

MEMBERSY DIRECT PLAN ADMINISTRATION AGREEMENT

PLEASE READ THIS MEMBERSY DIRECT PLAN ADMINISTRATION AGREEMENT (THE “**AGREEMENT**”) BEFORE USING THE PRODUCTS AND SERVICES OFFERED BY MEMBERSY LLC (“**MEMBERSY**”). BY EXECUTING AN ORDER AND USING MEMBERSY’S PRODUCT AND SERVICE OFFERINGS, YOU (THE “**CLIENT**” AND, TOGETHER WITH MEMBERSY, THE “**PARTIES**” AND, EACH, A “**PARTY**”) SIGNIFY ACCEPTANCE OF AND AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, INCLUDING THE LIMITATIONS OF LIABILITY AND WARRANTY DISCLAIMERS CONTAINED HEREIN. IF YOU DO NOT AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, DO NOT ACCESS OR USE MEMBERSY’S PRODUCTS OR SERVICES.

THIS AGREEMENT APPLIES TO PRODUCTS AND SERVICES PROVIDED BY MEMBERSY TO CLIENT AS MAY BE SET FORTH FROM TIME TO TIME IN ONE OR MORE ORDERS ENTERED INTO BETWEEN MEMBERSY AND CLIENT (EACH, AN “**ORDER**”). THIS AGREEMENT INCLUDES THE GENERAL TERMS AND CONDITIONS (THE “**GENERAL TERMS**”), AS WELL AS THE TERMS AND OTHER DOCUMENTATION REFERENCED HEREIN (THE “**ADDITIONAL TERMS**”), WHICH SUCH ADDITIONAL TERMS ARE INCORPORATED HEREIN BY REFERENCE.

WHEREAS, Membersy designs, develops and administers discount health care programs that provide plan members with access to discounted pricing for dental services rendered by contracted dental providers;

WHEREAS, Client owns and operates one or more dental practice locations and employs and/or contracts with licensed dental providers for the purpose of providing dental services to patients; and

WHEREAS, the Parties now seek to enter into an agreement pursuant to which (i) Membersy shall, in exchange for an administrative fee, administer a discount dental membership plan to be utilized by Client, and (ii) Client and its employed and contracted dental providers shall participate in such discount dental membership plan and will provide dental services at a discounted rate to plan members in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions referenced and exchanged herein, the sufficiency and receipt of which are hereby acknowledged, the Parties hereto, intending to be legally bound, covenant and agree as follows:

1. DEFINITIONS.

- a. **Administrative Fees:** The fees payable to Membersy in exchange for administrative services provided hereunder.
- b. **Applicable Law:** Any statute, regulation, or administrative ruling or action related to the operation of a Discount Health Care Program in any jurisdiction in which Membersy operates Plan pursuant to this Agreement.
- c. **Dental Services:** Dental services rendered by a Provider to a Member.
- d. **Discount Health Care Program:** An arrangement in which an entity offers individuals access to discounts on medical services in exchange for fees, not including an insurance policy, certificate of coverage or other product that is otherwise regulated by state insurance departments. A “discount health care program” may also be referred to as a “discount medical program”, “health discount plan”, or similar term under applicable state law.
- e. **Effective Date:** The date upon which the Parties enter into an Order incorporating this Agreement by reference.
- f. **Fee Schedule:** One or more schedules of applicable fees to be charged to Members for Dental Services rendered under the Plan. Fee Schedule shall be developed following consultation with Client and shall be available on Plan Website. Fee Schedule may be amended from time to time by Membersy in coordination with Client.
- g. **Marketing Materials:** Collectively, all Plan marketing materials furnished to Client by Membersy, including Plan Website, Rack Cards, Welcome Kit, and Renewal Notice.

