

## Terms and Conditions – February 7, 2022

ClearCare, Inc.  
Software as a Service (SaaS) License Agreement  
Terms and Conditions

These terms and conditions apply to any document or agreement (“Agreement”) made by and between ClearCare, Inc. (“ClearCare”), a Delaware corporation, located at 150 Spear Street, Suite 1550, San Francisco, CA 94105, and its customer (“Customer”) that incorporates these terms and conditions by reference. References to the “Agreement” include these terms and conditions. The effective date of the Agreement is referred to herein as the “Effective Date”.

### 1. DEFINITIONS.

1.1 “Affiliate” means any entity which directly or indirectly controls, is controlled by, or is under common control with the subject entity, where “control” (and its variants, including “controls,” “controlled by,” and “under common control with”) means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

1.2 “Client” means a person who during a specified period receives care from Customer or from any Customer Affiliate.

1.3 “ClearCare Group” means ClearCare, its Affiliates and their successors-in-interest.

1.4 “Customer’s Data” means all electronic data or information submitted by Customer to the Product Offering but excluding Deidentified Data (as defined below).

1.5 “Deidentified Data” means Customer’s Data that is deidentified by the ClearCare Group and such deidentification is certified by a third-party as compliant with the deidentification standards under HIPAA or otherwise meets the deidentification requirements under HIPAA ( “Deidentified Data”).

1.6 “Malicious Code” means viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs.

1.7 “Order Form” means the order form, cover page or other document that incorporates these terms and conditions by reference.

1.8 “Product Offering” means the online, web-based applications and platform provided by ClearCare at <http://www.clearcareonline.com> (and/or other designated websites as described in the User Guide or another URL as specified by ClearCare from time to time) as further described on the Order Form, but excluding Third Party Applications.

1.9 “Third-Party Applications” means online, Web-based applications and offline software products that are provided by third parties, interoperate with the Product Offering, and are identified as third-party applications.

1.10 “User Guide” means the online user guide for the Product Offering, accessible via <http://www.clearcareonline.com>, as updated from time to time.

1.11 "Users" means individuals who are authorized by Customer to use the Product Offering, and who have been supplied user identifications and passwords by Customer (or by ClearCare at Customer's request). Users may include, but are not limited to, Customer's employees, consultants, contractors and agents, third parties with which Customer transact business, Clients, Client family members and other service providers to the Clients such as a Client's physician, trust manager or geriatric care manager.

## 2. PRODUCT OFFERING.

2.1 Provision of Product Offering. Subject to the terms and conditions of this Agreement, ClearCare shall make the Product Offering available to Customer pursuant to this Agreement during the term of this Agreement.

2.2 Client Subscriptions. Unless otherwise specified on the Order Form, (i) the Product Offering is purchased based on the higher of the number of Clients of Customer or the Minimum Billable Clients (set forth on the Order Form) and a subscription must be purchased for each Client of Customer, (ii) additional Clients shall be added during the term at the pricing then in effect at the time the additional Clients are added, and (iii) use of the Product Offering for all Clients (including added Clients) will terminate on the termination date of this Agreement. A Client subscription cannot be shared or used by more than one Client.

## 3. USE OF THE PRODUCT OFFERING

3.1 ClearCare's Responsibilities. ClearCare shall: (i) provide to Customer the ClearCare standard, basic training with respect to the use of the Product Offering including up to 150 minutes of training and support in month one of the Initial Term and 30 minutes of support in each additional month at no additional charge, and, if purchased separately, additional support at the price of \$1 per minute; wherein unused minutes do not accrue from month to month; wherein cancelled or missed appointments will be accounted for as 30 minutes of training and support, (ii) use commercially reasonable efforts to make the Product Offering available 24 hours a day, 7 days a week, except for: (a) planned downtime (of which ClearCare shall give at least eight hours' notice via the Product Offering and which ClearCare shall schedule to the extent practicable during the weekend hours from 6:00 p.m. Pacific time Friday to 3:00 a.m. Pacific time Monday), or (b) any unavailability caused by circumstances beyond ClearCare's reasonable control, including, without limitation, acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems (other than those involving ClearCare's employees), or Internet service provider failures or delays, and (iii) provide the Product Offering only in accordance with applicable laws and government regulations.

