

**WELLRIGHT, INC.**  
**TERMS AND CONDITIONS**

These Terms and Conditions (“**Agreement**”), together with the Order Form referencing this Agreement, is made by and between WellRight, Inc., a Delaware corporation, located at 175 W Jackson Blvd, Suite 1425, Chicago, IL 60604 (“**WellRight**”), and the legal entity (“**Client**”) that completed the Order Form. This Agreement is effective as of the date Client submitted the Order Form through WellRight’s website or otherwise executed the applicable Order Form (the “**Effective Date**”). Each party may be referred to in this Agreement as a “Party” or collectively as “Parties.”

**1. DEFINITIONS**

Except as specifically indicated, the following terms have the following meanings in this Agreement (such meanings to be equally applicable to both the singular and plural forms of the terms defined):

- a) “**Account**” means the account established by WellRight when a Participant signs on to the Service (defined below) the first time and agrees to the Terms of Use and Privacy Policy.
- b) “**Applicable Law**” means, collectively, all foreign, federal, state and local statutes, codes, ordinances, regulations, and laws, which are applicable to a Party in the performance of its obligations under this Agreement.
- c) “**Authorized User**” means each of Client’s employees, subcontractors (who are acting on Client’s behalf) or agents authorized by Client to access and use the Service.
- d) “**Business Day**” means any day other than a Saturday, a Sunday or day on which banking institutions in Chicago, Illinois are authorized or obligated by Applicable Law or executive order to be closed.
- e) “**Client Marks**” means Client’s name, logo and other trademarks, identifiers and materials provided by Client to WellRight solely for the purposes of allowing WellRight to perform its obligations under this Agreement.
- f) “**Data Protection Law**” means any law or regulation relating to data security, data protection and/or privacy applicable to WellRight’s provision of the Services.
- g) “**Documentation**” means all materials, regardless of media, that explain or facilitate the use of the Service, including, without limitation, users’ manuals, standard operational manuals or instructions, training materials, system manuals, and specifications; (ii) written representations made by WellRight to Client regarding the functioning of the Service; and (iii) any other specifications for, or descriptions of, the Service that are appended to or referenced in an Order Form.
- h) “**Eligible Participant**” means an individual that is eligible to open an Account because (i) Client is an employer and the individual is a current or retired member of Client’s workforce and

meets Client's eligibility criteria for opening an Account; or (ii) Client is a health plan or third party administrator of a health plan and the individual is the primary subscriber of the health plan sponsored or administered by Client. Spouses and dependent of Eligible Participants may also open an Account but shall not be counted as Eligible Participants.

i) **"Ideas"** mean suggestions, ideas, comments, feedback developed or received by WellRight, including from Client, an Authorized User, or a Participant, related to potential enhancements or improvements, new features, or functionality with respect to the Service.

j) **"Order Form"** means the completed order form that references this Agreement and that is submitted by Client (and/or executed by the Parties) for the ordering of the Service. The terms and conditions of this Agreement are incorporated into each Order Form as if fully set forth therein.

k) **"Participant"** means an individual that opens an Account who is an Eligible Participant or the spouse or dependent of an Eligible Participant.

l) **"Service"** means the services provided by WellRight to Client pursuant to an active Order Form.

m) **"Term"** means the Initial Subscription Term set forth on the relevant Order Form and each Renewal Term, if any.

## 2. WELLRIGHT SERVICES

2.1. **License to Service.** Subject to the terms and restrictions set forth in this Agreement, WellRight hereby grants to Client during the Term, a non-exclusive, non-transferable, non-sub licensable license to (a) access and use the Service and (b) grant Participants the right to access and use the Service in accordance with this Agreement.

2.2. **Participants.** Each Participant will be required to indicate assent to the Terms of Use Agreement and the Privacy Policy prior to opening an Account.