- h. **Member:** An individual enrolled in Plan, including both Primary Members and Additional Members (each as defined in Section 3.a)
- i. **Membership Fees:** Membership fees received by Membersy for each Plan membership enrolled or renewed during the Term.
- j. **Membersy Connect:** A web-based administrative dashboard and ecommerce platform allowing Client and Providers to (i) access real-time plan metrics and reporting regarding the Plan, (ii) enroll, manage and verify eligibility of Members, and (iii) view Plan documents and information.
- k. **Member Terms:** The terms governing each Member's participation in the Plan.
- l. **Name:** Plan shall be marketed under the name "Membersy Direct". Use of the Name shall be subject to the terms and conditions set forth herein.
- m. **Plan:** Membersy Direct, a Discount Health Care Program designed, developed and administered by Membersy pursuant to which Providers render Dental Services to Members, then charge and collect from the Members, as payment in full for such Dental Services, no more than the amount specified in the Fee Schedule.
- n. **Plan Website:** Plan website developed and administered by Membersy.
- o. **Practice Location:** Any physical dental office location in which one or more Providers render Dental Services to Members.
- p. **Provider:** A licensed dental provider who shall participate in Plan and provide professional dental services to Members in accordance with the terms of this Agreement.
- q. **Provider Agreement:** The Participating Provider Agreement governing each Provider's participation in the Plan, which is located at <https://membersy.com/participating-provider-agreement>.
- r. **Rack Cards:** 4" x 9" printed promotional materials advertising Plan benefits.
- s. **Renewal Notice:** A renewal notice sent to Members approximately thirty (30) days prior to their annual renewal date in electronic and/or paper form in accordance with the Member's election or as determined by Membersy.
- t. **State License:** Any license, certification, or authorization required under Applicable Law for the operation of Plan.
- u. **Welcome Kit:** A welcome package sent to Members following enrollment in the Plan consisting of a welcome letter, a copy of the Member Terms, and personalized plan ID cards, to be furnished to Members in electronic and/or paper format subject to Member's election and/or Membersy's discretion.

2. AGREEMENT TERM.

- a. **Term.** This Agreement shall begin on the Effective Date and shall continue for the initial term set forth in the applicable Order (the "Initial Term"). Upon expiration of the Initial Term, this Agreement shall automatically renew for successive renewal terms of the duration set forth in the applicable Order (each such renewal term, a "Renewal Term," and together with the Initial Term, the "Term"), unless either Party delivers written notice to the other Party of its intent not to renew at least sixty (60) days prior to the expiration of the then-current Term.
- b. **Termination for Breach.** If either Party breaches any material term of this Agreement, the non-breaching Party shall provide the Party alleged to be in breach with written notice of the alleged breach. If such breach has not been cured by the breaching Party within thirty (30) days following such notice, the non-breaching Party shall have the right to immediately terminate this Agreement for cause upon written notice to the breaching Party.
- c. **Termination upon Mutual Consent.** The Parties may terminate this Agreement and Membersy's provision of the Plan and Plan-related services to Client upon mutual written consent.
- d. **Change in Laws; Frustration of Purpose.** Either Party may terminate this Agreement and Membersy's provision of the Plan and Plan-related services pursuant to Section 12.d.
- e. **Effect of Termination.** The rights and obligations of the Parties under Sections 1, 5.k, 5.l.iii, 5.l.iv, 5.l.v, and Sections 8 through 12 shall survive expiration or termination of this Agreement.

3. MEMBERSHIP STRUCTURE; MEMBERSHIP FEES.

- a. **Membership Structure.** The Parties agree that Plan memberships offered hereunder shall be

structured as follows:

- i. *Individual Membership*: A Plan membership purchased by an individual patient, who will be deemed the “**Primary Member**” for all purposes under the Plan.
 - ii. *Additional Membership*: A Plan membership purchased by or for a family member of a Primary Member who is enrolled in good standing in an individual Plan membership. This family member will be deemed an “**Additional Member**” for all purposes under the Plan. Each Primary Member will be permitted to have up to nine (9) Additional Members at any given time under his/her individual membership.
- b. Membership Fees. The Parties agree that Plan memberships offered to Members shall be subject to the Membership Fees amounts and payment mechanics as mutually agreed by the Parties.