3.2 Customer's Responsibilities. Customer (i) is responsible for Users' and its Affiliates' compliance with this Agreement, (ii) is solely responsible for Customer's compliance with applicable federal and state laws and regulations with respect to use of the Product Offering (iii) is solely responsible for the accuracy, quality, integrity and legality of Customer's Data and of the means by which Customer acquired Customer's Data, (iv) shall use commercially reasonable efforts to prevent unauthorized access to or use of the Product Offering, and notify ClearCare promptly of any such unauthorized access or use, and (v) shall use the Product Offering only in accordance with the User Guide and applicable laws and government regulations. Customer shall not (a) make the Product Offering available to anyone other than Users, (b) sell, resell, rent or lease the Product Offering, (c) use the Product Offering to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material

in violation of third-party privacy rights, (d) use the Product Offering to store or transmit Malicious Code, (e) interfere with or disrupt the integrity or performance of the Product Offering or any data contained therein, or (f) attempt to gain unauthorized access to the Product Offering or their related data, systems or networks. CUSTOMER ACKNOWLEDGES THAT THE PROPER PROVISION OF CARE TO CUSTOMER'S CLIENTS IS SOLELY CUSTOMER'S RESPONSIBILITY AND THAT THE PRODUCT OFFERING IS DESIGNED TO BE USED IN CONJUNCTION WITH OTHER PROCESSES AND PROCEDURES TO ENSURE PROPER PROVISION OF CARE UNDER ANY CIRCUMSTANCES, INCLUDING UNANTICIPATED FAILURE OF THE PRODUCT OFFERING. AS SUCH, CUSTOMER SHALL MAINTAIN PAPER VERSIONS OF UPDATED CARE PLANS AND SCHEDULES AND TO PROVIDE THOSE PLANS AND SCHEDULES TO CAREGIVERS REGULARLY TO ENSURE THAT PROPER CARE IS PROVIDED TO CUSTOMER'S CLIENTS UNDER ANY AND ALL CIRCUMSTANCES. CUSTOMER FURTHER ACKNOWLEDGES THAT PRODUCT OFFERING IS A TOOL AND ITS COMPLIANCE WITH ANY RULE AND REGULATIONS IS NOT GUARANTEED. CLEARCARE IS NOT PROVIDING PRODUCT OFFERING AS A REGULATED OR COVERED ENTITY. CUSTOMER IS SOLELY AND EXCLUSIVELY RESPONSIBLE FOR ENSURING THAT THEIR USE OF THE PRODUCT OFFERING IS COMPLIANT WITH ALL APPLICABLE LAWS, RULES AND REGULATIONS.

3.3 Number of Clients and Initial Data Entry. ClearCare will perform initial data entry of names and contact information of Customer's Clients and caregivers as of the Effective Date, referenced by the "Initial Number of Clients" set forth in the Order Form, provided that said data is provided to ClearCare in Excel format. The Initial Number of Clients is the number of clients that will be receiving care in the month immediately after the Effective Date. Data to be entered must be provided to ClearCare within the first ten days of the Initial Term and will not deduct from free training and support time specified in Section 3.1. ClearCare provides data entry as a courtesy. Customer is responsible for reviewing the accuracy of all data entered by ClearCare.

#### 4. LICENSES.

4.1 Product Offering. Subject to the terms and conditions of this Agreement, ClearCare hereby grants to Customer a limited, non-exclusive, non-transferable (except as permitted by Section 14 below) license, without the right to sublicense, to use the Product Offering solely for its own internal business purposes.

4.2 Customer Content. Customer hereby grants to ClearCare a non-exclusive, perpetual license, with the right to sublicense: (a) to use the Customer's Data in connection with the provision of the Product Offering; (b) to use the Customer Data to create Deidentified Data. ClearCare Group shall own such Deidentified Data. Customer authorizes ClearCare Group to aggregate Customer Data with other ClearCare Group customer's data for the creation and maintenance of consumer or patient health records. Customer shall include a description of the disclosure to ClearCare in Customer's privacy policies and shall notify ClearCare promptly of any Client's request to opt-out of such disclosure.