2.3. **General Restrictions.** Except as otherwise explicitly provided in this Agreement or as may be expressly required by Applicable Law, Client will not, and will not authorize an Authorized User, a Participant, or any other third party to: (a) use or copy the Service, any component of the Service, or any of the data, algorithms and calculations, or any portion thereof, except as expressly authorized in this Agreement; (b) copy, modify, or prepare derivative works based upon the Service; (c) alter, remove, or obscure any copyright or other proprietary notices or labels on or in the Service; (d) circumvent or disable any technological features or measures in the Service; (e) interfere with or disrupt the integrity or performance of the Service; (f) claim any rights to or ownership of (except through the rights granted under this Agreement) the Service or any derivative thereof; or (g) attempt to gain unauthorized access to the Service. Client acknowledges and agrees that the Service contains Confidential Information (as defined in Section 8.1), data and trade secrets of WellRight and its licensors.

2.4. **Cooperation.** The Parties will timely and diligently cooperate with each other in a commercially reasonable manner to facilitate the performance of their respective obligations under

this Agreement. The services provided by WellRight under this Agreement are dependent upon the accurate and timely provision of the information provided by Client. Client understands that to the extent such information is inaccurate or not provided in a timely manner, the services to be provided under this Agreement may be negatively affected.

**2.7 Third Party Contractor Access to the Service.** In the event that Client desires for a separate third party entity or independent contractor (each referred to as a “**Contractor**”) to be given administrator access to the Service on Client’s behalf and limited strictly for the purpose of Contractor providing services for or to Client, Client may provision access to the Service to the Contractor’s employees or agents. In provisioning access to a Contractor’s employees or agents, Client agrees to bind Contractor to the obligations and terms set forth in this Agreement (excluding terms related to payment), and Client hereby agrees to indemnify, defend and hold WellRight Parties (as defined in Section 9.2) harmless for the actions of Contractor and from and against any and all liability, claim, lawsuit, injury, loss, expense or damage resulting from or relating to the disclosure of Protected Health Information to Contractor.

**2.8 Support Policy.** WellRight will use commercially reasonable efforts to comply with the WellRight Support Services Policy located at <https://www.wellright.com/agreements-and-terms>.

### **3. PRICING, PAYMENTS, AND REPORTING**

**3.1. Pricing.** Client will timely pay WellRight the applicable fees (collectively, “**Fees**”) as set forth in an Order Form during the Initial Subscription Term. WellRight may increase the Fees for a Renewal Term, provided that WellRight provides Client notice of the increase at least sixty (60) days prior to the applicable Renewal Term.

**3.2. Invoicing and Payment.** WellRight will provide Client with an invoice for any Fees due . All Fees are payable to WellRight by Client as set forth in an Order Form. Client will pay all such Fees in United States dollars. Client shall notify WellRight in writing of any good faith dispute regarding an invoice within thirty (30) days of the invoice date. Any invoice not disputed within such period shall be deemed accepted, final and binding.

**3.3. Late Charges; Collection.** All Fees are non-refundable and non-cancellable, unless this Agreement is terminated by Client in accordance with Section 7.1, or as otherwise set forth in this Agreement. Any invoiced amounts not paid when due will accrue interest at the lower of 1.5 percent (1.5%) per month for each month (or fraction thereof) that payment is not received by WellRight, or the maximum percentage allowed by Applicable Law. Client will reimburse WellRight for all costs and expenses incurred by WellRight arising from WellRight’s efforts to collect past due amounts under this Agreement, including, without limitation, reasonable attorneys’ fees.

**3.4. Suspension of Service and Acceleration.** If Fees that are due and payable to WellRight become thirty (30) or more days overdue, WellRight may, without limiting its other rights and remedies, accelerate Client’s unpaid fee obligations for the remainder of the relevant term under the applicable Order Form so that all such obligations become immediately due and payable, and suspend Services until such amounts are paid in full, provided that, WellRight will give Client at least ten (10) days’ prior notice that its account is overdue, prior to suspending the Service. Client will have only one cure right under this Section during any rolling twelve month period, and in the event the Services are suspended hereunder for more than sixty (60) days, WellRight may

terminate this Agreement in its discretion.

**3.5. Taxes.** Other than property and income taxes imposed on WellRight, Client will bear all taxes, duties, and other governmental charges resulting from this Agreement.