4. PAYMENT MECHANICS; ADMINISTRATIVE FEES.

- a. Distribution of Membership Fees; Offset. Membersy shall distribute to Client, on a monthly basis, all Membership Fees collected by Membersy for each enrollment or renewal of a Plan membership during the immediately preceding month; *provided*, that Membersy shall deduct from such distributions an amount to the sum of the Membership Fees collected *multiplied by* the applicable Administrative Fee percentage payable to Membersy as set forth on Client’s Order. In addition, Membersy shall deduct from the distribution of Membership Fees all other deductions and offsets contemplated in this Section 4.
- b. Refunds and Chargebacks. If any payment of Membership Fees is refunded or overturned due to (a) Member cancellation, (b) a credit card dispute or “chargeback”, or (c) a check returned for insufficient funds, Membersy (x) shall cancel the associated Plan membership; (y) shall not pay Membership Fees to Client with respect to such membership; and (z) shall offset Membership Fees, if any, that have already been paid to Client with respect to such membership against future payments of Membership Fees otherwise payable by Membersy to Client. In the case of chargebacks and returned checks, Membersy shall offset any associated fees, penalties or surcharges paid or payable by Membersy against future payments of Membership Fees to Client.
- c. Instant Payout. Membersy’s third-party payment processor offers the option for Client to receive an “instant payout” of funds held in an account maintained by such payment processor. If Client elects to use the “instant payout” feature, Client will be obligated to pay an additional fee of two percent (2%) of the payout volume. Funds transferred via “instant payout” will appear in Client’s connected bank account(s) within thirty (30) minutes. The terms and conditions of “instant payout” are set forth at <https://stripe.com/docs/payouts/instant-payouts>.
- d. Increase in Administrative Fees. The Administrative Fees may be adjusted annually by Membersy in an amount not to exceed the sum of (A) U.S. Consumer Price Index for all Urban Consumers, as published by the U.S. Bureau of Labor Statistics *plus* (B) two percent (2%). Membersy will provide written notice of any increase to the Administrative Fees, which such increase will take effect immediately upon written notice by Membersy to Client.
- e. Taxes. To the extent Membersy is obligated to pay any sales, use or similar taxes with respect to its receipt of Membership Fees, Client is responsible for the payment of all such taxes. If Membersy is obligated to remit taxes directly to an applicable taxing authority, Membersy shall deduct the amount of such taxes from the Membership Fees distributed to Client hereunder. For clarity, in no event shall Client be responsible for any taxes imposed on Membersy’s income.
- f. Right to Deduct. All fees and taxes described in this Section 4 shall be automatically deducted from Membership Fees distributed to Client hereunder.
- g. No Minimum Balance Requirements. Client shall not be required to maintain a minimum balance in payment account(s) maintained by Membersy on Client’s behalf; however, in the event that a payment account exhibits a negative balance, Membersy will initiate a withdrawal back from Client’s connected bank account in the amount of such negative balance, and Client hereby authorizes Membersy to initiate such withdrawal.
- h. Membersy Connect. Client shall have access to reporting regarding accounting and payment of Membership Fees via Membersy Connect, including the total number of enrolled and renewed memberships, cancellations, chargebacks, returned checks, and any associated fees.

Client's use of Membersy Connect is subject to the Terms of Service located at <https://membersy.com/connect-tos>.

- i. Entire Payment. Once distribution of Membership Fees, as deducted and offset pursuant to this Section 4, has been made to Client with respect to an enrollment or renewal, Membersy shall have no further payment obligation to Client with respect to such enrollment or renewal.
- j. Obligation to Pay Providers. As between Membersy and Client, it is Client's sole responsibility to determine the portion of Membership Fees that are payable to Providers, if any, and to pay such amount to Providers in accordance with the terms agreed between Client and the Providers.

