Section 10 for any infringement or misappropriation to the extent that it arises out of or is based upon (a) use of the Services in combination with other products or services if such infringement or misappropriation would not have arisen but for such combination; (b) any aspects of the Services that are provided to comply with designs, requirements, or specifications required by or provided by Subscriber, if the alleged infringement or misappropriation would not have arisen but for the compliance with such designs, requirements, or specifications; (c) use of the Services by Subscriber for purposes not intended or outside the scope of the license granted to Subscriber; (d) Subscriber's failure to use the Services in accordance with written instructions provided by Company, if the infringement or misappropriation would not have occurred but for such failure; or (e) any modification of the Services not made or authorized in writing by Company where such infringement or misappropriation would not have occurred absent such modification.

10.2. Limited Remedy. This Section 10 states Company's sole and exclusive liability, and Subscriber's sole and exclusive remedy, for the actual or alleged infringement or misappropriation of any third-party Intellectual Property Right by the Services.

11. SUBSCRIBER INDEMNITY OBLIGATIONS

11.1. For any content that is published to the website and/or social networks by the Subscriber, the Subscriber shall defend and hold the Company, and its officers, directors, employees, agents, successors and assigns, harmless from any actual or threatened third party Claim arising out of or based upon (a) Subscriber's breach of any of its obligations under this Agreement, (b) Subscriber's use of a Third-Party Service, or (c) any of the exclusions stated in Section 10.1, and Subscriber shall indemnify Company for all damages, costs, and attorneys' fees awarded in any such Claim or all amounts that Subscriber agrees to pay to any third party to settle any such Claim. Subscriber's obligation under this section is contingent on: (a) Company giving Subscriber prompt written notice of the Claim; (b) Company granting Subscriber full and complete control over the defense and settlement of the Claim, provided that Subscriber may not settle or defend any Claim unless Subscriber unconditionally releases Company of all liability and such settlement does not affect Company's business or Services; and (c) Company providing assistance in connection with the defense and settlement of the Claim as Subscriber may reasonably request. Company shall not defend or settle any Claim eligible for indemnification under this section without Subscriber's prior written consent.

12. LIMITATIONS OF LIABILITY

12.1. Exclusion of Consequential and Related Damages. COMPANY SHALL NOT, UNDER ANY CIRCUMSTANCES, BE LIABLE TO SUBSCRIBER, UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, EXEMPLARY, ENHANCED, OR PUNITIVE DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO LOST PROFITS, REVENUE, BUSINESS, OR DATA; BUSINESS INTERRUPTION; OR LOSS OF GOODWILL OR REPUTATION, REGARDLESS OF WHETHER THE PARTY IS APPRISED OF THE LIKELIHOOD OF SUCH DAMAGES OCCURRING OR ANY LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE.

12.2. Cap on Liability. UNDER NO CIRCUMSTANCES SHALL THE AGGREGATE LIABILITY OF COMPANY AND ITS RESPECTIVE AFFILIATES OF ALL KINDS ARISING OUT OF OR RELATED TO THIS AGREEMENT, (INCLUDING BUT NOT LIMITED TO WARRANTY CLAIMS), REGARDLESS OF THE FORUM AND REGARDLESS OF WHETHER ANY ACTION OR CLAIM IS BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR ANY OTHER LEGAL OR EQUITABLE THEORY, EXCEED THE TOTAL AMOUNT PAID AND AMOUNTS ACCRUED BUT NOT YET PAID BY SUBSCRIBER TO COMPANY UNDER THE APPLICABLE SERVICE ORDER DURING THE TWELVE MONTHS PRECEDING THE EVENT GIVING RISE TO THE CLAIM (DETERMINED AS OF THE DATE OF ANY FINAL JUDGMENT IN AN ACTION). THE FOREGOING LIMITATIONS SHALL NOT IN ANY WAY LIMIT SUBSCRIBER'S PAYMENT OBLIGATIONS UNDER SECTION 5 ABOVE. THE LIMITATION OF LIABILITY PROVIDED FOR HEREIN SHALL APPLY IN AGGREGATE TO SUBSCRIBER AND ITS AFFILIATES AND SHALL NOT BE CUMULATIVE.

12.3. Independent Allocations of Risk. EACH PROVISION OF THIS AGREEMENT THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES, OR EXCLUSION OF DAMAGES IS TO ALLOCATE THE RISKS OF THIS AGREEMENT BETWEEN THE PARTIES. THIS ALLOCATION IS REFLECTED IN THE PRICING OFFERED BY COMPANY TO SUBSCRIBER AND IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES. EACH OF THESE PROVISIONS IS SEVERABLE AND INDEPENDENT OF ALL OTHER PROVISIONS OF THIS AGREEMENT. THE LIMITATIONS IN THIS SECTION 12 SHALL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

12.4. State Prohibition of Limitation of Liability and Disclaimer of Implied Warranties. Some states do not allow the exclusion of implied warranties or limitation of liability for incidental or consequential damages, which means that some of the above limitations may not apply. IN THESE STATES, EACH PARTY'S LIABILITY SHALL BE LIMITED TO THE GREATEST EXTENT PERMITTED BY LAW.