#### **4. WARRANTIES AND DISCLAIMER OF WARRANTIES**

**4.1. Mutual Warranties.** Each Party represents and warrants that: (a) it has validly entered into this Agreement and that it has the power and authority to do so; (b) no authorization or approval from any third party is required in connection with the Party's execution, delivery, or performance of this Agreement; (c) the execution, delivery, and performance of this Agreement does not violate the laws of any jurisdiction or the terms or conditions of any other agreement to which it is a party or by which it is otherwise bound; and (d) its business and operations, including any operations conducted through third parties, are conducted in compliance with Applicable Law.

**4.2. WARRANTY DISCLAIMER.** EXCEPT FOR THE EXPRESS WARRANTIES PROVIDED IN THIS SECTION 4, NEITHER PARTY MAKES ANY ADDITIONAL REPRESENTATION OR WARRANTY OF ANY KIND WHETHER EXPRESS, IMPLIED (EITHER IN FACT OR BY OPERATION OF LAW), OR STATUTORY, AS TO ANY MATTER WHATSOEVER. EACH PARTY EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY, ACCURACY, AND TITLE, AND ALL DELIVERABLES HEREUNDER ARE ACKNOWLEDGED TO BE "AS IS" AND "WHERE IS." THE SERVICE MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. WELLRIGHT IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS OR WHICH MAY ARISE DUE TO CLIENT'S OR A PARTICIPANT'S MISUSE OF THE SERVICE. CLIENT WILL NOT HAVE THE RIGHT TO MAKE OR PASS ON ANY REPRESENTATION OR WARRANTY ON BEHALF OF WELLRIGHT TO ANY PARTICIPANT OR OTHER THIRD PARTY.

**4.3 Wellness Program Design Disclaimer.** WellRight incorporates Client's wellness program design and features into the Service in order to assist Client in the management and operation of its wellness program. Under no circumstances shall WellRight be construed as approving the design or structure, notices, and/or incentives that may be part of Client's wellness program as meeting all of the requirements of Applicable Law. No information or guidance provided by WellRight in the provision of the Service shall constitute or be construed as legal advice on any matter and Client should always seek the legal advice of competent counsel in designing its wellness program. As between WellRight and Client, Client shall be solely responsible for ensuring that the structure, notices, and/or any incentives it provides as part of its wellness program are compliant with Applicable Law, including but not limited to the Health Insurance Portability and Accountability Act of 1996, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, the regulations under each, as well as applicable guidance published by relevant regulatory authorities.

**4.4 Not Medical Advice.** THE SERVICE IS NOT A SUBSTITUTE FOR MEDICAL ADVICE. THE SERVICE (INCLUDING ANY INFORMATION OR MATERIALS AVAILABLE ON THE SERVICE), WHETHER PROVIDED BY WELLRIGHT, OTHER

USERS, OR THIRD PARTIES, IS NOT INTENDED TO BE AND SHOULD NOT BE USED IN PLACE OF: (A) THE ADVICE OF DOCTORS OR OTHER MEDICAL PROFESSIONALS, (B) A VISIT, CALL OR CONSULTATION WITH DOCTORS OR OTHER MEDICAL PROFESSIONALS, OR (C) INFORMATION CONTAINED ON OR IN ANY PRODUCT PACKAGING OR LABEL. ANY ADVICE OR INFORMATION RECEIVED FROM A THIRD PARTY THROUGH THE SERVICE HAS NOT BEEN VERIFIED BY WELLRIGHT AND SHOULD NOT BE RELIED UPON WITHOUT VERIFICATION FROM A DOCTOR OR OTHER MEDICAL PROFESSIONAL. CLIENT AND AUTHORIZED USERS SHOULD NOT USE THE SERVICE FOR DIAGNOSING OR TREATING A HEALTH PROBLEM OR MEDICAL CONDITION. ADDITIONALLY, CLIENT OR AUTHORIZED USERS' USE OF THE SERVICE AND COMMUNICATION VIA THE INTERNET, E-MAIL OR OTHER MEANS DOES NOT CONSTITUTE OR CREATE A DOCTOR-PATIENT, THERAPIST-PATIENT OR OTHER HEALTHCARE PROFESSIONAL RELATIONSHIP BETWEEN CLIENT OR AUTHORIZED USERS AND WELLRIGHT.