5. CLIENT RESPONSIBILITIES, OBLIGATIONS, DUTIES and WARRANTIES.

- a. Provider Agreement; Referral. Client shall use good faith efforts to encourage Providers to participate in the Plan, including providing a letter or other written or verbal recommendation from Client recommending participation in Plan, and taking all other such steps as may be reasonably requested by Membersy to encourage Provider participation in the Plan. In order to begin participating in Plan, the entity that is authorized to contract on behalf of the participating Provider(s) will be required to create a Membersy Connect account and agree to the terms and conditions of the Provider Agreement.
- b. Provider Contact Information. Following execution of this Agreement, Client shall furnish a list to Membersy of all Providers to whom Client currently provides management and/or support services, including names, email addresses, telephone numbers, Practice Location addresses, and contact information for any applicable office managers or regional managers (collectively, the "**Provider Contact Information**"). Client shall be responsible for maintaining an up-to-date list of Provider Contact Information and for providing prompt updates to such list to Membersy. Client represents, warrants and covenants that it has obtained, and will continue to obtain, all consents and has provided all notices, in each case to the extent required pursuant to applicable laws, rules and regulations to provide Provider Contact Information to Membersy for use in marketing and administering the Plans. Client shall be fully responsible for any actual or alleged violation of such laws, rule or regulations resulting from Membersy's use of Provider Contact Information in the manner contemplated herein.
- c. Utilization Data. Upon request from Membersy, Client shall furnish to Membersy, at least quarterly, deidentified dental care utilization data from participating Providers for both Members and non-Members for the purpose of analyzing Plan utilization. Client may provide Membersy with access to the practice management system ("**PMS**") serving Client and Providers for the purpose of obtaining this data, in which case the Parties shall cooperate to facilitate such access and to minimize costs to both Parties and disruption to Client operations. All utilization data provided by Client to Membersy shall be anonymized and de-identified prior to Client providing such data to Membersy so that such data does not qualify as "protected health information," "personal information" or like term under applicable laws, rules or regulations.
- d. No Use with Third-Party Payor Programs. Membersy and Client agree that the Plan shall not be used in conjunction with any third-party payor program, including government and private third-party payor programs (e.g., Medicaid, private insurance), and Providers shall be prohibited from enrolling any patient who is a participant in such payor program(s) where applicable laws, rules, regulations or provider agreements prohibit the Provider from offering additional discounts to such patient.
- e. Non-Circumvent. Client shall not solicit any Member or Provider to discontinue participation in the Plan or assist any other person or entity in soliciting any Member or Provider to discontinue participation in the Plan. Without limiting the foregoing, Client shall not export or otherwise use any data or information regarding the Plan for purposes of purchasing or implementing a substitute dental membership plan.
- f. Marketing Materials; No Representations or Warranties. Client shall not vary, discharge, waive or modify the Marketing Materials, the Member Terms, or any advertising or other Plan materials furnished by Membersy without Membersy's written consent. Without limiting the foregoing, Client shall not make any representations or warranties regarding the Plan to Providers or Members that are inconsistent with the Marketing Materials provided by Membersy.

