

## Simon Care Management Terms of Service

These Terms of Service (this “**Agreement**”) set out the terms on which Simon Care Management Corp., a Delaware corporation, (“**Simon Care Management**” “**we**” or “**us**”) or its licensors will provide access to and use of certain services to individuals with cognitive impairment and their caretakers (such individuals and caretakers individually and collectively, “**you**”). You can pair the Simon Care Management mobile application (the “**App**” or the “**Simon App**”) to a smartphone which sends push notifications to caretaker users, with the goal of assisting caretakers in monitoring the safety of the individuals in their care (the “**Service**”).

You should read this Agreement carefully. By indicating acceptance of this Agreement or by otherwise using the Service, you are entering into a legally binding agreement with us, and you hereby represent that you are of legal age, and are otherwise fully able and competent, to enter into a binding agreement. If you are a caretaker entering into this Agreement on behalf of an individual to be monitored by the Service, you represent that you have all rights and authority to enter into this Agreement on such individual’s behalf. If you are using the Service on behalf of an organization, you represent that you have the right to bind such organization to this Agreement, and the terms “you” will include both you, the individual user, and such organization. If you do not agree to these terms and conditions, you must not use the Service.

THIS AGREEMENT CREATES A BINDING LEGAL AGREEMENT BETWEEN YOU AND SIMON CARE MANAGEMENT, AND INCLUDES AN ARBITRATION CLAUSE UNDER WHICH CERTAIN CLAIMS MAY NOT BE BROUGHT IN COURT OR DECIDED BY A JURY. PLEASE READ THIS AGREEMENT CAREFULLY.

### 1. Nature of the Service.

- a. *Monitoring of Individuals with Cognitive Impairment.* Simon Care Management will use commercially reasonable efforts to provide the Service described in and subject to these Terms of Service. The Service collects information from individuals with cognitive impairment via their smartphones, and makes this information available to their caregivers, through the App. The individual monitored via their smartphone (the “**Monitored Individual**”) must agree to share data collected from the device regarding their location and activities (the “**Monitoring Data**”) with Simon Care Management and the App user who receives such individual’s Monitoring Data via the App (the “**User**”). Simon Care Management may offer you use of the Service for free during a pilot period (the “**Pilot Period**”) prior to offering a paid subscription term (the “**Subscription Term**”). DURING THE PILOT PERIOD THE SERVICE IS PROVIDED “AS IS” WITH NO WARRANTIES.
- b. *Disclaimer.* THE SERVICE IS NOT DESIGNED TO PROVIDE MEDICAL ADVICE OR FACILITATE MEDICAL EMERGENCIES. THE SERVICE IS NOT DESIGNED FOR USE IN DIAGNOSING MEDICAL CONDITIONS OR MAKING TREATMENT DECISIONS. ALWAYS SEEK THE ADVICE OF YOUR PHYSICIAN OR OTHER QUALIFIED HEALTH PROVIDER WITH ANY QUESTIONS YOU MAY HAVE REGARDING YOUR HEALTH OR THE HEALTH OF MONITORED INDIVIDUALS IN YOUR CARE. NEVER DISREGARD PROFESSIONAL MEDICAL ADVICE OR DELAY IN SEEKING IT BECAUSE OF SOMETHING YOU HAVE READ ON THE SERVICE. IF YOU THINK YOU HAVE A MEDICAL EMERGENCY, CALL YOUR DOCTOR OR 911 IMMEDIATELY. DO NOT RELY ON ELECTRONIC COMMUNICATIONS OR COMMUNICATION THROUGH THE SERVICE FOR IMMEDIATE, URGENT MEDICAL NEEDS.

- c. *Health Care Providers.* You understand and agree that by using the Service, neither the User nor the Monitored Individual are entering into a health care provider-patient relationship with Simon Care Management. You understand that information sent or received via the Service does not become part of the separate medical records of the Monitored Individual held by their health care providers. The Service is not meant to keep a record of complete or exhaustive information about any Monitored Individual's medical condition. You are strongly encouraged to consult with a qualified health care professional for answers to your questions regarding Monitored Individuals in your care.
- d. *No Regulatory Approval.* Neither the Service nor the App have been approved for use as medical devices by regulatory agencies in the United States or elsewhere.