## 5. PRIVACY AND DATA SECURITY

5.1. **Business Associate Addendum.** To the extent Client meets the definition of a "Covered Entity" or "Business Associate," as those terms are defined in 45 C.F.R. § 160.103, the Parties agree to the terms of the Business Associate Addendum, located at <https://www.wellright.com/agreements-and-terms>, which shall be incorporated by reference into this Agreement, unless other terms superseding the Business Associate Addendum are agreed to in a separate writing of the Parties.

5.2. **Personal Data Processing.** Client acknowledges and agrees that WellRight may Process Personal Data (each as defined in the Data Processing Addendum) in performing the Service in accordance with Data Protection Laws and the Data Processing Addendum, located at <https://www.wellright.com/agreements-and-terms>, which shall be incorporated by reference into this Agreement, unless other terms superseding the Data Protection Addendum are agreed to in a separate writing of the Parties. Client represents and warrants that (i) Client complies with its obligations concerning any Personal Data provided or made available to WellRight under this Agreement; (ii) Client has a lawful basis for processing Personal Data, to the extent required by Data Protection Law and, to the extent consent constitutes such lawful basis, such consent has been appropriately obtained in compliance with applicable Data Protection Law; and (iii) that, unless Client has notified WellRight in writing of a change in such lawful basis (including, where applicable, the termination or invalidation of any consent) necessary for WellRight's Processing of Personal Data, each such lawful basis is and will continue to be valid in accordance with Data Protection Law.

5.3 **Sensitive Personal Information.** WellRight shall not be provided with Sensitive Personal Information (as defined below), in its performance of the Service. If WellRight becomes aware that it has been provided Sensitive Personal Information, WellRight will promptly contact Client so that the parties can discuss the secure deletion of the Sensitive Personal Information. For purposes of this Section, "**Sensitive Personal Information**" is an individual's first name or initial and last name, along with any of the following: i) social security number, ii) driver's license or government

ID number and/or iii) account credit or debit card number in combination with any required security code, access code or password that would allow access to an individual's financial account.

5.4 **Security Tests.** WellRight prohibits network scanning, penetration testing, and vulnerability testing (collectively, "**Security Tests**") of WellRight networks and systems by Client. Client shall not perform Security Tests, but may request that WellRight perform such Security Tests on its behalf. Should Client have a business need or regulatory requirement for a Security Test, Client shall submit a written request to infosec@wellright.com that will be reviewed on a case-by-case basis. As part of its information security program, WellRight will conduct Security Tests of its network and systems, review vulnerability reports, and prioritize risk-based remediation action plans to address relevant vulnerabilities identified. WellRight will share executive summaries of such reports with Client upon request.

## 6. INTELLECTUAL PROPERTY

6.1. **Client Trademarks and Logos.** The Service may be configured to display the trademarks and/or logos of Client. Client grants to WellRight a non-exclusive, non-transferable (except as permitted under Section 11.2) license to use and display in the Service, during the Term, the Client Marks solely for the purpose of allowing WellRight to perform its obligations under this Agreement. WellRight agrees that the Client Marks and the goodwill associated with them are and will remain the sole property of Client and WellRight agrees not to contest the ownership of such Client Marks, nor misappropriate such Client Marks for its own use. WellRight also agrees that its use of the Client Marks will be in accordance with Client's policies regarding the usage of its trademarks, as amended from time-to-time, provided that Client provides such policies to WellRight. WellRight's use of the Client Marks inures solely to the benefit of Client.