- g. Member Pricing and Payments. Client acknowledges and agrees that:
 - i. Providers shall be required to accept the amount specified in the then-current Fee Schedule as payment in full at time of service, and shall be prohibited from charging Members more than the amount listed in the Fee Schedule for any Dental Services rendered. The Fee Schedule may be amended from time to time by Membersy in coordination with Client.
 - ii. Providers shall be solely responsible for collection of payment for Dental Services from Members, and Membersy shall be solely responsible for the collection of Membership Fees from Members.
- h. Receipt of Membership Fees. Client shall direct all current and prospective Members to submit payment for the Membership Fees in the manner directed by Membersy. If Client nevertheless receives payment for Membership Fees directly from a current or prospective Member, Client shall, unless Membersy and Client agree otherwise, promptly transfer such amount to Membersy.
- i. Payment for Dental Services. Client and Providers shall be solely responsible for collection of payment for Dental Services from Members. Membersy shall not pay Client or Providers any fees for Dental Services. Client may, in its sole discretion, offer extended payment terms on Dental Services provided to the Member.
- j. Responsibility for Dental Services. Client acknowledges that Membersy shall not have nor exercise any control or direction over the methods by which Providers render Dental Services to Members. Standards of dental practice and the professional duties of the Provider shall be determined in accordance with applicable provisions of law and other rules and regulations of any and all governmental authorities relating to licensure and regulation of the Provider.
- k. Post-Termination Obligations. In order to ensure that all Members who have paid to enroll in a Plan receive the benefit of such enrollment for the full membership term, Client acknowledges that, upon termination or expiration of this Agreement and/or discontinuation of Plan for any reason, Providers shall be required to (i) honor all existing Plan memberships that have been enrolled or renewed prior to the effective date of termination, and (ii) continue to render Services to Members in accordance with the Fee Schedule and the terms and conditions of this Agreement, in each case until all such existing memberships have expired.
- l. Exclusive Plan Provider. Client acknowledges and agrees that, in connection with configuring, implementing and administering a Plan for Client, Membersy shall be providing Confidential Information to Client and investing considerable expense in the creation of a Plan that is customized to meet the needs of Client and its Providers, including creation of custom Marketing Materials and Fee Schedules. For the foregoing reasons:
 - i. Client agrees that Plan will be the sole Discount Health Care Program product that is offered and/or marketed to patients or otherwise participated in by Client, its affiliates, subsidiaries, officers, directors and Providers (collectively, with Client, the "**Client Affiliated Parties**") throughout the Term of this Agreement.
 - ii. Client agrees that none of the Client Affiliated Parties shall engage in the ownership, operation, management or administration of a Discount Health Care Program serving Client, Providers and/or their patients during the Term of this Agreement.
 - iii. In the event that Client terminates this Agreement prior to the expiration of the Term, Client agrees that the Client Affiliated Parties shall not, for a period equal to the remainder of the Term: (i) offer, market and/or facilitate enrollment of Provider(s) or their patients in any other Discount Health Care Program, or (ii) engage in the ownership, operation, management or administration of a Discount Health Care Program servicing Client, Providers and/or their patients.
 - iv. In the event of a breach or threatened breach of this Section 5.l by the Client Affiliated Parties, Membersy and Client expressly agree that Membersy shall, in addition to any other rights and remedies available at law or otherwise, be entitled to equitable relief by temporary restraining order, temporary injunction, permanent injunction or otherwise to be issued by any court of competent jurisdiction enjoining and restraining the Client Affiliated Parties from violating any of the provisions of this Section 5.l and Client hereby consents to the issuance of such equitable relief by temporary restraining order, temporary injunction, permanent injunction or otherwise without the posting of

bond or other security.

- v. For the avoidance of doubt, nothing herein is intended to prohibit either (i) Membersy from offering or maintaining any Discount Health Care Program other than Plan in any state, or (ii) Client from contracting with any affiliate of Membersy for any purpose related to the provision of Discount Health Care Program services.

6. **PLAN ADMINISTRATION OBLIGATIONS.** With respect to the configuration, implementation and administration of the Plan, Membersy will provide the specific services in accordance with the Membersy Direct Plan Administration Obligations set forth at <https://membersy.com/direct-plan-obligations>.

7. **USE OF MARKS.**

- a. Plan Name and Marks. The Name and any other trademarks, service marks, trade dress, trade names, brand names, logos, or domain names developed by Membersy and used for any purpose under this Agreement (collectively, the “**Marks**”), shall at all times be and remain the property of Membersy. To the extent the Marks incorporate the name or trademarks associated with Client or its related Providers, Client hereby grants Membersy a non-exclusive license throughout the Term to use such trademarks as incorporated in the Marks for the purposes of marketing the Plan and otherwise in furtherance of the relationship contemplated in this Agreement. Membersy’s use of Client’s trademarks will comply with any trademark usage guidelines that may be provided by Client from time to time, and all goodwill arising out of the use of such trademarks shall inure to the benefit of Client. Client will provide specimens of its trademarks in the format and file size as requested by Membersy from time to time.
- b. Registration of Marks; Infringement. The Parties agree and acknowledge that (i) with the exception of the registered trademark “MEMBERSY”, Membersy does not hold exclusive right, title or interest in or to any of the Marks in any territory or jurisdiction, and (ii) Membersy has no plans to pursue state or federal registration of any other Mark(s) due to the prohibitive costs associated with such registration. In the event that use of one or more of the Marks by Membersy and/or Client is challenged by any third party claiming rights in the Mark(s) for any reason, Membersy reserves the right to discontinue use of one or more Marks for any purpose hereunder in its sole discretion, in which case Membersy shall cooperate with Client to develop new Marks for use with Plan, which shall be adopted only upon mutual written agreement of the Parties.