2. Registration and Communications.

- a. *Registration.* In order to use certain parts of the Service, you will be required to provide us information about yourself ("**User Data**" for Users and "**Monitoring Data**" for Monitored Individuals), including, but not limited to, first name, last name, date of birth, email address, and you will be required to create a password and register with us. When you initially install the App on your mobile device, you will be required to provide access to certain information about the smartphone of the Monitored Individual, including location monitoring and notifications, in order to complete the registration process. Once you have completed the registration process, you may provide additional information regarding the Monitored Individual's medical history and condition to the Service. You represent, warrant and covenant to us that you will provide us with accurate, current and complete information. You are responsible for your registration, and for all use of the Service using any user credentials or passwords issued to you or chosen by you. You will keep all such credentials and passwords confidential.
- b. *Communication and Text Messages.* The Service may provide you with opportunities to communicate with Simon Care Management through text ("**SMS**") or multimedia ("**MMS**") messages. By voluntarily providing your cell phone number to Simon Care Management and signifying your agreement to receive SMS and MMS messages from Simon Care Management, you agree that Simon Care Management may contact you by SMS or MMS messages at that phone number, and you consent to receiving such communications for transactional, operational, or informational purposes. You understand and consent that such messages may be sent using an automatic telephone dialing system.
- c. *Unsubscribing from Text Messaging.* To revoke your consent to receiving SMS or MMS messages from Simon Care Management, please reply "STOP" to the number sending the message. Simon Care Management will send you an SMS message to confirm that you have been unsubscribed. After this, you will no longer receive SMS messages from Simon Care Management. If you want to join again, just sign up as you did the first time. You may also receive text messages in response to certain Customer Support requests. To unsubscribe from Customer Support messages, just reply to the message by texting "STOP" to the number sending the message. If you unsubscribe from receiving text messages from Simon Care Management through the process described above, you may continue to receive text messages for a short period while Simon Care Management processes your request(s). If you change or deactivate the phone number you provided to Simon Care Management, you have an affirmative obligation to update your account information and the phone number(s) attached to your account to prevent us from inadvertently communicating with anyone who acquires any phone number(s) previously attributed to you, and any new phone number(s) you attach to your account may receive Simon Care Management's standard SMS or MMS messages unless you also unsubscribe via the above procedure.

- d. *Text Messaging Fees and Support.* Standard data and message rates may apply for SMS and MMS alerts, whether you send or receive such messages. Please contact your mobile phone carrier for details. Your mobile phone carrier (e.g. T-Mobile, AT&T, Verizon, etc.) is not liable for delayed or undelivered messages. If you are experiencing issues with the messaging program you can reply with the keyword HELP for more assistance, or you can get help directly by calling Simon Care Management Customer Support at 347.201.1313 or emailing [support@simon.health](mailto:support@simon.health). If you have questions regarding privacy, please read Simon Care Management's privacy policy at [simon.health/privacypolicy](http://simon.health/privacypolicy).

3. Fees and Payment. If you are selected by Simon Care Management to use the Service during the Pilot Period, use of the Service is free of charge during the Pilot Period. During Subscription Terms, we offer paid subscription plans to the Service. If you purchase a subscription plan, Simon Care Management will charge your credit card for the subscription fee then in effect when you subscribe. All fees are nonrefundable. You agree and represent that all information you provide for the purpose of subscribing to the Service is accurate, complete and current, and you agree to notify Simon Care Management of any changes to the credit card information associated with your Simon Care Management account, including changes in billing address and expiration dates. If Simon Care Management does not receive payment from the issuer of the credit card associated with your Simon Care Management account, you agree to pay all amounts due upon demand directly to Simon Care Management, and Simon Care Management further reserves the right to either suspend or terminate your Simon Care Management account and your subscription to the Service in such circumstances. All amounts due hereunder are exclusive of all sales, use, excise, service, value added, or other taxes, duties and charges of any kind (whether foreign, federal, state, local or other) associated with the Service. You shall be solely responsible for all such taxes, duties and charges (except for taxes imposed on Simon Care Management's income), which may be invoiced or charged by Simon Care Management from time to time.