#### 5. THIRD PARTY PROVIDERS.

5.1 Acquisition of Third-Party Products and Product Offering. ClearCare may offer Third-Party Applications for sale. Any acquisition by Customer of third party products or services, including, but not limited to, Third-Party Applications and implementation, customization and other consulting services, and any exchange of data between Customer and any third party provider, is solely between Customer and the applicable third party vendor or provider. ClearCare does not warrant or support third party

products or services, whether or not they are designated by ClearCare as “certified” or otherwise. No purchase of third party products or services is required to use the Product Offering.

5.2 Third-Party Applications and Customer’s Data. If Customer installs or enables Third-Party Applications for use with Product Offering, Customer acknowledge that ClearCare may allow providers of those Third-Party Applications to access Customer’s Data as required for the interoperation of the Third-Party Applications with the Product Offering. ClearCare is not responsible for any disclosure, modification or deletion of Customer’s Data resulting from any access by Third-Party Application providers. The Product Offering will allow Customer to restrict that access by restricting Users from installing or enabling Third-Party Applications for use with the Product Offering.

## 6. PROPRIETARY RIGHTS.

6.1 Reservation of Rights. Subject to the limited rights expressly granted hereunder, ClearCare reserves all rights, title and interest in and to the Product Offering, including all related intellectual property rights. No rights are granted to Customer hereunder other than as expressly set forth herein. There are no implied rights.

6.2 Restrictions. Customer shall not (i) permit any third party to access the Product Offering except as expressly permitted herein or on the Order Form, (ii) modify or create derivate works of the Product Offering, (iii) copy, frame or mirror any part or content of the Product Offering, other than copying or framing on Customer’s own intranets or otherwise as reasonably required for Customer’s own internal business purposes, (iv) reverse engineer, decompile, disassemble or otherwise attempt to discover the source code or underlying ideas or algorithms of the Product Offering, (v) remove any proprietary notices from the Product Offering or any other ClearCare materials furnished or made available hereunder, or (vi) access the Product Offering in order to (a) build a competitive product or service, or (b) copy any features, functions or graphics of the Product Offering.

6.3 Ownership of Customer’s Data. As between ClearCare and Customer, Customer exclusively own all rights, title, and interest in and to all of Customer’s Data.

6.4 Suggestions. Customer hereby grants ClearCare a royalty-free, worldwide, transferable, sublicensable, irrevocable, perpetual license to use or incorporate into the Product Offering any suggestions, enhancement requests, recommendations or other feedback provided by Customer, including Users, relating to the operation of the Product Offering.

## 7. FEES AND TAXES; PAYMENT.

7.1 User Fees. Customer shall pay ClearCare the fees described in this Section 7.1. On the Effective Date, Customer shall pay a fee equal in amount to the Initial Payment Amount set forth on the Order Form. In addition, Customer shall pay all fees specified on the Order Form. Unless otherwise instructed by Customer, each Client will be established at the base level of the Product Offering (i.e., the “ClearCare Platform” level). Except as otherwise specified herein or on the Order Form, (i) fees are quoted and payable in United States dollars (ii) fees are based on the number of Clients and not actual usage, (iii) payment obligations are non-cancelable and fees paid are non-refundable (except as expressly set forth in Section 10.1), and (iv) the number of Client subscriptions must equal the highest number of Clients of Customer during the applicable period. Subscription fees are based on monthly periods that begin on the Effective Date and each monthly anniversary thereof; therefore, fees for Client subscriptions added

in the middle of a monthly period will be charged for that full monthly period and the monthly periods remaining in the term. For purposes of billing, the number of Client subscriptions billed will be equal to the highest number of concurrently active or billed Clients of Customer in the applicable period.

7.2 Invoicing and Payment. Except as otherwise agreed to by the parties in writing, invoicing and payment shall be handled by the parties in accordance with this Section 7.2. Customer shall provide ClearCare with valid and updated credit card information. Customer hereby authorizes ClearCare to charge that credit card for the Product Offering during the term of this Agreement. Without limiting Customer's rights under this Agreement, or at law, all payments by Customer are non-refundable (except as expressly set forth in Section 10.1). For payments made by Customer, upon request ClearCare will provide a receipt evidencing payment. Customer is responsible for maintaining complete and accurate billing and contact information in the Product Offering. Customer is also responsible for providing updated credit card information should a new card issue or an account close or change.