6.2. **WellRight Intellectual Property.** Client hereby acknowledges and agrees that as between WellRight and Client, WellRight exclusively owns all right, title, and interest worldwide in the WellRight trademarks and logos, the Service, the Documentation, and Ideas, including any and all modifications, enhancements, improvements, transformations or derivative works thereof (collectively, "**WellRight Intellectual Property**"), and to all intellectual property rights worldwide thereto. Client will not have any rights in or to WellRight Intellectual Property except as expressly granted in this Agreement. Client will not act to jeopardize, limit, or interfere in any manner with WellRight's ownership of and rights with respect to WellRight and WellRight Intellectual Property. WellRight reserves to itself all rights to the Service not expressly granted to Client in accordance with this Agreement.

## 7. TERMINATION

7.1. **Termination for Cause.** If either Party fails to perform any of its material obligations under this Agreement, the other Party may terminate this Agreement and any applicable Order Forms by giving thirty (30) days prior written notice if the matters set forth in such notice are not cured to the other Party's reasonable satisfaction within the thirty (30) day period.

7.2. **Termination by Insolvency.** Either Party may terminate this Agreement effective immediately by providing written notice to the other Party if the other Party makes an assignment for the benefit of creditors, files a petition in bankruptcy, permits a petition in bankruptcy to be filed

against it, or admits in writing its inability to pay its debts as they mature, or if a receiver is appointed for a substantial part of its assets.

7.3. **No Liability for Termination.** Except as expressly required by law, if either Party terminates this Agreement in accordance with any of the provisions of this Agreement, neither Party will be liable to the other because of such termination for compensation, reimbursement, or damages on account of the loss of prospective profits or anticipated sales or on account of expenditures, inventory, investments, or commitments in connection with the business or goodwill of WellRight or Client. Termination will not, however, relieve either Party of obligations incurred prior to the effective date of the termination.

7.4. **Effects of Termination.** Upon termination of this Agreement for any reason (a) where applicable each Party shall cease using the other Party's content and intellectual property, including trademarks, trade dress, copyrights and trade secrets; and (b) each Party shall cease using the other Party's Confidential Information, and upon request, return or destroy all tangible copies of the other Party's Confidential Information in its possession. The following provisions will survive any expiration or termination of this Agreement: Section 1, Section 3, Section 4.2-4.4, Section 6.2, Section 7.4, Section 8, Section 9, Section 10, and Section 11. The termination or expiration of this Agreement will not relieve Client of the obligation to pay any Fees that are due to WellRight under this Agreement.

## 8. CONFIDENTIALITY

8.1. **Definition of Confidential Information.** "Confidential Information" means any and all information and material disclosed by one Party ("Discloser") to the other Party ("Recipient") or its Representatives (as defined below) (before or after the signing of this Agreement, and whether in writing, or in oral, graphic, electronic or any other form) that is (a) marked in writing as or provided under circumstances reasonably indicating it is confidential or proprietary, or if disclosed orally or in other intangible form or in any form that is not so marked, that is identified as confidential at the time of such disclosure; or (b) not generally known to the public or other third parties who could derive economic value from its use or disclosure. Confidential Information, includes, without limitation, any (i) secret, know-how, idea, invention, process, technique, algorithm, program (whether in source code or object code form), hardware, device, design, schematic, drawing, formula, data, plan, strategy and forecast of, and (ii) proprietary technical, engineering, manufacturing, product, marketing, customer, servicing, financial, personnel and other proprietary information and materials of, Discloser and its employees, consultants, investors, affiliates, licensors, suppliers, vendors, customers and clients. For purposes of this Agreement, "Representatives" refers to any person, its directors, officers, employees, agents and advisors (including, without limitation, consultants, clients, customers, vendors, financial advisors, banks and other financing sources, attorneys, accountants and their respective Representatives). To the extent applicable, all references in this agreement to WellRight, Client, Recipient or Discloser, shall also be deemed to be references to each of their respective Representatives. Confidential Information does not include any Protected Health Information (if applicable) as defined in 45 C.F.R. § 160.103, which shall be governed by the Business Associate Addendum.