4. Ownership Rights.

- a. *The App.* The Service, including all aspects of the Simon App, is the property of, and owned by, Simon Care Management or its licensors. As between you and Simon Care Management, all the software, algorithms, functionality, inventions, concepts, text, images, marks, logos, compilations, content and technology used to deliver the Service or otherwise embodied in, displayed through, or provided directly or indirectly (e.g., emails or other communications from us to you) via, the Service are "***Our Property.***" Except as otherwise expressly permitted by this Agreement, any use, copying, making derivative works, transmitting, posting, linking, deep linking, framing, redistribution, sale, decompilation, modification, reverse engineering, translation or disassembly of Our Property is prohibited. You acknowledge that Our Property has been created, compiled, developed and maintained by us or our licensors at great expense of time and money such that misappropriation or unauthorized disclosure or use of Our Property by others for commercial gain would unfairly and irreparably harm us in a manner for which damages would not be an adequate remedy, and you consent to our obtaining injunctive relief to restrain any breach or threatened breach of this Agreement, without any requirement to post bond. You may be subject to criminal or civil penalties for violation of this paragraph.
- b. *Our Marks.* The name SIMON CARE MANAGEMENT, the mark SIMON, and the names and marks of any sub-brands and variants of the mark, and any associated logos, are registered or unregistered trademarks or service marks of Simon Care Management or its licensors. You may not use them, or any of our other marks or logos, in any manner, including any use that is likely to cause confusion or that disparages or discredits us, without our consent. The Service may also feature the trademarks, service marks, and logos of third parties, and each owner retains all rights in such marks. Any use of such marks, or any others displayed on the Service, will inure solely to the benefit of their respective owners.

Subject to the terms and conditions herein, we grant you the non-exclusive, non-transferable, limited, revocable right to access and use Our Property solely to the extent necessary for you to use the Service, as permitted by this Agreement, solely for your personal non-commercial use. We reserve all other rights. For clarity and without limiting other obligations herein, you shall not distribute or otherwise commercialize Our Property.

5. User Data and Monitoring Data

- a. *License to Data.* We do not claim any ownership rights in your User Data and Monitoring Data, and as between you and Simon Care Management, you remain the owner of all intellectual property rights that you have in your User Data and Monitoring Data. By using the Service, you grant Simon Care Management a worldwide, non-exclusive, royalty-free, perpetual, irrevocable, sub-licensable (through multiple tiers) right and license to use, reproduce, adapt, modify, translate, and create derivative works from your User Data and Monitoring Data, for the purposes of developing, providing, and improving, the Service. You agree that we are not responsible for any use or disclosure of your User Data and Monitoring Data by any third party who gains access to it through the Service (which may include unintended activities by third parties, such as by hackers). To the extent allowed by law, this Section 5 and any license granted to you hereunder includes all rights of paternity, integrity, disclosure and withdrawal and any other rights that may be known as or referred to as “moral rights,” “creator’s rights,” “droit moral,” or the like.
- b. *Rights in Monitoring Data.* By accessing and using the Service, you, as a Monitored Individual, or a User on a Monitored Individual’s behalf, represent and warrant that you have all rights and authority necessary to grant access to the Monitored Individual’s Monitoring Data, as the Monitored Individual or on the Monitored Individual’s behalf. By allowing the collection and use of Monitoring Data, you as a Monitored Individual, or as a User on a Monitored Individual’s behalf, , represent and warrant that you have all necessary rights and authority to provide Simon Care Management with the Monitoring Data and the rights provided for herein, and you have all necessary rights from all persons, including the Monitored Individual if you are a User making such representation and warranty on the Monitored Individual’s behalf, and entities necessary to give you the rights to do the foregoing and otherwise fully comply with this Agreement.
- c. *Other Rights in Data.* By allowing such collection and use of Monitoring Data, or of User Data, you further represent and warrant that (a) none of the User Data or Monitoring Data or any development, use, production, distribution or exploitation thereof hereunder will infringe, misappropriate or violate any intellectual property right or other right or applicable law, or cause injury to any person or entity, including the Monitored Individual, and (b) you will comply with all applicable laws in the course of accessing and using User Data and Monitoring Data collected through the Service. You agree that you bear all risks associated with your User Data and Monitoring Data. Simon Care Management will remove User Data and Monitoring Data from the Service if properly notified that such User Data or Monitoring Data violates another person’s or entity’s rights.
- d. *Rights in Data Upon Termination.* We do not control User Data or Monitoring Data, and we are not responsible for its content, accuracy or reliability. We are under no obligation to edit or control User Data or Monitoring Data, although we reserve the right to review, and take certain actions with respect to, User Data and Monitoring Data in accordance with this Agreement, including as describe in the Privacy Notices described in Section 11. On termination of your account, or this Agreement, we have no obligation to return any User Data or Monitoring Data to you, so you should retain copies of all of your User Data and Monitoring Data. We reserve the right to remove User Data and Monitoring Data from the Service, in whole or in part, without prior notice, for any reason or for no reason at all. Without limiting our right to terminate your use of the Service pursuant to Section 12 of this Agreement, we reserve the right to terminate your account if you have been notified of