7.3 Overdue Charges. Except as otherwise agreed to by the parties in writing, if any payment is not received from Customer when due, then, at ClearCare's discretion, (a) such charges may accrue late interest at the rate of 2.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date the payment was due until the date paid, and (b) ClearCare may require future payments to be made in advance.

7.4 Suspension of Product Offering and Acceleration. If any amount owing under this Agreement or any other agreement for ClearCare's services is five or more days past due, ClearCare may, without limiting ClearCare's other rights and remedies, accelerate Customer's unpaid fee obligations under this Agreement and the other agreements so that all such obligations become immediately due and payable, and suspend ClearCare's Product Offering to Customer until such amounts are paid in full.

7.5 Taxes. Unless otherwise expressly stated, ClearCare's fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including but not limited to value-added, sales, use or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction (collectively, "Taxes"). Customer is responsible for paying all Taxes associated with Customer's purchases in connection with this Agreement. If ClearCare has the legal obligation to pay or collect Taxes for which Customer are responsible under this paragraph, the appropriate amount will be invoiced to and paid by Customer, unless Customer provide ClearCare with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, ClearCare is solely responsible for taxes assessable against it based on ClearCare's income, property and employees.

## 8. TERM AND TERMINATION.

8.1 Term of Agreement. This Agreement commences on the Effective Date and, unless terminated sooner as provided herein, continues for the initial term specified on the Order Form ("Initial Term"). Following the end of the Initial Term, this Agreement will renew for renewal terms as specified on the Order Form (each, a "Renewal Term") unless either party notifies the other in writing of its intent not to renew this Agreement at least 90 days prior to the end of the then-current term. Fees for Renewal Terms will be the same unless otherwise set forth in the Order Form or unless ClearCare notifies Customer at least 100 days prior to the end of the then-current term that the fees will be increasing. In the event of such notice, the fees will be at ClearCare's prices set forth in its notice.

8.2 Termination for Cause. A party may terminate this Agreement for cause: (i) upon 30 days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, except that the cure period for non-payment is five days, or (ii) 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.

8.3 Early Termination. Notwithstanding anything in this Agreement, this Agreement may be terminated by Customer for convenience upon payment of all outstanding fees for the term of the contract. Customer acknowledges and agrees that (i) such payment is a genuine pre-estimate of the loss that ClearCare would incur upon Customer's premature termination of this Agreement because ClearCare will allocate substantial staff and other resources to serve Customer, and ClearCare would incur substantial costs in reallocating such staff and other resources upon premature termination by Customer; and (ii) such payment is not a penalty. Any dispute, claim or controversy arising out of or relating to early termination by the Customer or the breach, termination, enforcement, interpretation or validity of this Section 8.3, including the determination of the scope or applicability of this Section 8.3, shall be submitted to and determined by final and binding arbitration in San Francisco, CA before one arbitrator. The arbitration shall be administered by JAMS pursuant to JAMS' Streamlined Arbitration Rules and Procedures. Judgment on the award may be entered in any court having jurisdiction. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction. In the event any proceeding or lawsuit is brought by either party in connection with an early termination by the Customer or the breach, termination, enforcement, interpretation or validity of this Section 8.3, including the determination of the scope or applicability of this Section 8.3, the prevailing party in the proceeding is entitled to receive its costs, expert witness fees and reasonable attorneys' fees, including costs and fees on appeal.

8.4 Effect of Termination. Upon any termination for cause by ClearCare, Customer shall, as a reasonable estimate of the actual damages and not a penalty, pay an amount equal to the fees that would be due over the remainder of the then-current term. In no event will any termination relieve Customer of the obligation to pay the fees payable to ClearCare for the period prior to the effective date of termination.

