

## TERMS OF SERVICE

THIS AGREEMENT CONSTITUTES A LEGALLY BINDING CONTRACT BETWEEN YOU (CLIENT) AND KEET, INC. (KEET OR KEET HEALTH) AND BY ACCESSING THIS SITE OR ANY OF THE SERVICES YOU AGREE TO BE LEGALLY BOUND AND TO ABIDE BY THE TERMS HEREIN AS IF YOU HAD PHYSICALLY SIGNED THIS AGREEMENT. BY ACCEPTING THE TERMS OF SERVICE YOU ARE CONFIRMING THAT YOU HAVE READ THESE IN FULL AND ARE IN AGREEMENT. THE EFFECTIVE DATE OF THIS IS AGREEMENT IS THE DATE OF ACCEPTANCE OF THE ONLINE TERMS AND CONDITIONS.

**Background.** Keet provides a musculoskeletal coordinated care platform (as it may be updated from time to time, the “**Service**”) that is designed to allow doctors, nurses, physical therapists, athletic trainers and other healthcare and wellness providers (“**Providers**”) to efficiently manage the musculoskeletal care process and to allow Patients to effectively complete tasks and to meaningfully interact with Providers. The Service includes a responsively designed web application (the “**Application**”) to be used by End Users (defined below).

**Provision of Service, Acknowledgement and Cooperation.** Subject to the terms and conditions of this Agreement, Keet shall provide Client with access to the Service during the Term, consistent with the fees set forth on this site.

**Cooperation.** Client shall cooperate with Keet as may be reasonably required to enable the provision of the Service. Client hereby grants to Keet a non-exclusive license to use Client’s trademarks and other applicable proprietary rights (collectively, “**Client Properties**”) as may be reasonably necessary or helpful in connection with the provision of the Service hereunder.

**Representations About Client.** Client represents and warrants to Keet that it has the power and authority to enter into this Agreement, and that the information that it provides to Keet about Client or its account in connection with the Service will be current, true, accurate, supportable and complete.

**Users.** The Service is designed to be used by multiple categories of users.

- a. **End Users.** Patients have the option to share their care experience received via the Service with their family and friend care partners (“**Care Partners**”). Patients and Care Partners are referred to collectively as “**End Users**” in this Agreement. Any End User that uses the Service may be subject to any corresponding terms and conditions (the “**End User Service Agreement**”) and to Keet’s Privacy Policy. The End User Service Agreement and the Privacy Policy are entered directly between the End User and Keet.
- b. **Authorized Users.** During the Term, Client may allow its Authorized Users to use the Service only on Client’s behalf and solely for its intended purposes in accordance with this Agreement. Examples of Authorized Users include Client’s Providers, administrative employees and other Client-affiliated personnel. As a condition to such use, Authorized Users shall abide by the terms set forth herein and to any additional terms published by Keet specific to Authorized Users. Client shall immediately notify Keet if it becomes aware of any violation of the terms of this Agreement by any Authorized User. Client shall be liable for any breach of the Agreement by any Authorized User.

**Healthcare Advice.** Client is solely responsible for any and all Content transmitted by Client or its Providers to End Users via the Service and for any and all medical or health-related advice dispensed by Client or its Providers via the Service.

**Reservation of Rights with Respect to the Service.** Keet reserves all rights in and to the Service, including any modifications thereto, and all related intellectual property not expressly granted under this Agreement. “Keet,” and all associated logos displayed within the Service, are Keet’s trademarks (unless otherwise noted). Without limiting the generality of the foregoing, subject to the limited rights granted hereunder, Client acknowledges and agrees that, as between Client and Keet, all right, title and interest, including all copyright, trademark, patent, trade secret (including all modifications, improvements, upgrades, and derivative works thereof) and other intellectual property or proprietary rights, related to the Service belong exclusively to Keet. Client shall honor and comply with any and all contractual, statutory or common law rights of Keet, as well as any applicable third parties, arising out of or relating to the provision or use of the Service.

**Feedback.** If Client or any of its Providers or other Authorized Users submit comments, suggestions, or other feedback regarding the Service (“Feedback”), Client agrees that Keet will own such Feedback and will be free to use such Feedback for any purpose.

**Restrictions on Use of the Service.** Client and the Authorized Users may use the Service and the data generated thereby solely for Client’s intended purposes in accordance with this Agreement. Client may not rent, lease, lend, sell, redistribute, reproduce or sublicense the Service. Client may not copy, decompile, reverse-engineer, disassemble, attempt to derive the source code of, modify, or create derivative works of the Service, or any part thereof, or integrate the Service with other technology, other than as is expressly contemplated by Keet’s pertinent documentation or as otherwise agreed by Keet. If for some reason these restrictions are prohibited by applicable law or by an agreement Keet has with one of its licensors, then the activities are permitted only to the extent necessary to comply with such law or license(s). Client shall not exploit the Service in any unauthorized way whatsoever, including, but not limited to, (i) by trespass, (ii) by burdening network capacity or consuming a disproportionate share of the resources on which the Service relies (e.g. compute time, disk storage, and network bandwidth), or (iii) by utilizing the Service in a way that unnecessarily interferes with the normal operation thereof.

1. **DEFINITIONS.** In addition to other terms defined elsewhere in this Agreement, the following terms shall apply to this Agreement, any Service Orders, and any Statements of Work, including any future Service Orders or Statements of Work, so agreed by and between the Parties to the Agreement.

- 1.1 “Affiliate” means, with respect to a given person or entity, a person or entity that directly or indirectly controls, is controlled by, or is under common control with, such person or entity.