infringing activity and/or have had User Data or Monitoring Data removed from the Service. We may remove any User Data or Monitoring Data and/or terminate an account for uploading material in violation of this Agreement at any time, without prior notice and at our sole discretion.

- e. **Data Security.** Simon Care Management shall maintain appropriate data security policies, procedures and controls that are designed to: (i) ensure the security and integrity of User Data and Monitoring Data; (ii) protect against threats or hazards to the security or integrity of User Data and Monitoring Data; and (iii) prevent unauthorized access to User Data and Monitoring Data. If either party believes that there has been an unauthorized access to or use of User Data or Monitoring Data (a “**Security Breach**”), such party must notify the other party without undue delay, unless legally prohibited from doing so. Additionally, each party will reasonably assist the other party in implementing corrective actions to prevent the Security Breach from reoccurring.

6. **Use of the Service.** You represent, warrant and covenant that you comply and will comply with all applicable laws and regulations in your use of the Service. You must comply with all rules and policies about use of the Service in this Agreement and that we publish from time to time. These rules and policies will be available on the Service. Certain features, pages or content within the Service may contain supplemental terms of use, to which you must agree in order to use the relevant features, pages or content. You must not: (a) harvest or otherwise collect information about other users from the Service; (b) take any action that imposes or may impose an unreasonable or disproportionately large load on the Service or its infrastructure, or bypass any measures we may use to prevent or restrict access to any portion of the Service (or other accounts, networks or services connected thereto); (c) use manual or automated software, devices, or other processes to “crawl”, “scrape” or “spider” any of the Service or otherwise to copy, obtain, propagate, distribute or misappropriate any information or other content from the Service, including any of Our Property; (d) distribute or otherwise make available any information or other content obtained through the Service to any third party, except as expressly permitted herein; (e) otherwise interfere in any manner with the use or operation of the Service; or (f) use the Service in the development, directly or indirectly, of any product, software or service that offers any functionality substantially similar to, or competitive with, the Service. We reserve the right (but are under no obligation) to investigate any claim that use of the Service does not conform to the terms and conditions of this Agreement, and to terminate your use of the Service for breach of this Agreement.

7. **Feedback.** If you are selected to use the Service for a Pilot Period, you may be required to provide us with comments, feedback, suggestions, ideas, or other submissions related to the Service (collectively “**Feedback**”). If you provide to us (directly or indirectly, and by any means) any Feedback, the Feedback will be the sole property of Simon Care Management. We will be entitled to use, reproduce, disclose, publish, distribute, and otherwise exploit in any manner, all Feedback, without restriction and without compensating you in any way. We are and shall be under no obligation to maintain any Feedback in confidence, or to respond to any Feedback.