8.5 Return of Customer's Data. Upon request by Customer made within 30 days after the effective date of termination of this Agreement, ClearCare will make available to Customer for download a file of Customer's Data client and caregiver profile data in comma separated value (.csv). After that 30-day period, ClearCare has no obligation to maintain or provide any of Customer's Data and may thereafter, unless legally prohibited, delete all of Customer's Data in ClearCare's systems or otherwise in ClearCare's possession or under ClearCare's control.

8.6 Surviving Provisions. The provisions that by their nature continue and survive, including those of Section 4.2 (Customer Content), Section 6 (Proprietary Rights), 7 (Fees and Taxes; Payment), 8.3 (Early Termination), 8.4 (Effect of Termination), 8.5 (Return of Customer's Data), 8.6 (Surviving Provisions), 8.7 (Non-exclusive Remedy), 9 (Confidentiality), 10 (Warranty), 11 (Indemnification), 12 (Limitation of Liability), and 14 (General) shall survive any termination or expiration of this Agreement.

8.7 Non-exclusive Remedy. Termination or expiration of this Agreement, in part or in whole, shall not limit either party from pursuing other remedies available to it, nor shall either party be relieved of its obligation to pay all fees that are due and owing under this Agreement through the effective date of

termination. Neither party will be liable to the other for any damages resulting from termination as permitted herein.

## 9. CONFIDENTIALITY.

9.1 Definition of Confidential Information. As used herein, "Confidential Information" means all non-public information disclosed by a party ("Disclosing Party") to the other party ("Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Confidential Information does not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.

9.2 Protection of Confidential Information. Except as otherwise permitted in writing by the Disclosing Party, the Receiving Party shall (i) use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care) not to disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, (ii) use any Confidential Information of the Disclosing Party solely to perform this Agreement or exercise rights hereunder, and (iii) limit access to Confidential Information of the Disclosing Party to those of its employees, contractors and agents who need such access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein.

9.3 Protection of Customer's Data. Without limiting the above, ClearCare shall maintain industry standard administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Customer's Data. ClearCare shall not (a) modify Customer's Data, (b) disclose Customer's Data except as compelled by law, as expressly permitted by this Agreement or as expressly permitted in writing by Customer, or (c) access Customer's Data except to provide the Product Offering or prevent or address service or technical problems, or at Customer's request in connection with customer support matters.

9.4 Compelled Disclosure. The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to such Confidential Information.

9.5 Terms of Agreement. The parties agree that the terms of this Agreement are considered Confidential Information of both parties. Each party may provide a copy of this Agreement in confidence to its advisors, counsel, any bona fide potential investor, investment banker, acquirer, merger partner or other potential financial partner, or as required by the governmental action, including action by the

United States Securities Exchange Commission or its equivalent, and in connection with legal action or proceedings concerning this Agreement.

## 10. WARRANTY.

10.1 ClearCare's Warranties. ClearCare warrants to Customer that (i) the Product Offering shall perform materially in accordance with the User Guide, and (ii) the functionality of the Product Offering will not be materially decreased during a subscription term. For any breach of either such limited warranty, Customer's exclusive remedy shall be for ClearCare, at ClearCare's option, to: (i) correct the issue so that the Product Offering performs as warranted at no additional cost to Customer within a reasonable period of time or (ii) (x) refund fees paid to ClearCare for the Product Offering for the period of time after Customer gives ClearCare written notice of the breach of such limited warranty and (y) terminate this Agreement upon notice.

10.2 Customer Warranties. Except if Customer and ClearCare have previously executed with each other a Business Associate Agreement, Customer hereby represents and warrants that (a) it has the right to share Customer Data with ClearCare, its privacy policies permit it to grant the rights it grants hereunder, and such sharing does not violate any state or federal laws; and (b) it is not a Covered Entity or a Business Associate of a Covered Entity, each as defined in HIPAA, and is not performing a service for which applicable state laws require a license (e.g. nursing or medical services). Customer agrees that if it is determined that it is a Covered Entity, Customer will notify ClearCare immediately, and the Parties will negotiate in good faith ClearCare's then-current business associate agreement, provided, however, that ClearCare shall be permitted to continue to use any Deidentified Data created prior to entering into such business associate agreement unless otherwise instructed by an applicable regulatory authority. By providing Customer Data, Customer represents that Clients whose personally identifiable information is included in such provided Customer Data have either consented, where such consent is required, or not opted-out after proper notice of the disclosure to ClearCare and the use by ClearCare in the manner described in this Section 10.2.