- 1.2 **“Application Services”** means any service used to host and operate a Keet Health Application to provide Client with access to and use of such Keet Health Application.
  - 1.3 **“Authorized Users”** means persons authorized by Client (including its employees, Patients and Providers) to access and use the Services who possess an authorized user ID and password
  - 1.4 **“Client”** means the Party identified as such on the applicable Service Order or Statement of Work.
  - 1.5 **“Content”** means all of Client’s Confidential Information, software applications, text, pictures, sound, graphics, video and other data transmitted by Client or Authorized Users using the Services.
  - 1.6 **“Go-Live Date”** means the date on which the Service is substantially ready for operational use by Client and its Authorized Users, following the completion of any implementation or onboarding activities by Keet or Client to prepare the Service for such operational use, which activities, absent an alternative agreement by the Parties, shall be completed no later than three (3) months after the date of the Parties’ execution of the applicable Service Order or Statement of Work.
  - 1.7 **“Keet Health Application”** means all software and databases used by Keet Health to provide the Application Services to Client.
  - 1.8 **“Patient”** means a person seeking health care and who, prior to using the Application Services, has been determined by Client to have a patient-practitioner relationship with a Practitioner in accordance with the applicable requirements of State law and of the applicable State licensure boards.
  - 1.9 **“Practitioner”** means a licensed practitioner that participates in Client’s practice.
  - 1.10 **“Scope of Work”** any document captioned “Scope of Work (SOW)” that includes a written description of the Services to be provided by Keet Health to Client and the fees to be paid by Client to Keet Health for those Services. SOW’s shall be executed by Client and Keet Health. A SOW may incorporate a Service Order that describes the specific ways in which the Parties will fulfill the SOW.
  - 1.11 **“Services”** means the Application Services and the other services identified in Section 2.1 of these Terms.
2. **SERVICES.**
- 2.1 **Services.** Keet Health only offers accounts to business entities. You represent and agree that you are entering into this Agreement on behalf of a business or other legal entity. Keet Health shall use commercially reasonable efforts to provide the Services in accordance with the terms and conditions of this Agreement. In the event of any conflict between these Terms and a Service Order, these Terms shall govern, except if the conflicting provision is designated as a “Special Consideration” in the Service Order, in

which case such Special Consideration shall govern. In addition to the Application Services, the Services shall include: (i) the provision of technical support to Client (including Client's employees and authorized Providers) during Keet Health's regular business hours, in accordance with Keet Health's then-current support policies and (ii) Keet Health's then-current online training. Client's Providers and employees shall complete such training prior to their use of the Application Services.

- 2.2 **Security.** Keet Health has implemented commercially reasonable security measures to prevent unauthorized access to computer hardware and other equipment and/or software possessed and used by Keet Health to provide the Application Services. Client shall be solely responsible for the security of Client's operating environment.
- 2.3 **Keet Health Application Changes.** Keet Health may from time to time develop enhancements, upgrades, updates, improvements, modifications, extensions and other changes to the Application Services ("**Keet Health Application Changes**"). Client hereby authorizes Keet Health to implement such Keet Health Application Changes for use with the Application Services, provided that such Keet Health Application Changes do not have a material adverse effect on the functionality or performance of the Application Services. When commercially practicable, Keet Health shall notify Client in advance of the implementation of any material Keet Health Application Changes if they are expected to interrupt Client's use of the Keet Health Application.
- 2.4 **Cooperation; Access.** Client acknowledges that the successful and timely rendering of the Services shall require the good faith cooperation of Client. Keet Health shall not be liable for any failure to perform the Services that arises from Client's failure to cooperate with Keet Health.
- 2.5 **Special Terms.** The Application Services provided to Client shall be subject to any specific limitations set forth in the Service Order.
- 2.6 **Reference.** Client acknowledges that Keet may refer to Client by name and include Client's logos, trademarks, and a description of Client's business in Keet's marketing materials, list of Clients and on Keet's website. Additionally, Client shall use commercially reasonable efforts to cooperate with Keet with regard to the publication of at least one (1) press release regarding Client's use of the Service and at least one (1) case study discussing the benefits of the Service.

### 3. **USE OF THE APPLICATION SERVICES.**

- 3.1 **Keet Health License.** Keet Health hereby grants to Client a nontransferable, non-exclusive license, during the Term, to allow Authorized Users to access and use, over public and private networks, the Application Services for Client's medical practice. For clarity, use of the Application Services is not permitted by any third-party practice without Keet Health's consent.
- 3.2 **Restrictions.**

- 3.2.1 Keet Health owns all right, title and interest in and to the Application Services and the Keet Health Application. The Application Services are provided to Client for use only as expressly set forth in this Agreement, and Client will not use the Application Services in whole or in part for any other use or purpose. Client will not, and will not allow any third-party to: (i) decompile, disassemble, reverse engineer or attempt to reconstruct, identify or discover any source code, underlying ideas, underlying user interface techniques or algorithms of the Keet Health Application by any means, or disclose any of the foregoing; (ii) except as expressly set forth in this Agreement, provide, rent, lease, lend, or use the Keet Health Application for timesharing, subscription, or service bureau purposes; or (iii) sublicense, transfer or assign the Keet Health Application or any of the rights or licenses granted under this Agreement.
- 3.2.2 Client shall not use the Application Services for storage, possession, or transmission of any information the possession, creation or transmission of which violates any state, local or federal law, including, without limitation, those laws regarding stolen materials, obscene materials or child pornography.
- 3.2.3 Client shall not transmit Content over the Application Services that infringes upon or misappropriates the intellectual property or privacy rights of any third party.
- 3.2.4 Client understands the Application Services streamline the normal operations of a medical practice and that the Application Services are not designed for medical emergencies. Client agrees to inform its Patients that the Application Services are not designed for emergency use.
- 3.2.5 Client acknowledges and agrees that Keet Health is not a provider of healthcare services through the provision of the Services contemplated herein. Client shall take all actions required to ensure that Client's and its Authorized Users' use of the Application Services follows all applicable laws, rules, regulations and professional standards. Client shall be solely responsible for verifying the identity and authenticity of Authorized Users. Neither Party shall interfere with, control, or otherwise influence the Practitioner-patient relationship established between a Practitioner and a Patient. Client shall take all reasonable precautions to ensure that the Application Services are utilized by its Authorized Users in a manner consistent with applicable ethical and legal requirements. **KEET HEALTH SHALL HAVE NO OBLIGATION, RESPONSIBILITY OR LIABILITY FOR ANY PROVIDER'S PROVISION OF PROFESSIONAL SERVICES.**
- 3.2.6 Nothing in this Agreement shall be construed as an offer for payment by one Party to the other Party or any Affiliate of the other Party of any cash or other remuneration, whether directly or indirectly, overtly or covertly, for Patient referrals or for recommending or for arranging, purchasing, leasing or ordering any item or service.