8. **Warranty Disclaimers and Limitations of Liability.** THE SERVICE IS PROVIDED “AS IS”, WITH ALL FAULTS. WE EXPRESSLY DISCLAIM ANY AND ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING: (A) ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NONINFRINGEMENT, AND ANY AND ALL WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE; AND (B) THAT THE SERVICE OR OUR PROPERTY WILL MEET YOUR REQUIREMENTS, WILL ALWAYS BE AVAILABLE, ACCESSIBLE, UNINTERRUPTED, TIMELY, SECURE OR OPERATE WITHOUT ERROR. WE DISCLAIM ALL LIABILITY AND RESPONSIBILITY FOR THE ACTS OR OMISSIONS OF ANY THIRD PARTIES, INCLUDING BUT NOT LIMITED TO THIRD PARTY SERVICE PROVIDERS. UNDER NO CIRCUMSTANCES WILL YOU BE ENTITLED TO RECOVER FROM US ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, PUNITIVE OR SPECIAL DAMAGES (INCLUDING DAMAGES FOR LOSS OF DATA OR LOSS OF USE), WHETHER BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE ARISING FROM OR RELATING TO THIS AGREEMENT, THE SERVICE OR OUR PROPERTY, EVEN IF WE HAVE BEEN INFORMED OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES. TO THE EXTENT PERMITTED BY APPLICABLE LAW, OUR MAXIMUM



AGGREGATE LIABILITY TO YOU FOR ANY DAMAGES ARISING FROM OR RELATING TO THIS AGREEMENT, THE SERVICE OR OUR PROPERTY, WHETHER BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, SHALL BE LIMITED TO THE GREATER OF (I) THE AMOUNT YOU HAVE PAID TO US FOR USE OF THE SERVICE, OR (II) \$10. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF WARRANTIES OR OF LIABILITY FOR CERTAIN TYPES OF DAMAGES, SO SOME OF THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO YOU.

9. Third Party Services. Without limitation of the disclaimers and limitations of liability set forth in Section 8, you acknowledge and agree that Simon Care Management provides the Service using third party service providers. Simon Care Management does not endorse, and hereby disclaims all liability or responsibility to you or any other person for, any third party services. We reserve the right to change the terms of any third party service provider relationship or terminate your access to the Service at any time upon notice to you due to a change necessitated by unforeseen circumstances that may arise after the date hereof, regulatory changes or changes imposed or required by a third party service provider.

10. Indemnity. You will indemnify us, our affiliates, and our and their respective partners, members, trustees, directors, officers, employees, and licensors against any and all claims, actions, proceedings, suits, liabilities, losses, damages, costs, expenses and attorneys' fees ("**Liabilities**") arising out of or related to (a) your breach of this Agreement or (b) your use of the Service (but excluding any Liabilities to the extent caused by our negligence or willful misconduct). We reserve the right to assume the sole control of the defense and settlement of any claim, action, suit or proceeding for which you are obliged to indemnify us. You will cooperate with us with respect to such defense and settlement.

11. Our Privacy Policy. We operate the Service under the Privacy Policy published at [simon.health/privacypolicy](http://simon.health/privacypolicy) (the "**Privacy Policy**"), which is hereby incorporated into this Agreement. Each party shall comply with the Privacy Policy.

12. Term and Termination.

- a. *Term.* The term of this Agreement ("**Term**") shall commence on the Effective Date. The "**Effective Date**" shall be the date you first access the Service, if you use the Service during the Pilot Period, or the effective date of the Subscription Term, for all other users. If you purchase a paid subscription plan, the term of such subscription shall commence on the Effective Date for the paid subscription and, unless earlier terminated as set forth herein, shall continue for the subscription term you purchase, unless otherwise terminated as described in this Section 12.
- b. *Termination.* Either party may terminate this Agreement for convenience and without cause at any time by providing thirty (30) days' prior written notice to the other party (for paid subscriptions) or by discontinuing use of the Service (during the Pilot Period). Either party may terminate this Agreement by written notice thereof to the other party, if the other party materially breaches this Agreement and does not cure such breach within fifteen (15) days after written notice thereof.
- c. *Effects of Termination; Survival.* Upon any expiration or termination of this Agreement: (a) all rights granted to you hereunder shall terminate, and Simon Care Management shall no longer provide access to the Service to you, (b) you shall cease using the Service, and (c) each party shall promptly return or destroy any confidential information of the other party in its possession. Any obligations that have accrued prior to expiration or termination, including payment obligations, shall survive expiration or termination of this Agreement. In addition, the following Sections, as well as any other provisions herein which by their nature should survive, shall survive expiration or termination of this Agreement: Sections 1, 3 through 11, 12c, 14 through 17, 19 and 20.