8.2. **Nondisclosure and Permitted Use.** Recipient shall hold all Confidential Information in strict confidence and shall not disclose or distribute any Confidential Information to any third party other than to its employees and agents who need to know such information and who are bound in writing by restrictions regarding disclosure and use of such information comparable to and no less restrictive than those set forth herein. Recipient shall not use any Confidential Information for the benefit of itself or any third party or for any purpose other than to perform its obligations under this Agreement. Recipient shall take the same degree of care that it uses to protect its own confidential and proprietary information and materials of similar nature and importance (but in no event less than reasonable care) to protect the confidentiality and avoid the unauthorized use, disclosure, publication or dissemination of the Confidential Information. Recipient shall not make any copies of the Confidential Information except to the extent reasonably necessary to carry out its obligations under this Agreement, or unless otherwise approved in writing in advance by Discloser. Any such copies made shall be identified as the property of Discloser and marked “confidential,” “proprietary” or with a similar legend. The obligations of this Section 8.2 with respect to any item of Confidential Information shall survive any termination or expiration of this Agreement and continue for five years from the date of Recipient’s receipt of such Confidential Information.

8.3. **Scope.** The obligations of this Section 8 including the restrictions on disclosure and use, shall not apply with respect to any Confidential Information to the extent such Confidential Information: (a) is or becomes publicly known through no act or omission of Recipient; (b) was rightfully known by Recipient before receipt from Discloser, as evidenced by Recipient’s contemporaneous written records; (c) becomes rightfully known to Recipient without confidential or proprietary restriction from a source other than Discloser that does not owe a duty of confidentiality to Discloser with respect to such Confidential Information; or (d) was independently developed by Recipient without the use of or reference to the Confidential Information of Discloser, as evidenced by Recipient’s contemporaneous written records. In addition, Recipient may use or disclose Confidential Information to the extent (i) approved by Discloser or (ii) Recipient is legally compelled to disclose such Confidential Information, provided, however, that prior to any such compelled disclosure, Recipient shall give Discloser reasonable advance notice of any such disclosure and shall cooperate with Discloser in protecting against any such disclosure and/or obtaining a protective order narrowing the scope of such disclosure and/or use of the Confidential Information.

8.4. **Remedies.** Due to the unique nature of each Party’s Confidential Information, the unauthorized disclosure or use of Discloser’s Confidential Information will cause irreparable harm and significant injury to Discloser, the extent of which will be difficult to ascertain and for which there may be no adequate remedy at law. Accordingly, Discloser, in addition to any other available remedies, shall have the right to an immediate injunction and other equitable relief enjoining any breach or threatened breach of this Section 8 without the necessity of posting any bond or other security. Recipient shall notify Discloser in writing immediately upon Recipient becoming aware of any such breach or threatened breach.

8.5. **Confidentiality of Agreement.** Neither Party to this Agreement will disclose the terms of this Agreement to any third party without the consent of the other Party, except as required by securities or other Applicable Laws. Notwithstanding the above provisions, each Party may disclose the terms of this Agreement (a) in connection with the requirements of a public offering or securities filing; (b) in confidence, to accountants, banks, and financing sources and their advisors;

(c) in confidence, in connection with the enforcement of this Agreement or rights under this Agreement; or (d) in confidence, in connection with a merger or acquisition or proposed merger or acquisition, or the like.

8.6. **Return of Materials.** Upon the termination or expiration of this Agreement, or upon earlier request, each Party will deliver to the other all Confidential Information that it may have in its possession or control. Notwithstanding the foregoing, neither Party will be required to return materials that it must retain in order to receive the benefits of this Agreement or properly perform in accordance with this Agreement.