- 3.3 **Change of Control.** Client agrees to immediately but in any event within thirty (30) days inform Keet Health in writing of any change of control resulting in all or substantially all of the assets being transferred to different ownership.

#### 4. **CONTENT**

Through the Service, Client and its Authorized Users may submit Content. Client retains ownership of such Content, however, by providing Content to Keet, or submitting it through the Service, Client hereby grants to Keet and its third-party partners a non-exclusive, perpetual, fully-paid, royalty-free, transferable, worldwide license, with the right to sublicense, under all of Client's applicable intellectual property or other rights protecting the Content, to use, modify, publicly perform, publicly display, reproduce, prepare derivative works of and distribute the same (in whole or in part), solely in connection with the provision of the Service to Client, Patients and Authorized Users. Client represents and warrant to Keet that (a) Client has the right to share the Content via the Service, and (b) the collection, use, posting and sharing of the Content via the Service does not violate the privacy rights, publicity rights, copyrights, trademark rights, contract rights or any other rights of any person or entity or applicable law.

#### 5. **DATA OWNERSHIP AND LICENSE**

5.1 **Client Data and Blind Data.** As between Keet and Client, Client owns all right, title, and interest in and to any data that is collected by Keet from Client and its Authorized Users, and in connection with their use of the Service ("**Client Data**"). To the fullest extent permissible under applicable law, Client hereby grants to Keet a non-exclusive, perpetual, fully-paid, royalty-free, transferable, worldwide license, with the right to sublicense, under all of Client's applicable intellectual property or other rights, to (i) use Client Data in order to provide the Service to Client, Patients and Authorized Users and as necessary to monitor and improve the Service, and (ii) use Client Data to collect, develop, create, extract or otherwise generate statistics and other information and to otherwise compile, synthesize and analyze such data ("**Blind Data**"). Notwithstanding anything in this Agreement to the contrary, to the extent that Keet collects or generates Blind Data, such Blind Data will be owned solely by Keet and may be used for any lawful business purpose without a duty of accounting or obligation, provided that such data is aggregated, not personally identifiable and does not identify the source of such data. Notwithstanding any prohibition on using de-identified information set forth in any Business Associate Agreement between the parties, Keet and Client expressly acknowledge and agree that Keet may use Blind Data as provided herein, subject to applicable law. Client represents and warrants that it has obtained all necessary rights and consents required under applicable law to grant access to the Client Data and the licenses contained herein.

5.2 **Patient Data.** Client Data and Blind Data should not be confused with data and information collected by Keet from Patients or Care Partners via the Service ("**Patient Data**"). Collection and use of Patient Data is a matter between Keet and the Patient and/or Care Partner and governed by Keet's Privacy Policy and End User Service Agreement. Client's rights to access Patient Data are limited to such features of the Service for which Client has subscribed and exist only during the Term.

## 6. PAYMENTS

- 6.1 **Fees.** Client agrees to pay Keet Health for the performance of the Services in accordance with the rates and fees specified **on the website** at date of purchase and any subsequent Service Order. Client agrees to begin implementation of the Services as described at time of purchase within ninety (90) days of purchase. Keet shall bill Client the Monthly Fee starting at Go-Live or day ninety-one (91), whichever comes first. Following the first anniversary of a Service Order, Keet Health may increase the rates and fees set forth in such Service Order upon notice to Client; provided, however, that such increases shall not be implemented in the initial twelve (12) month period, and similarly thereafter. Keet Health shall give Client sixty (60) days' notice of such increase prior to its effective date.
- 6.2 **Monthly Fee Quantity Adjustments.** Additional Providers or Clinic Locations may be added into the Keet platform by Client as needed and will be billed according to the terms of the original Agreement and are considered part of the scope of the Agreement when added to the Keet platform.
- 6.3 The fees payable under this Agreement shall not include local, state or federal sales, use, value-added, excise or personal property or other similar taxes or duties now in force or enacted in the future imposed on the transaction and/or the delivery of the Services, all of which Client shall be responsible for and pay in full, except those taxes based on the net income of Keet Health.
- 6.4 **Fee Increases/Adjustments.** Keet Health shall be permitted to increase fees for Services and will increase no more than once per year, not to exceed five percent (5%) in any given year.
- 6.5 **Credit Card Authorization.** By providing your credit card information, you represent and warrant that you are authorized to use the designated payment method and that you authorize us (or our third-party payment processor) to charge your payment method for the total amount of your subscription (including any applicable taxes and other charges) for the duration of the agreement and any subsequent terms. If the payment method cannot be verified, is invalid, or is otherwise not acceptable, your access to the Service may be suspended or canceled.
- 6.6 **Overdue Charges and Suspension of Services.** Unless otherwise set forth in the Service Order, all payments shall be made in United States dollars no later than thirty (30) days after the date of invoice or fees are incurred. All payments not received when due shall accrue interest at a rate per month of one and one-half percent (1.5%). Any failure to make timely payments hereunder shall be deemed to be a material breach of this Agreement and, upon such a default, Keet Health shall have the right to (a) suspend performance of any or all Services hereunder upon fifteen (15) days' written notice to Client, (b) modify the payment terms of this Agreement, (c) require full payment (including any accrued interest) before restarting its performance of any suspended Services, and/or (d) terminate the Agreement for cause as described in Section 7.3 of

this Agreement. For the avoidance of doubt, any written notice provided under this Section also begins the notice period for Termination for Cause, described in Section 7.3 of this Agreement.