### 13. Auto Renew Subscriptions

- a. *Annual Auto-Renew Subscriptions.* If you purchase a subscription plan for the Service that automatically renews annually, upon expiration of your subscription plan's paid term, that subscription plan will automatically renew at the billing interval you have selected. Unless such subscription plan is canceled by you according to the terms set forth in Section this Section 13 or by Simon Care Management as allowed by this Agreement, you hereby authorize us (or our designated third party payment processor) to charge to your credit card on file, or a substitute account provided by you or your card issuer, on each subscription renewal date at the billing intervals you have selected, the then current subscription rate for your renewing subscription plan, plus any applicable taxes, governmental fees and surcharges, for the duration of the applicable subscription plan as described in Section 3. To cancel your subscription plan, you may call Simon Care Management Customer Support at 347.201.1313, or cancel online via the App or Simon Care Management website at [www.simon.health](http://www.simon.health), or use any other method allowed by law.
- b. *Month to Month Auto Renew Subscriptions.* If you sign up for a monthly subscription plan, your subscription will automatically renew each month for successive one month terms, until you cancel your subscription. **YOU MAY CANCEL YOUR SUBSCRIPTION AT ANY TIME BY PROVIDING NOTICE TO SIMON CARE MANAGEMENT BY EMAILING US AT [support@simon.health](mailto:support@simon.health) OR CALLING US AT 347.201.1313, STATING YOUR NAME AND THAT YOU ARE CANCELING YOUR SUBSCRIPTION, OR WORDS OF SIMILAR EFFECT.** You may also cancel by logging into your account on the App and visiting our FAQ page, for a pre-formatted cancellation e-mail template, which you can send to us. Your cancellation will be effective as of the first day of the month following the date you submitted your cancellation request. If you cancel your subscription, Simon Care Management will not automatically renew your subscription thereafter.
- c. *Reaffirmation of Authorization.* If you are a subscriber, your non-cancellation of your subscription reaffirms that we are authorized to charge your payment method for the applicable charge each month, unless you have opted out for a given month. We may submit those charges for payment and you will be responsible for such charges. This does not waive our right to seek payment directly from you. Your charges may be payable in advance, in arrears, per usage, or as otherwise described when you initially signed up for the subscription.

14. Modification of Service and Agreement. We reserve the right to modify the Service at any time during the Pilot Period, without notice to you. We may also from time to time amend this Agreement prospectively. If we do so, we will notify you by posting on the Service. You agree that your continued use of the Service constitutes your agreement to the amended Agreement. If you do not agree to any amended Agreement that we publish, you must terminate your account and cease using the Service. Except as set forth above, this Agreement may be amended or modified only by an express writing signed by Simon Care Management.

15. Children. The Service is not directed to users under the age of 18. The Service does not knowingly collect personal information from children under the age of 13. If you are under 18, you are not permitted to use the Service or to send personal information to Simon Care Management.

16. Applicable Law. You and we each agree that all disputes or other matters arising from or relating to this Agreement, or the use or operation of the Service, will be governed by the substantive laws of the State of New York, U.S.A., without regard to its or any other jurisdiction's conflicts of laws principles that would apply another law. Any action or proceeding by you relating to any claim arising from or relating to the Service or this Agreement must commence within the shorter of the applicable statute of limitations or one year after the cause of action has accrued. The United Nations Convention for the International Sale of Goods is hereby disclaimed.