10.3 Mutual Warranties. Each party represents and warrants to the other that (i) it has the legal power to enter into this Agreement, and (ii) it will not transmit to the other party any Malicious Code (except for Malicious Code previously transmitted to the warranting party by the other party).

10.4 Disclaimer. EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS AND EXCLUDES ALL OTHER WARRANTIES, WHETHER STATUTORY, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS.

## 11. INDEMNIFICATION.

11.1 Customer Obligations. Customer shall defend the ClearCare Group against any cause of action, suit or proceeding (each a "Claim") made or brought against the ClearCare Group by a third party (a) alleging that Customer's Data, or Customer's use of the Product Offering in violation of this Agreement, infringes or misappropriates the intellectual property rights of a third party or violates applicable law, (b) arising out of or resulting from a breach by Customer of its representations or warranties set forth in Section 10.2, and for (a) and (b) shall indemnify the ClearCare Group for any damages finally awarded against,

and for reasonable attorney's fees incurred by, the ClearCare Group in connection with the Claim, on condition that the ClearCare Group (x) promptly gives Customer written notice of the Claim; (y) gives Customer sole control of the defense and settlement of the Claim (provided that Customer may not settle any Claim unless the settlement unconditionally release ClearCare of all liability); and (z) provides reasonable assistance in connection with the defense (at Customer's reasonable expense).

11.2 ClearCare Obligations. ClearCare shall defend Customer against any Claim made or brought against Customer by a third party alleging that Customer's use of the Product Offering infringes or misappropriates the intellectual property rights of a third party or violates applicable law, and shall indemnify Customer for any damages finally awarded against, and for reasonable attorney's fees incurred by, Customer in connection with the Claim, on condition that Customer (a) promptly gives ClearCare written notice of the Claim; (b) gives ClearCare sole control of the defense and settlement of the Claim (provided that ClearCare may not settle any Claim unless the settlement unconditionally release Customer of all liability); and (c) provides reasonable assistance in connection with the defense (at ClearCare's reasonable expense).

11.3 Exclusive Remedy. This Section 11 (Indemnification) states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any type of claim described in this Section. Notwithstanding the foregoing, Clear Care may terminate this Agreement upon 30 days prior written notice if the Product Offering infringes and Clear Care determines it cannot otherwise practically cure such infringement.

## 12. LIMITATION OF LIABILITY.

12.1 Limitation on Liability. IN NO EVENT SHALL AGGREGATE LIABILITY OF CLEARCARE ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE LESSER OF \$100,000 OR THE AMOUNT PAID BY CUSTOMER HEREUNDER IN THE 12 MONTHS PRECEDING THE INCIDENT, NOTWITHSTANDING ANY FAILURE OF THE ESSENTIAL PURPOSE OF THIS AGREEMENT OR ANY LIMITED REMEDY HEREUNDER.

12.2 Exclusion of Consequential and Related Damages. IN NO EVENT SHALL CLEARCARE HAVE ANY LIABILITY TO CUSTOMER FOR ANY LOST PROFITS OR REVENUES OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER OR PUNITIVE DAMAGES HOWEVER CAUSED, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING ANY FAILURE OF THE ESSENTIAL PURPOSE OF THIS AGREEMENT OR ANY LIMITED REMEDY HEREUNDER. THE FOREGOING DISCLAIMER SHALL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

12.3 Acknowledgement of Customer's Sole Responsibility for Customer's Services. CUSTOMER ACKNOWLEDGES THAT THE PROPER PROVISION OF CARE TO CUSTOMER'S CLIENTS IS SOLELY AND EXCLUSIVELY CUSTOMER'S RESPONSIBILITY AND CUSTOMER WILL NOT RELY SOLELY ON THE OFFERINGS OF CLEARCARE TO ENSURE PROPER FULFILLMENT OF CARE PLANS BY CUSTOMER'S CAREGIVERS. CUSTOMER AGREES TO MAKE REDUNDANT PRINTED COPIES OF ALL UPDATES TO CARE PLANS AND SCHEDULES ON A REGULAR BASIS AND TO MAKE THESE PRINTED PLANS AND SCHEDULES AVAILABLE TO CAREGIVERS TO ENSURE THAT PROPER CARE IS PROVIDED TO CUSTOMER'S CLIENTS UNDER ANY CIRCUMSTANCE WITHOUT REGARD TO THE FUNCTION OR PERFORMANCE OF THE PRODUCT OFFERING.