## 7. TERM AND TERMINATION.

7.1 **Term.** This Agreement, commencing and binding on the Parties as of the Effective Date, has an initial twelve (12) month term (the “**Initial Term**”). For the purposes of this Agreement, the Initial Term shall commence on the Go-Live date as described in Section 1.6 herein. The Initial Term and any Renewal Term(s) shall constitute the “**Term**” of this Agreement. Separately, the term of any Service Order or Statement of Work shall commence on the date on which such Service Order or Statement of Work is fully executed by the Parties and shall be in effect consistent with the duration of the Term. Client may opt out of the automatic renewal of the Term by notifying Keet in writing of its intention at least ninety (90) days before the end of the current Term. Once notice is given, the current Service Order or Statement of Work shall terminate at the end of the Term.

7.2 **Renewal Term.** Agreement renewal is automatic as so provided in Section 7.1 and dependent on Keet’s continued provision of the Service.

a. **Non-MIPS Service.** Except with respect to any Clients participating in a Merit-based Incentive Payment System (“**MIPS**”), this Agreement shall renew automatically and on an annual basis for one (1) year terms (each such term, a “**Renewal Term**”), unless terminated by either Party in accordance with Sections 7.1, 7.3 or 7.4 of this Agreement. In the event of a non-material breach during any Renewal Term either Party may terminate this agreement by providing written notice to the other Party of not less than ninety (90) days prior to the automatic renewal date. Once notice is given, the current Agreement (including any Service Orders and Statements of Work) will terminate at the end of its Term.

b. **MIPS Service.** MIPS agreements are for a full calendar year and commence not later than January 1. Client will be responsible for providing retrospective data and for monthly fees for all contracts executed after January 1. Renewal for all MIPS participating Clients will be January 1 of the calendar year.

7.3 **Termination for Cause.** Except as otherwise provided herein, either Party may terminate this Agreement upon the material breach of the other Party, if such breach remains uncured for thirty (30) days following written notice to the breaching Party.

7.4 **Termination Without Cause.** If Client provides Keet Health with notice of a change of control under Section 3.3, Keet Health reserves the right to terminate the Agreement without cause within ninety (90) days of receiving that notice.

- 7.5 **Effect of Termination.** Upon the termination of this Agreement, Keet Health will terminate Client's access to the Application Services and will cease the provision of all Services.
- 7.6 **Client Data Upon Termination.** Upon termination of this Agreement, Keet Health will provide to Client a data file with all of Client's Client Data, including patient demographics, patient reported outcomes data, and secure messaging between patients and providers. Keet Health's intellectual property data is not transferrable to any other services that Client may elect to purchase following the termination of this Agreement.

## 8. **WARRANTIES; EXCLUSIVE REMEDIES; DISCLAIMER.**

- 8.1 Keet Health hereby warrants that the Application Services will substantially perform, in all material respects, in accordance with their then-current published functional specifications. In the event of any substantial failure of the Application Services to perform, as Client's sole and exclusive remedy, Keet Health will undertake commercially reasonable efforts to repair the applicable Application Service in a commercially reasonable time.
- 8.2 **DISCLAIMER OF WARRANTIES. EXCEPT AS SET FORTH IN SECTION 8.1, KEET HEALTH MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE SERVICES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, COMPATIBILITY, OR SECURITY, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE. ADDITIONALLY, KEET HEALTH DOES NOT WARRANT THAT ACCESS TO OR USE OF THE APPLICATION SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, THAT ALL DEFECTS AND ERRORS IN THE APPLICATION SERVICES WILL BE CORRECTED, OR THAT THE SERVICES WILL MEET ANY CRITERIA OF PERFORMANCE OR QUALITY. KEET HEALTH DOES NOT PROVIDE ANY WARRANTIES REGARDING THE ACCURACY OF DATA OR INFORMATION PROVIDED BY THIRD PARTIES.**

Keet Health and Client acknowledge and agree that (a) the provisions of this Section 8.2 and Section 9, below, allocate the risks under this Agreement between Keet Health and Client, and (b) Keet Health could not offer the Services at the rates in this Agreement but for the allocation of risk and the limitation of liability specified in this Agreement.

## 9. **DAMAGES; LIMITATIONS OF LIABILITY.**

- 9.1 **Liquidated Damages.** The Parties acknowledge and agree that Keet Health incurs significant costs and administrative burden to implement and onboard Client, and that the Implementation Fee set forth at the date of purchase is not intended to recoup all those costs at once; instead, Keet Health's fee structure contemplates recovering those costs over the Initial Term. The Parties further acknowledge and agree that the amount of fees Keet Health will ultimately collect is uncertain at the time the Parties enter the Agreement. As a result, if Client terminates the Agreement between the Effective Date

and the Go-Live Date, Client is liable to Keet Health for eight (8) months' worth of the Monthly Minimum Fee.

- 9.2 **LIMITATIONS OF LIABILITY.** NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, KEET HEALTH AND ITS SHAREHOLDERS, AFFILIATES, DIRECTORS, OFFICERS, EMPLOYEES AND OTHER REPRESENTATIVES SHALL NOT BE LIABLE TO CLIENT, AUTHORIZED USERS OR ANY THIRD-PARTY FOR ANY INDIRECT, INCIDENTAL, EXEMPLARY, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING ANY DAMAGES FOR BUSINESS INTERRUPTION, LOSS OF DATA, LOSS OF USE, ATTORNEYS' FEES, LOST REVENUES OR LOST PROFITS), WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT KEET HEALTH HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES.

IN ANY EVENT, KEET HEALTH'S AGGREGATE LIABILITY FOR DAMAGES, LOSSES, COSTS, AND EXPENSES ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, SHALL NOT EXCEED THE AMOUNTS RECEIVED BY KEET HEALTH FROM CLIENT PURSUANT TO THIS AGREEMENT IN THE TWELVE (12) MONTHS PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM. THE FOREGOING LIMITATIONS SHALL APPLY EVEN IF THE CLIENT'S REMEDIES UNDER THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE.