13. GENERAL

13.1. Assignment. Neither party may assign its right, duties, and obligations under this Agreement without the other party's prior written consent, which consent shall not be unreasonably withheld or delayed, except that a party may assign this Agreement without the other party's consent to a successor (including a successor by way of merger, acquisition, sale of assets, or operation of law) if the successor agrees to assume and fulfill all of the assigning party's obligations under this Agreement.

13.2. Notices. Any notice required or permitted to be given in accordance with this Agreement shall be effective if it is in writing and sent by fax, e-mail, certified mail return receipt requested, or insured courier, return receipt requested, to the appropriate party at the address set forth on the signature page of this Agreement or the applicable Service Order. Either party may change its address for receipt of notice by notice to the other party in accordance with this Section. Notices are deemed given two business days following the date of mailing or one business day following delivery to a courier or sending an email or fax.

13.3. Force Majeure. Neither party shall be liable for, or be considered to be in breach of or default under this Agreement on account of, any delay or failure to perform as required by this Agreement as a result of any cause or condition beyond its reasonable control, so long as that party uses all commercially reasonable efforts to avoid or remove the causes of non-performance.

13.4. Governing Law. This Agreement shall be interpreted, construed, and enforced in all respects in accordance with the local laws of the State of New Jersey, without reference to its choice of law rules. Each party hereby irrevocably consents to the exclusive jurisdiction and venue of the federal, state, and local courts in Middlesex County, New Jersey in connection with any action arising out of or in connection with this Agreement.

13.5. Binding Arbitration and Waiver. ANY CONTROVERSY OR CLAIM ARISING UNDER OR IN ANY WAY PERTAINING TO THIS AGREEMENT OR ANY SERVICE ORDER, OR THE BREACH THEREOF, SHALL BE DETERMINED SOLELY AND EXCLUSIVELY THROUGH BINDING ARBITRATION ADMINISTERED BY THE AMERICAN ARBITRATION ASSOCIATION. THE SUBSCRIBER SPECIFICALLY ACKNOWLEDGES THAT ABSENT THIS PROVISION THE SUBSCRIBER WOULD HAVE THE RIGHT TO PRESENT AND PURSUE SUCH CLAIMS IN A CIVIL ACTION AND HAVE THEM DETERMINED WITH OR WITHOUT A JURY TRIAL BY A COURT OF COMPETENT JURISDICTION. WITH FULL KNOWLEDGE OF THE CONSEQUENCES OF ITS DECISION TO WAIVE ITS RIGHT TO A CIVIL ACTION AND A JURY TRIAL, IF APPLICABLE, THE SUBSCRIBER HEREBY KNOWINGLY, FREELY, VOLUNTARILY, AND WITHOUT RESERVATION WAIVES, RELINQUISHES, AND SURRENDERS FOREVER ANY AND ALL RIGHTS IT HAS OR MAY HAVE TO PURSUE A CIVIL ACTION FOR CLAIMS ARISING UNDER OR IN ANY WAY PERTAINING TO THIS AGREEMENT OR ANY SERVICE ORDER, AND AGREES INSTEAD THAT EACH AND EVERY SUCH CLAIM SHALL BE DETERMINED SOLELY AND EXCLUSIVELY THROUGH BINDING ARBITRATION AS STATED ABOVE.

13.6. Waiver. The waiver by either party of any breach of any provision of this Agreement does not waive any other breach. The failure of any party to insist on strict performance of any covenant or obligation in accordance with this Agreement shall not be a waiver of such party's right to demand strict compliance in the future, nor shall the same be construed as a novation of this Agreement.

13.7. Severability. If any part of this Agreement is found to be illegal, unenforceable, or invalid, the remaining portions of this Agreement shall remain in full force and effect. If any material limitation or restriction on the use of the Services under this Agreement is found to be illegal, unenforceable, or invalid, Subscriber's right to use the Services shall immediately terminate.

13.8. Entire Agreement. This Agreement, including all applicable Service Orders, state the final and complete expression of the agreement between these parties regarding the Company's provision and the Subscriber's use of the Services. This Agreement supersedes, and the terms of this Agreement govern, all previous oral and written communications regarding these matters, all of which are merged into this Agreement. Company may amend this Agreement from time to time, in which case the new Agreement shall supersede prior versions. Company shall notify (notice within the application to be deemed sufficient) Subscriber of material changes and direct Subscriber to the latest version of this Agreement. Company shall not be bound by, and specifically objects to, any term, condition, or other provision that is different from or in addition to this Agreement (whether or not it would materially alter this Agreement) that is proffered by Subscriber in any receipt, invoice, acceptance, purchase order, confirmation, correspondence, or otherwise, regardless of Company's failure to object to such terms, provisions or conditions. This Agreement may be executed in multiple counterparts, and may be signed electronically or via facsimile.

13.9. Survival. Section 3 (Use of the Services), Section 4 (Third Party Services), Section 5 (Fees and Payment), Section 6 (Term and Termination), Section 7 (Confidentiality), Section 8 (Warranties and Disclaimer), Section 9 (Intellectual Property), Section 10 (Intellectual Property Infringement), Section 11 (Subscriber Indemnification), Section 12 (Limitation of Liability), Section 13 (General) shall survive any termination of this Agreement.