17. Arbitration. We will attempt to resolve disputes with you to your satisfaction. If, however, a matter arises that cannot be resolved promptly between you and us, you agree that any disputes arising out of or relating to the Service or this Agreement (including the validity and scope of the agreement to arbitrate and any disputes with other users of the Service) shall be resolved exclusively by final and binding arbitration administered by the American Arbitration Association (“AAA”) under the Federal Arbitration Act, and shall be conducted before a single arbitrator pursuant to the applicable Rules and Procedures established by the AAA (for information on the AAA and its rules, see [adr.org](http://adr.org)). You agree that the arbitration shall be held in New York, New York, unless the AAA or the arbitrator shall determine that venue in such city is unreasonably burdensome, in which case the AAA or the arbitrator shall select a venue that is not unreasonably burdensome to both you and us. You agree that, if the AAA shall be unavailable or decline to administer the arbitration, and the parties do not agree on a substitute, a substitute administrator or arbitrator shall be appointed by the court. The arbitrator may render early or summary disposition of some or all issues, after the parties have had a reasonable opportunity to make submissions on these issues. At Simon Care Management’s option, this provision shall not apply to claims of patent, trademark, or copyright infringement or misappropriation of trade secrets (collectively, “*IP Claims*”). With respect to any IP Claims that are not subject to arbitration under the above provision, you hereby consent to non-exclusive jurisdiction and venue in any federal or state court located within the State of New York, U.S.A., with respect to any suit, claim or cause of action arising from or relating to the Service or this Agreement, and you shall not bring any such suit, claim or cause of action except in a court located within the State of New York, U.S.A. You agree that any arbitration shall not permit claims on a class, mass, representative, or private attorney general basis. You further agree that no claims of other parties may be consolidated with your or our claims in the arbitration without both your and our consent. **YOU ARE WAIVING YOUR RIGHTS TO HAVE YOUR CASE DECIDED BY A JURY AND TO PARTICIPATE IN A CLASS, MASS, REPRESENTATIVE, PRIVATE ATTORNEY GENERAL, OR CONSOLIDATED ACTION AGAINST US.** If any part of this Arbitration clause is later deemed invalid as a matter of law, then it shall be severed and the remaining portions of this section shall remain in effect, with the exception that if the preceding paragraph is deemed invalid, then this entire section shall be deemed invalid and the arbitration clause shall be void.

18. Force Majeure. Simon Care Management will not be liable for delay or non-performance of any of its obligations hereunder or its performance of the Service to the extent that such performance is prevented, prohibited or delayed by any circumstance for reasons beyond its control including without limitation, labor disputes, fire, flood, natural disaster, epidemic or pandemic, war, military operations, riot, civil commotion, plant breakdown, state of emergency, power outage, computer or other equipment failure or non-delivery or delays in delivery by any other suppliers of goods or services utilized in the performance of services under this Agreement, provided that Simon Care Management completes performance of the Service within a reasonable time after such circumstances are resolved.

19. Geography. We provide the Service from the United States and for use only by persons located in the United States. We make no claims that the Service or any of its content is accessible or appropriate outside of the United States. Access to the Service may not be legal by certain persons or in certain countries. If you access the Service from outside the United States, you do so on your own initiative and are responsible for compliance with local laws.

20. Miscellaneous Provisions. No delay or omission by us in exercising any of our rights occurring upon any noncompliance or default by you with respect to any of the terms and conditions of this Agreement will impair any such right or be construed to be a waiver thereof, and a waiver by us of any of the covenants, conditions or agreements to be performed by you will not be construed to be a waiver of any succeeding breach thereof or of any other covenant, condition or agreement herein. No waiver will be binding on us unless made in an express writing signed by us. If any provision of this Agreement is found by a court of competent jurisdiction to be invalid or unenforceable, then this Agreement will remain in full force and effect and will be reformed to be valid and enforceable while reflecting the intent of the parties to the greatest extent permitted by law. Except as otherwise expressly provided herein, this Agreement sets forth the entire agreement between us and you regarding its subject matter, and supersedes all prior promises, agreements or representations, whether written or oral, regarding such subject matter. Your registration, this Agreement and your rights and obligations hereunder are not assignable, or otherwise transferable or delegable, by you to any third party without our prior written consent in our sole discretion.



Any purported assignment, transfer or delegation without such consent will be null and void. We may assign or otherwise transfer or delegate this Agreement (including any rights or obligations hereunder), including to any purchaser of our organization, from time-to-time in our sole discretion. This Agreement will be binding upon and inure to the benefit of the parties' successors and permitted assigns. You agree that the electronic text of this Agreement constitutes a writing and your assent to the terms and conditions hereof constitutes a "signing" for all purposes. As used herein and unless the intent is expressly otherwise in a specific instance, the terms "include," "includes" or "including" shall not be limiting and "or" shall not be exclusive. Any section headings herein are for convenience only and do not form a part of, and will not be used in the interpretation of, the substantive provisions of this Agreement. You agree that email to your email address on record will constitute formal notice under this Agreement.

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