## 10. **INDEMNITY.**

- 10.1 **Infringement.** Keet Health shall defend, indemnify and hold harmless Client, its subsidiaries, Affiliates, officers, directors, agents, employees and assigns, from and against any and all claims, suits, proceedings, losses, damages, liabilities, costs and expenses (including, without limitation, reasonable attorneys' fees) (collectively, "**Losses**") suffered or incurred by them in connection with a third-party claim arising out of any actual or threatened claim that the Application Services infringe upon or misappropriate any copyright, patent, trademark, trade secret, or other proprietary or other rights of any third party. Keet Health shall have no obligation to indemnify Client to the extent the alleged infringement arises out of (i) the use of the Application Services in combination by Client with other data products, processes or materials not provided by Keet Health and such infringement would not have occurred but for Client's combination; or (ii) the Content. Should the Application Services as used by Client become, or in Keet Health's opinion be likely to become, the subject of an infringement claim, Keet Health shall at its option and sole expense either: (a) procure for Client the right to continue to use the Application Services as contemplated hereunder, (b) modify the Application Services to eliminate any such claim that might result from its use hereunder, or (c) replace the Application Services with equally suitable, compatible and functionally equivalent non-infringing Application Services at no additional charge to Client. If none of these options is reasonably available to Keet Health, then this Agreement may be terminated at the option of either Party hereto without further obligation or liability on the part of either Party hereto except that Keet Health agrees to

promptly refund to Client the pro-rata portion of any fees prepaid by Client, amortized on a straight-line basis over the Term.

- 10.2 **Client Indemnity.** Client shall defend, indemnify and hold harmless Keet Health, its subsidiaries, Affiliates, officers, directors, agents, employees and assigns, from and against any and all Losses suffered or incurred by them in connection with any actual or threatened third-party claim arising out of (i) a breach by Client of this Agreement, (ii) Client's and/or its Authorized Users' use of the Services, (iii) Client's and/or its Providers' failure to comply with laws, rules, regulations or professional standards, or (iv) any End User's use of the Services.
- 10.3 **Mechanics of Indemnity.** The indemnifying Party's obligations are conditioned upon the indemnified Party: (i) giving the indemnifying Party prompt written notice of any claim, action, suit or proceeding for which the indemnified Party is seeking indemnity; (ii) granting control of the defense and, subject to the provisions of Section 10.4 below, settlement to the indemnifying Party; and (iii) reasonably cooperating with the indemnifying Party at the indemnifying Party's expense.
- 10.4 **Settlement of Indemnified Claims.** The indemnifying Party shall give prompt written notice to the indemnified Party of any proposed settlement of an indemnified claim. The indemnifying Party may not, without the prior written consent of the indemnified Party, which the indemnified Party shall not unreasonably withhold, condition or delay, settle or compromise any claim or consent to the entry of any judgment with respect to which indemnification is being sought hereunder unless such settlement, compromise or consent: (a) includes an unconditional release of the indemnified Party from all liability arising out of such claim; (b) does not contain any admission or statement suggesting any wrongdoing or liability on behalf of indemnified Party; and (c) does not contain any equitable order, judgment or term (other than the fact of payment or the amount of such payment) that in any manner affects, restrains or interferes with the business of the indemnified Party.

## 11. **CONFIDENTIAL INFORMATION.**

- 11.1 Except as expressly permitted in this Section 11, no Party will, without the prior written consent of the other Party, disclose any Confidential Information of the other Party to any third party. Information will be considered Confidential Information of a Party if either (i) it is disclosed by the Party to the other Party in tangible form and is conspicuously marked "Confidential", "Proprietary" or the like; (ii) (a) it is disclosed by a Party to the other Party in non-tangible form and is identified as confidential at the time of disclosure; and (b) it contains the disclosing Party's customer lists, customer information, technical information, pricing information, pricing methodologies, or information regarding the disclosing Party's business planning or business operations; or (iii) due to the nature of the information, the receiving Party would reasonably understand it to be confidential information of the disclosing Party. In addition, notwithstanding anything in this Agreement to the contrary, the terms of this Agreement will be deemed Confidential Information of Keet Health. Keet Health may, in any manner, publicly announce the relationship with Client. Keet Health may also

develop, with Client's review and approval, a business use case that may be used for Keet Health's marketing purposes.

- 11.2 Other than the terms and conditions of this Agreement, information will not be deemed Confidential Information hereunder if such information: (i) is known to the receiving Party prior to receipt from the disclosing Party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing Party; (ii) becomes known (independently of disclosure by the disclosing Party) to the receiving Party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing Party; (iii) becomes publicly known or otherwise ceases to be secret or confidential, except through a breach of this Agreement by the receiving Party; or (iv) is independently developed by the receiving Party. In the event of a dispute, the receiving Party shall have the burden of proving that one of the foregoing exceptions applies.
- 11.3 Each Party will secure and protect the Confidential Information of the other Party (including, without limitation, the terms and conditions of this Agreement) in a manner consistent with the steps taken to protect its own trade secrets and confidential information, but, in any event, not less than a commercially reasonable degree of care. Each Party may disclose the other Party's Confidential Information where (i) the disclosure is required by applicable law or regulation or by an order of a court or other governmental body having jurisdiction after giving reasonable notice to the other Party with adequate time for such other Party to seek a protective order; (ii) in the opinion of counsel for such Party, disclosure is advisable under any applicable securities laws regarding public disclosure of business information; or (iii) the disclosure is reasonably necessary and is to that Party, or its Affiliates', employees, officers, directors, attorneys, accountants and other advisors, or the disclosure is otherwise necessary for a Party to exercise its rights and perform its obligations under this Agreement, so long as in all cases the disclosure is no broader than necessary and the person or entity who receives the disclosure agrees prior to receiving the disclosure to keep the information confidential consistent with the terms of this Agreement. Each Party is responsible for ensuring that any Confidential Information of the other Party that the first Party discloses pursuant to this Section 11 (other than disclosures pursuant to clauses (i) and (ii) above that cannot be kept confidential by the first Party) is kept confidential by the person receiving the disclosure.