8. **CONFIDENTIAL INFORMATION.**

- a. Confidentiality. In connection with this Agreement, either Party may disclose to the other Party certain information regarding its business affairs, products, services, technology, plans, concepts, internal processes, and documents, in each case regardless of whether or not marked, designated or otherwise identified as “confidential” (collectively, “**Confidential Information**”). With respect to Membersy, its Confidential Information shall include all information regarding the marketing, design, and selling of Discount Health Care Programs or otherwise related to Membersy’s business. Confidential Information does not include information that, at the time of disclosure is: (a) in the public domain through no action by the receiving Party; (b) known to the receiving Party at the time of disclosure without restriction on use or disclosure; (c) rightfully obtained by the receiving Party on a non-confidential basis from a third party; or (d) independently developed by the receiving Party without use of, or reference to, the disclosing Party’s Confidential Information. Neither Party shall disclose the other Party’s Confidential Information to any person or entity, except to the receiving Party’s employees or consultants who have a need to know the Confidential Information to exercise its rights or perform its obligations hereunder. In addition, neither Party shall use the disclosing Party’s Confidential Information for any purpose other than exercising its rights and performing its obligations pursuant to this Agreement or as otherwise agreed by the disclosing Party.
- b. Feedback. If Client or any of its employees or contractors sends or transmits any communications or materials to Membersy by mail, email, telephone, or otherwise, suggesting or recommending changes to the Plan or related technology, including new features or functionality relating thereto, or any comments, questions, suggestions, or the like

- (“**Feedback**”), Membersy is free to use such Feedback for any and all lawful purposes.
- c. Return or Destruction. On the expiration or termination of this Agreement, each receiving Party shall cease using and permanently and irretrievably erase or destroy all of the disclosing Party’s Confidential Information, whether in written, electronic, or other form or media.
9. **WARRANTY DISCLAIMER.** THE PLANS AND OTHER SERVICES OFFERED BY MEMBERSY ARE PROVIDED “AS IS” AND MEMBERSY HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. WITHOUT LIMITING THE FOREGOING, MEMBERSY MAKES NO WARRANTY OF ANY KIND THAT THE PLAN WILL INCREASE PATIENT VOLUME, REVENUES, PROFITABILITY OR OTHERWISE RESULT IN ECONOMIC BENEFIT TO CLIENT OR PROVIDERS.
10. **LIMITATION OF LIABILITY.**
- a. WAIVER OF CERTAIN DAMAGES. IN NO EVENT WILL MEMBERSY BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY: (A) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES; (B) INCREASED COSTS, DIMINUTION IN VALUE OR LOST BUSINESS, PRODUCTION, REVENUES, OR PROFITS; (C) LOSS OF GOODWILL OR REPUTATION; (D) USE, INABILITY TO USE, LOSS, INTERRUPTION, DELAY OR RECOVERY OF ANY DATA; OR (E) COST OF REPLACEMENT GOODS OR SERVICES, IN EACH CASE REGARDLESS OF WHETHER MEMBERSY WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE.
- b. MAXIMUM LIABILITY. IN NO EVENT WILL MEMBERSY’S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE EXCEED THE TOTAL AMOUNT OF ADMINISTRATIVE FEES RETAINED BY MEMBERSY IN THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM.
11. **INDEMNIFICATION.**
- a. Membersy Indemnification. Membersy shall indemnify, defend and hold harmless Client from and against any and all losses, damages, liabilities, costs (including reasonable attorneys’ fees) (“**Losses**”) incurred by Client resulting from any third-party claim, suit, action, or proceeding (“**Third-Party Claim**”) that Client’s permitted use of Membersy Connect infringes or misappropriates such third party’s US patents, copyrights, or trade secrets, provided that Client promptly notifies Membersy in writing of the claim, cooperates with Membersy, and allows Membersy sole authority to control the defense and settlement of such claim. If such a claim is made or appears possible, Client agrees to permit Membersy, at Membersy’s sole discretion, to (A) modify or replace Membersy Connect, or component or part thereof, to make it non-infringing, or (B) obtain the right for Client to continue to use Membersy Connect in substantially the same manner as contemplated in these Terms and the applicable Order. If Membersy determines that neither alternative is reasonably available, Membersy may terminate Client’s access to Membersy Connect and provide an alternative method for Client to access data regarding the Plan.
- b. Client Indemnification. Client shall indemnify, hold harmless and, at Membersy’s option, defend Membersy from and against any Losses resulting from (i) any Third-Party Claim resulting from the provision of Dental Services by Providers associated with Client; (ii) any Third-Party Claims resulting from Client’s breach of the restrictions or obligations applicable to it pursuant to this Agreement; (iii) any Third-Party Claim alleging that the use of any trademarks, logos or other creative assets of Client or the Providers by Membersy, including in connection with the Plan Website, infringes or misappropriates a third-party’s intellectual property rights; or (iv) any Third-Party Claim resulting from a Provider’s breach of the restrictions or obligations applicable to the Provider pursuant to this Agreement or the Provider Agreement; provided, in each case that, if Membersy requests Client to assume the defense