## 9. INDEMNIFICATION.

9.1. **WellRight Indemnification.** WellRight will indemnify, defend, and hold harmless Client and its officers, directors, agents, and employees (collectively, “**Client Parties**”) from and against any and all third party claims brought against Client alleging that the Service provided under this Agreement infringes a U.S.-issued patent or U.S.-registered copyright of a third party (“**Infringement Claim**”); provided that, if an Infringement Claim occurs, WellRight, within its sole discretion, may (i) acquire the right for Client to continue to use the affected portion of the Service in accordance with the terms of this Agreement; (ii) replace or modify the affected portion of the Service so that it becomes non-infringing; or (iii) terminate this Agreement, and refund to Client any pre-paid Fees for the unused portion of the remainder of the Term (or part thereof). Notwithstanding the foregoing, WellRight will have no liability to the Client Parties with respect to any Infringement Claim that is based upon, arises out of, or would not have occurred but for (A) Client’s combination of Service with a non-WellRight product, software, data, business process or other component; (B) Client’s use of the Service in violation of this Agreement, not in accordance with the Documentation, or in excess of the scope of license granted; or (C) Client’s use of any third party software other than in accordance with the license agreement for such third-party software. This Section sets forth Client’s sole and exclusive remedy with respect to any Claim for WellRight’s alleged violation of any intellectual property or other rights of third parties.

9.2. **Client Indemnification Obligations.** Client will indemnify, defend, and hold harmless WellRight and its parent, subsidiaries, and affiliates and their respective owners, representatives, officers, directors, agents, and employees (collectively, “**WellRight Parties**”) from and against any and all claims, proceedings, damages, injuries, liabilities, losses, costs and expenses (including reasonable attorneys’ fees and litigation expenses) (“**Claims**”) to the extent arising out of any action or proceeding brought by a third party against any one or more of the WellRight Parties (i) alleging injury, damage, or loss resulting from Client’s use of the Service; (ii) alleging that Client Marks or data provided by Client infringes a privacy or intellectual property right of a third party; or (iii) related to any gross negligence or willful misconduct by Client or any of its Authorized Users.

9.3. **Indemnification Procedures.** The indemnified party will provide prompt written notice to the indemnifying party of any Claim for which the indemnified party will seek indemnification under this Agreement, and will provide reasonable assistance to the indemnifying party upon the indemnifying party’s reasonable request. The indemnifying party will have the right to defend and

compromise such claim at the indemnifying party's expense for the benefit of the indemnified party; provided, however, the indemnifying party will not have the right to obligate the indemnified party in any respect in connection with any such compromise without the written consent of the indemnified party. Notwithstanding the foregoing, if the indemnifying party fails to assume its obligation to defend, the indemnified party may do so to protect its interests and the indemnifying party will reimburse all costs incurred by the indemnified party in connection with such defense.

## **10. LIMITATION OF LIABILITY**

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, WELLRIGHT WILL NOT UNDER ANY CIRCUMSTANCE BE LIABLE TO CLIENT OR ANY THIRD PARTY FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATED TO THE TRANSACTION CONTEMPLATED UNDER THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO LOST PROFITS OR LOSS OF BUSINESS, EVEN IF CLIENT IS APPRISED OF THE LIKELIHOOD OF SUCH DAMAGES OCCURRING. WELLRIGHT'S AGGREGATE LIABILITY UNDER THIS AGREEMENT SHALL NOT EXCEED THE FEES OWED BY CLIENT TO WELLRIGHT IN THE TWELVE MONTH PERIOD IMMEDIATELY PRECEDING THE ACCRUAL OF ANY CLAIM, REGARDLESS OF THE FORUM AND REGARDLESS OF WHETHER ANY ACTION OR CLAIM IS BASED ON CONTRACT, TORT, OR OTHERWISE. EACH PROVISION OF THIS AGREEMENT THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTY, OR EXCLUSION OF DAMAGES IS TO ALLOCATE THE RISKS OF THIS AGREEMENT BETWEEN THE PARTIES. THIS ALLOCATION IS REFLECTED IN THE PRICING OFFERED BY WELLRIGHT TO CLIENT AND IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES.

## **11. GENERAL PROVISIONS**

**11.1. Independent Contractors.** The relationship of the Parties established by this Agreement is that of independent contractors, and nothing contained in this Agreement should be construed to give either Party the power to (a) act as an agent or (b) direct or control the day-to-day activities of the other. Financial and other obligations associated with each Party's business are the sole responsibility of that Party. WellRight may utilize a subcontractor or other third party to perform its duties under this Agreement so long as WellRight remains responsible for all of its obligations under this Agreement.