## 12. GENERAL PROVISIONS.

- 12.1 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to the choice of law provisions thereof. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.
- 12.2 **Dispute Resolution.** Any contract dispute or claim arising out of, or in connection with, this Agreement shall be finally settled by binding arbitration in Multnomah County, Oregon, and the then current rules and procedures of the American Arbitration Association by one (1) arbitrator according to the American Arbitration Association Commercial Arbitration Rules. The arbitrator shall apply the law of the State of

Delaware, without reference to rules of conflict of law or statutory rules of arbitration, to the merits of any dispute or claim. Judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction. Notwithstanding the foregoing, nothing herein shall preclude either Party from seeking emergency injunctive relief in any state or federal court of competent jurisdiction without first complying with the arbitration provisions of this Section.

- 12.3 **Severability.** If any provision of this Agreement is held to be invalid or unenforceable for any reason, it shall be deemed omitted and the remaining provisions will continue in full force without being impaired or invalidated in any way. The Parties agree to replace any invalid provision with a valid provision that most closely approximates the intent and economic effect of the invalid provision.
- 12.4 **Waiver.** The waiver by either Party of a breach of any provision of this Agreement will not operate or be interpreted as a waiver of any other or subsequent breach.
- 12.5 **Assignment.** This Agreement shall be binding upon the Parties' respective successors and permitted assigns. Client shall not assign this Agreement, and/or any of its rights and obligations hereunder, without the prior written consent of Keet Health, which consent shall not be unreasonably withheld. This Agreement, and the rights and obligations herein, may be assigned by Keet Health to any person or entity without the written consent of the Client.
- 12.6 **Independent Contractors.** Keet Health is acting in performance of this Agreement as an independent contractor, and this Agreement shall not be construed to create any association, partnership, joint venture, employee or agency relationship between Keet Health and Client for any purpose.
- 12.7 **Notices.** All notices required to be given under the terms of this Agreement or which any of the Parties hereto may desire to give hereunder, shall be in writing, shall be delivered via one of the following methods, and shall be deemed to have been received: (i) on the day given delivered by hand (securing a receipt evidencing such delivery); or (ii) on the second day after such notice is sent by a nationally recognized overnight or two (2) day air courier service, full delivery cost paid; or (iii) on the fifth day after such notice was mailed, registered U.S. mail, postage prepaid, return receipt requested, and addressed to the Party to be notified at the address set forth for such Party in the Service Order.
- 12.8 **Survival.** All provisions of this Agreement relating to proprietary rights, payment of fees accrued, confidentiality and non-disclosure, indemnification and limitation of liability shall survive the completion of the Services or any termination or expiration of this Agreement.
- 12.9 **Legal Fees.** In the event of any proceeding or lawsuit brought by Keet Health or Client in connection with this Agreement, the prevailing Party shall be entitled to recover its costs and legal fees (including, but not limited to, allocated costs of in-house legal counsel and any legal fees incurred on appeal).

- 12.10 **Force Majeure.** Neither Party will be liable to the other for failure to meet its obligations under this Agreement where such failure is caused by events beyond its reasonable control, such as fire, failure of communications networks, riots, civil disturbances, embargos, storms, acts of terrorism, pestilence, war, floods, tsunamis, earthquakes or other Acts of God.
- 12.11 **Subsequent Modifications.** No amendment, alteration or modification of this Agreement shall be effective or binding unless it is set forth in a writing signed by duly authorized representatives of both Parties.
- 12.12 **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties in connection with the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, of the Parties, and there are no warranties, representations and/or agreements among the Parties in conjunction with the subject matter hereof except as set forth in this Agreement. This Agreement expressly contemplates that the Parties may enter additional Service Orders.

## **BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement (“Business Associate Agreement”), is entered into as of the date of the Terms of Service by and between Keet Inc., and Client, each a “Party” and collectively the “Parties” to the Terms of Service.

WHEREAS, Sections 261 through 264 of the federal Health Insurance Portability and Accountability Act (“HIPAA”) of 1996, Public Law 104-191, known as “the Administrative Simplification provisions,” direct the Department of Health and Human Services to develop standards to protect the security, confidentiality and integrity of health information; and

WHEREAS, pursuant to the Administrative Simplification provisions, the Secretary of Health and Human Services issued regulations modifying 45 C.F.R. Parts 160 and 164, subparts C, D, and E (the “HIPAA Security Rule”, “Breach Notice Rule”, and “Privacy Rule”, respectively); and

WHEREAS, the American Recovery and Reinvestment Act (“ARRA”) of 2009 (Pub. L. 111-5), pursuant to Title XIII of Division A and Title IV of Division B, called the “Health Information Technology for Economic and Clinical Health” (“HITECH”) Act, provides modifications to the HIPAA Security and Privacy Rule (hereinafter, all references to the HIPAA Security Rule, Breach Notice Rule, or Privacy Rule are deemed to include all amendments to such rule contained in the HITECH Act and any accompanying regulations, and any other subsequently adopted amendments or regulations); and

WHEREAS, Keet Health and Covered Entity wish to enter into an arrangement whereby Keet Health will provide certain services to Covered Entity (“Services”) to Covered Entity under the terms of the Master Business Agreement between Business Associate and Covered Entity (“Agreement”), and, pursuant to such arrangement, Keet Health may be considered a “business associate” of Covered Entity as defined in HIPAA or the HIPAA Security Rule, Breach Notice Rule or Privacy Rule; and

WHEREAS, Business Associate may have access to Protected Health Information (“PHI”), as defined below, in fulfilling its responsibilities under such arrangement; and

Therefore, in consideration of the Parties’ obligations under law and pursuant to their arrangement set forth in the Agreement, for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Keet Health and Covered Entity hereby agree to the terms and conditions of this Business Associate Agreement.