of any such Third-Party Claim, Client may not settle any Third-Party Claim against Membersy unless Membersy consents to such settlement, and; provided, further, that Membersy will have the right, at its option, to defend itself against any such Third-Party Claim at Client's expense or to participate in the defense thereof by counsel of its own choice.

12. MISCELLANEOUS TERMS.

- a. HIPAA Business Associate Addendum. In the performance of this Agreement, the Parties shall comply with the standards for privacy and security of individually identifiable health information of the Health Insurance Portability and Accountability Act of 1996, Health Information for Economic and Clinical Health Act, and the rules and regulations promulgated thereunder (including the HIPAA Omnibus regulations promulgated on January 25, 2013), all as the same may be amended from time to time (collectively, "HIPAA"), as well as other applicable state and federal laws and regulations protecting individually identifiable health information, as fully set forth in the Business Associate Addendum located at <https://membersy.com/direct-business-associate-addendum> and incorporated herein by reference.
- b. Nature of Relationship. This Agreement does not create an agency or employment relationship, partnership, or joint venture between Client and Membersy for any purpose. The Parties acknowledge and agree that each Party is an independent contractor and, as such, is solely responsible for its acts and omissions and the consequences thereof, and is fully able and capable of assessing any risks involved in undertaking the obligations required by this Agreement. Neither Party shall have the authority to bind the other Party to any contract or other obligation.
- c. Amendment; Waiver. Except as provided herein, this Agreement may only be modified, amended, or changed by an agreement in writing signed by the Parties. **Notwithstanding the foregoing, Membersy may update this Agreement from time to time, and such updated Agreement will apply to any new Order entered into following such update.** No waiver by either Party of any of the provisions hereof will be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in these Terms, (i) no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from these Terms will operate or be construed as a waiver thereof and (ii) no single or partial exercise of any right, remedy, power, or privilege hereunder will preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.
- d. Severability. If any court determines that any portion of this Agreement is unenforceable, it shall be deleted from this Agreement and the Agreement shall otherwise remain in effect. If any Applicable Law comes into effect following the Effective Date that increases or otherwise changes the Parties' compliance obligations with respect to the Plan and Plan-related services provided hereunder, the Parties shall negotiate in good faith to amend this Agreement as required to comply with such Applicable Law. If this Agreement cannot be amended in a manner that is reasonably sufficient to comply with such Applicable Law or if the Parties are unable, despite using good faith efforts, to mutually agree on an amendment to this Agreement, then either Party may terminate this Agreement immediately upon written notice to the other Party.
- e. Entire Agreement. This Agreement represents the entire agreement of the Parties with respect to the transactions contemplated herein, and any prior or contemporaneous oral or written negotiations, representations or agreements of the Parties are merged herein and may not be used to vary or contradict the terms and provisions hereof.
- f. Beta Services. From time to time, Membersy may, in its sole discretion, invite you to use, on a trial basis, pre-release or beta features that are in development and not yet available to all customers ("**Beta Services**"). Beta Services may be subject to additional terms and conditions, which Membersy will provide to you prior to your use of the Beta Services. Such Beta Services and all associated conversations and materials relating thereto will be considered Membersy Confidential Information and subject to the confidentiality provisions in this Agreement. Client agrees that it will not make any public statements or otherwise disclose its participation in the Beta Services without Membersy's prior written consent. Membersy makes no representations or warranties that the Beta Services will function. Membersy may discontinue the Beta Services at any time in its sole discretion, with or without notice to Client. Membersy will have no liability