**11.2. Assignability.** Neither Party may assign its right, duties, or obligations under this Agreement without the other Party's prior written consent, except to a successor-in-interest in connection with a merger, acquisition, or sale of the company.

**11.3. Nonsolicitation.** During the Term and for a period of one year thereafter, neither Party will knowingly solicit the employment or services of an employee or independent contractor without the prior written consent of the non-soliciting Party, provided however, this prohibition is not

intended to (i) prevent a Party from hiring any employee or contractor who contacts the other Party after the date of termination of such individual's employment or contract with the other Party, so long as such individual makes such contact on his or her own initiative, without direct or indirect solicitation from such Party, or (ii) prohibit either Party from placing public advertisements or conducting any other form of general solicitation which is not targeted toward officers, employees, consultants, agents or other representatives of the other Party.

11.4. **Notices.** Any notice required or permitted to be given in accordance with this Agreement will be effective if it is in writing and sent by certified or registered mail, or insured courier, return receipt requested, to the appropriate Party at the address set forth below and with the appropriate postage affixed. Notice may also be given via email and shall be determined delivered upon acknowledgement of receipt by the recipient. Either Party may change its address for receipt of notice by notice to the other Party in accordance with this Section 11.4. Notices are deemed given two Business Days following the date of mailing or one Business Day following delivery to a courier:

To Client: The Address specified in the Order Form.

To WellRight: WellRight, Inc.

PO Box 773178

Chicago, IL 60677-3178

Attn: Chief Financial Officer

11.5. **Force Majeure.** WellRight will not be liable for, or be considered to be in breach of or default under this Agreement on account of, any delay or failure to perform as required by this Agreement as a result of any cause or condition beyond WellRight's reasonable control, so long as WellRight uses commercially reasonable efforts to avoid or remove such causes of non-performance.

11.6. **Publicity.** WellRight may advertise and publish its business relationship with Client, including the fact that it is providing services relating to this Agreement; however, to the extent WellRight intends to use Client's trademarks or logos, WellRight will first seek consent from Client.

11.7. **Governing Law.** This Agreement will be interpreted, construed, and enforced in all respects in accordance with the local laws of the State of Illinois, without reference to its choice of law rules. The provisions of the United Nations Convention on the International Sale of Goods shall not apply to this Agreement. All actions brought to interpret or enforce this Agreement shall be brought in the exclusive forum of the courts located in Chicago, Illinois and each party agrees not to assert any challenges based on personal jurisdiction, lack of venue or forum non conveniens.

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

11.9. **Severability.** If any part of this Agreement is found to be illegal, unenforceable, or invalid, the remaining portions of this Agreement will remain in full force and effect. In addition, in such event, the Parties agree to negotiate in good faith to modify the Agreement to carry out the Parties' original intent as closely as possible and to the extent lawful.

11.10. **Interpretation.** This Agreement shall not be construed more strongly against either Party regardless of who is more responsible for its preparation. The headings appearing at the beginning of several sections contained in this Agreement have been inserted for identification and reference purposes only and must not be used to construe or interpret this Agreement. Whenever required by context, a singular number will include the plural, the plural number will include the singular, and the gender of any pronoun will include all genders.

11.11. **Counterparts.** This Agreement may be executed in any number of identical counterparts, notwithstanding that the Parties have not signed the same counterpart, with the same effect as if the Parties had signed the same document. All counterparts will be construed as and constitute the same agreement. This Agreement may also be executed and delivered by facsimile and such execution and delivery will have the same force and effect of an original document with original signatures.

11.12. **Entire Agreement.** This Agreement, including the Order Form and other documents incorporated herein, is the final and complete expression of the agreement between these Parties regarding the Service. This Agreement supersedes, and the terms of this Agreement govern, all previous oral and written communications regarding these matters. No employee, agent, or other representative of WellRight has any authority to bind WellRight with respect to any statement, representation, warranty, or other expression unless the same is specifically set forth in this Agreement. No usage of trade or other regular practice or method of dealing between the Parties will be used to modify, interpret, supplement, or alter the terms of this Agreement. This Agreement may be changed only by an agreement executed by an authorized agent of each Party.