### **Article 1 Definitions**

Terms used but not otherwise defined in this Business Associate Agreement shall have the same meaning as the meaning ascribed to those terms in the Health Information Portability and Accountability Act of 1996, codified as 42 U.S.C. § 1320d (“HIPAA”), the Health Information Technology Act of 2009, as codified at 42 U.S.C.A. prec. § 17901 (the “HITECH” Act), and any current and future regulations promulgated under HIPAA or HITECH.

1.1 **“Breach”** shall mean the actual or attempted acquisition, access, use or disclosure of Protected Health Information in a manner not permitted under 45 C.F.R. Part 164, Subpart E (the “HIPAA Privacy Rule”) which compromises the security or privacy of the Protected Health Information.

1.2 **“Electronic Protected Health Information”** or **“Electronic PHI”** means “electronic protected health information: as defined in 45 C.F.R. § 160.103 but limited to the Electronic PHI created, received, maintained, or transmitted by Business Associate on behalf of Covered Entity.

1.3 **“HIPAA Breach Notice Rule”** shall mean Notification in the Case of Breach of Unsecured Protected Health Information at 45 C.F.R. part 164, subpart D.

1.4 **“HIPAA Privacy Rule”** shall mean the Standards for Security of Individually Identifiable Health Information at 45 C.F.R. part 164, subpart E.

1.5 **“HIPAA Security Rule”** shall mean the Standards for Security of Individually Identifiable Health Information at 45 C.F.R. part 164, subpart C.

1.6 **“Protected Health Information”** or **“PHI”** shall have the same meaning as the term “protected health information” in 45 C.F.R. § 160.103, limited to the information created or received by Business Associate for or on behalf of Covered Entity including, but not limited to Electronic PHI.

1.7 **“Unsecured Protected Health Information”** or **“Unsecured PHI”** shall mean Electronic PHI that is not secured using technology or methodology specified by the Secretary in regulations or as otherwise defined in the HIPAA Breach Notice Rule.

## **Article 2**

### **Obligations and Activities of Business Associate**

2.1 **General Use or Disclosure of PHI.** Business Associate agrees not to use or disclose PHI other than as necessary to render services, as permitted or required by this Business Associate Agreement, or as Required by Law.

2.2 **Limited Use or Disclosure of PHI.** Business Associate will not sell PHI or use or disclose PHI for marketing or fundraising purposes. In addition, and except as otherwise permitted or limited by this Business Associate Agreement, Business Associate will not use or further disclose Protected Health Information for any purpose other than:

(a) to perform the services to or on behalf of Covered Entity, provided that such use or disclosure would violate (i) the HIPAA Privacy Rule if made by Covered Entity, or (ii) the minimum necessary policies and procedures of Covered Entity if those policies and procedures have been disclosed to Business Associate; or

(b) for the proper management and administration of Business Associate or in accordance with its legal responsibilities, provided that for any such disclosure:

(i) the disclosure is Required by Law; or

(ii) Business Associate obtains reasonable assurances from the recipient of PHI that the PHI will remain confidential and will be used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the recipient, and the recipient will notify Business Associate of any instances of which it is aware in which the confidentiality of the PHI has been breached.

**2.3 Subcontractors.** Business Associate agrees that any Subcontractor that creates, receives, maintains, or transmits PHI for or on behalf of Business Associate agrees to comply with the HIPAA Security Rule and to the same restrictions and conditions that apply through this Business Associate Agreement to Business Associate with respect to such PHI and Electronic PHI.

**2.4 Safeguards.** Business Associate agrees to implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of any Electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of Covered Entity and comply with applicable provisions of the HIPAA Security and Privacy Rule.

**2.5 Mitigation.** Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Unsecured Protected Health Information by Business Associate or its Subcontractors in violation of this Business Associate Agreement.

**2.6 Compliance.** Business Associate will comply with all applicable requirements of the HIPAA Privacy Rule, including those contained in 45 C.F.R. §§ 164.502(e) and 164.504(e)(1)(ii). Business Associate will not directly or indirectly receive remuneration in exchange for any PHI, subject to the exceptions contained in the HIPAA Privacy Rule, without a valid authorization from the applicable Individual. In addition, Business Associate will comply with all applicable requirements of the HIPAA Security Rule.

**2.7 Notice of Use or Disclosure, Security Incident or Breach.** Business Associate agrees to notify Covered Entity of any use or disclosure of Unsecured PHI by Business Associate or its Subcontractors as required by the HIPAA Breach Notice Rule. Business Associate is under no other obligation to make any report of a Breach of Unsecured PHI, including to any individual, government agency, or the media.

**2.8 Access.** Business Associate agrees to provide to Covered Entity upon its written request all PHI that has been identified by Covered Entity as part of a Designated Record Set, is not subject to any legally enforceable nondisclosure or confidentiality order, and is necessary for the Covered Entity to respond to an Individual's request for access to PHI pursuant to 45 C.F.R. § 164.524. If PHI subject to this paragraph is maintained electronically, Business Associate will provide the PHI in the requested electronic form and format, if it is readily producible in such form or format; if the PHI is not readily producible by Business Associate in the requested form and format, Business Associate will provide the PHI to Covered Entity in a readable electronic form as agreed by Covered Entity and Business Associate.

**2.9 Restrictions.** Business Associate agrees to comply with any requests for restrictions on certain disclosures of Protected Health Information pursuant to 45 C.F.R. § 164.522 to which Covered Entity has agreed and of which Business Associate is notified by Covered Entity.

**2.10 Amendments.** Upon written instructions from Covered Entity, Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set agreed to by Covered Entity in accordance with 45 C.F.R. § 164.526.

**2.11 Disclosure of Practices, Books and Records.** Business Associate agrees to make internal practices, books and records relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity, available to Covered Entity or the Secretary in a time and manner designated by the Covered Entity or Secretary, for the purposes of the Secretary in determining the Covered Entity's compliance with HIPAA.