for any harm or damage arising out of or in connection with a Beta Service. The Beta Services may not work in the same way as a final version. Membersy may change or not release a final or commercial version of a Beta Service in our sole discretion.

- g. Force Majeure. Neither Party shall be liable or responsible to the other for delays or failures in performance resulting from acts, causes, circumstances or events beyond its reasonable control, including acts of nature and natural disasters, inclement weather, governmental actions, fire, flood, pandemic or other public health crisis, including quarantine or other employee restrictions, labor difficulties or shortages, unavailability of material or equipment from suppliers, delays due to third party vendors, terrorism, cyber, chemical or biological attack, civil disturbances or insurrection, war, interruptions of power, supply or communications or other similar events or occurrences.
- h. Publicity. During the term of this Agreement, Membersy may include Client's name and logo in its customer lists, including on its website. To the extent Client provides standard trademark usage guidelines, Membersy shall use Client's name and logo in accordance with such guidelines.
- i. Assignment. This Agreement shall be binding upon and inure to the benefit of the Parties and their successors and assigns. Neither Party shall assign its rights or obligations hereunder without the written consent of the other Party, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, Membersy shall have the right to assign its rights and obligations under this Agreement without obtaining Client's consent to (i) any of its affiliates, (ii) any purchaser of all or substantially all of its assets or the portion of its business to which the subject matter of this Agreement relates, or (iii) any successor entity resulting from any merger or consolidation of Membersy with or into such entity.
- j. Governing Law; Venue. This Agreement will be interpreted and construed in accordance with the laws of the State of Texas, without regard to conflict of law principles. Any dispute arising out of, or related to, this Agreement shall be subject to the exclusive jurisdiction of the state and federal courts located in Travis County, Texas, and each Party hereby submits to the jurisdiction of such courts.
- k. Waiver of Jury Trial. To the extent permitted by applicable law, each Party waives the right to litigate any dispute arising out of, or related to, this Agreement as a class action, either as a member of a class or as a representative.
- l. Authority. Each of the Parties expressly warrants his or her authority to enter into this Agreement and to carry out its obligations as set forth herein, and that this Agreement, when executed, will be a valid and binding obligation enforceable in accordance with its terms. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement.
- m. Notice. Any notice required or permitted to be given under this Agreement shall be deemed to have been given when (i) personally delivered (ii) deposited in the United States mail, by registered or certified mail, return receipt requested, postage prepaid, (iii) deposited with an internationally recognized overnight courier and addressed to the other Party, or (iv) delivered via electronic mail to the address set forth below or such other address as the Party may designate in writing:

To Client:	At the address set forth on the Order
To Membersy:	Membersy LLC 811 Barton Springs Road, Suite 750 Austin, TX 78704 Attention: Legal Email: legal@membersy.com

[Remainder of Page Left Intentionally Blank]