13. **MARKETING.** ClearCare may use Customer's name as part of a general list of customers and may refer to Customer as a user of the Product Offering in its advertising, marketing and promotional materials.

14. **GENERAL.** All notices to a party shall be in writing and sent to the addresses specified above or such other address as a party notifies the other party, and shall be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by confirmed facsimile; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested. Customer and ClearCare are independent contractors and neither party is the legal representative, agent, joint venturer, partner, franchisor, franchisee or employee of the other party for any purpose whatsoever. Neither party has any right or authority to assume or create any obligations of any kind or to make any representation or warranty on behalf of the other party, whether express or implied, or to bind the other party in any respect whatsoever. All indices, titles, subject headings, section titles and similar items contained in this Agreement are provided for the purpose of reference and convenience only and are not intended to be inclusive, definitive or to affect the meaning, content or scope of this Agreement. ClearCare and Customer acknowledge and agree that, unless explicitly stated to the contrary, this Agreement is for the sole benefit of the parties hereto and shall not be construed as a third-party beneficiary contract to confer on any person other than the parties hereto any legal or equitable rights hereunder. This Agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument. Neither party shall assign its rights under this Agreement nor delegate any performance (other than the right to receive payments) without the other party's prior written consent, except that ClearCare may, without Customer's consent, assign this Agreement to an affiliate or pursuant to a corporate reorganization, merger, acquisition or sale of all or substantially all of its assets to which this Agreement relates or other business combination transaction. Any attempted assignment in violation of this Section is void. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties and their respective successors and permitted assigns. The laws of the State of California (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Agreement. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement. The parties hereby submit to the jurisdiction of, and waive any venue objections against, the federal and state courts of San Francisco, California in all controversies arising out of, or relating to, this Agreement. Each remedy set forth herein shall be cumulative and in addition to any other remedy referred to above or otherwise legally available to a party. Except with respect to payment obligations, neither party is liable for any failure of performance or equipment due to causes beyond its reasonable control, including, but not limited to, the following: (i) acts of God, fire, flood, earthquake, tsunami, storm, or other catastrophes; (ii) any law, order, regulation, direction, action, or request of any governmental entity or agency, or any civil or military authority; (iii) national emergencies, insurrections, riots, wars or acts of terrorism; (iv) unavailability of rights-of-way or materials; or (v) strikes, lock-outs, work stoppages, or other labor difficulties. The parties may waive this Agreement only by a writing executed by the party or parties against whom the waiver is sought to be enforced. No failure or delay (a) in exercising any right or remedy, or (b) in requiring the satisfaction of any condition, (c) under this Agreement, and no act, omission or course of dealing between the parties, operates as a waiver or estoppel of any right, remedy or condition. A waiver made in writing on one occasion is effective only in that instance and only for the purpose stated. A waiver once given is not to be construed as a waiver on

any future occasion or against any other person. Customer shall comply with all applicable United States, foreign and local laws and regulations, including, without limitation, export control laws and regulations of the U.S. Export Administration. The parties may amend this Agreement only by a written agreement of the parties that identifies itself as an amendment to this Agreement. If any part of this Agreement is found invalid or unenforceable that part will be enforced to the maximum extent permitted by law and the remainder of this Agreement will remain in full force. This Agreement reflects the wording negotiated and accepted by the parties and no rule of construction shall apply against either party. This Agreement is proposed and executed in the English language only and any translation of this Agreement into any other language shall have no effect. All proceedings related to this Agreement will be conducted in the English language. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof. All earlier and contemporaneous negotiations and agreements between the parties on the matters contained in this Agreement are expressly merged into and superseded by this Agreement.