**2.12 Accounting.** Business Associate agrees to document any disclosures of PHI and to provide to Covered Entity upon written request, within a reasonable time and in a reasonable manner, information related to such disclosures as necessary for Covered Entity to respond to a request by an Individual of an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528. Business Associate shall not be obligated to respond to an individual's request for an accounting of disclosures of PHI that is made by the individual directly to Business Associate.

**2.13 Minimum Necessary.** Business Associate agrees to limit its uses and disclosures of, and requests for, PHI (a) when practical, to the information making up a Limited Data Set; and (b) in all other cases subject to the requirements of 45 C.F.R. § 164.502(b), to the minimum amount of PHI necessary to accomplish the intended purpose of the use, disclosure or request.

### **Article 3 Obligations of Covered Entity**

**3.1 Notice of Privacy Practices.** Covered Entity shall notify Business Associate of any limitations in Covered Entity's Notice of Privacy Practices that may affect Business Associate's use or disclosure of PHI.

**3.2 Changes in the Use of PHI.** Covered Entity shall notify Business Associate of any changes in, or revocation of, permission granted by any Individual to use or disclose PHI, to the extent such changes or revocation affects Business Associate's use or disclosure of PHI.

**3.3 Restrictions on Use of PHI.** Covered Entity shall notify Business Associate of any restrictions on the use or disclosure of PHI or requests for confidential communications to which Covered Entity has agreed in accordance with 45 C.F.R. § 164.522, to the extent such restrictions may affect Business Associate's use or disclosure of PHI.

**3.4 Appropriate Requests.** Except as otherwise provided in this Business Associate Agreement, Covered Entity will not ask Business Associate to use or disclose PHI in any manner that would violate HIPAA if done by Covered Entity.

### **Article 4 Term and Termination**

**4.1 Term.** The Term of this Business Associate Agreement shall be effective as of the Effective Date of the Agreement and shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this section.

**4.2 Termination for Cause.** Upon either Party's determination that the other Party has committed a material breach of this Business Associate Agreement, the non-breaching Party may take one of the following steps:

(a) Provide an opportunity for the breaching Party to cure the material breach or end the violation, and if the breaching Party does not cure the material breach or end the violation within a reasonable time, terminate this Business Associate Agreement; or

(b) Immediately terminate this Business Associate Agreement if the other Party has committed a material breach of this Agreement and cure of the material breach is not possible.

(c) If neither termination nor cure is feasible, report the violation to the Secretary.

**4.3 Disposition of PHI upon Termination or upon Request.**

(a) Upon termination of this Business Associate Agreement, for any reason, or upon request of Covered Entity, whichever occurs first, if feasible, Business Associate shall return or destroy all Protected Health Information created or received by Business Associate on behalf of Covered Entity which Business Associate still maintains in any form and retain no copies of such information. This provision shall apply to Protected Health Information that is in the possession of Subcontractors.

(b) It may not be feasible for Business Associate to return or destroy all copies of customer data constituting Protected Health Information. If both Parties agree that return or destruction are infeasible, Business Associate will extend the protections of this Business Associate Agreement to the information and limit further uses and disclosures solely to those purposes as originally intended under this Business Associate Agreement that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

**Article 5  
Miscellaneous**

**5.1 No Third Parties; Survival.** Except as expressly stated herein or within HIPAA, the Parties to this Business Associate Agreement do not intend to create any rights in any third Parties. The respective rights and obligations of Business Associate under this Section shall survive the expiration, termination, or cancellation of this Business Associate Agreement, and/or the business relationship of the Parties, and shall continue to bind Business Associate, its agents, employees, contractors, successors, and assigns as set forth herein.

**5.2 Amendment.** The Parties agree to take such action as is necessary to amend this Business Associate Agreement from time to time as is necessary for Business Associate to comply with the requirements of HIPAA and any other applicable regulations.

**5.3 Interpretation.** Any ambiguity in this Business Associate Agreement shall be resolved in favor of a meaning that permits Business Associate to comply with the applicable portions of HIPAA.

**5.4 Prior Agreement.** This Business Associate Agreement shall replace and supersede any prior Business Associate Agreement between the Parties.

**5.5 Notices.** Except as otherwise specified herein, all notices, demands or communications required under this Business Associate Agreement shall be in writing and delivered personally, or sent either by U.S. certified mail, postage prepaid return receipt requested, or by overnight delivery air courier (e.g., Federal Express) to the Parties at their respective addresses set forth above in this Business Associate Agreement. All such notices, requests, demands, or communications shall be deemed effective immediately upon receipt.

**5.6 Entire Agreement, Amendments, Assignment, Relationship, Waiver, Governing Law.** This Business Associate Agreement is the entire agreement between the Parties about the subject matter herein and this Business Associate Agreement may be amended or modified only in a writing signed by the Parties. Either Party may assign, sublicense, delegate or transfer all or any portion of its rights or responsibilities under this Business Associate Agreement by operation of law or otherwise to any subsidiaries or affiliates thereof, or to any other Party, about a sale of the business related to this Business Associate Agreement. None of the provisions of this Business Associate Agreement are intended to create, nor will they be deemed to create any relationship between the Parties other than that of independent Parties contracting with each other solely for the purposes of effecting the provisions of this Business Associate Agreement and any other agreements between the Parties evidencing their business relationship. No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion. If any provision of this Business Associate Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the provisions of this Business Associate Agreement will remain in full force and effect. In addition, in the event a Party believes in good faith that any provision of this Business Associate Agreement fails to comply with the then-current requirements of HIPAA, such Party shall notify the other Party in writing. For a period of up to thirty (30) days, the Parties shall address in good faith such concern and amend the terms of this Business Associate Agreement, if necessary, to bring it into compliance. If, after such thirty (30)-day period, the Agreement fails to comply with HIPAA, then either Party has the right to terminate upon written notice to the other Party.

**5.7 Execution.** This Business Associate Agreement will be deemed effective as of the Effective Date of the fully executed Agreement by the Parties.