

Best Doctors Services Terms and Conditions

These Terms and Conditions (“**Agreement**”) contains the general terms and conditions under which Best Doctors Canada Inc., a Canadian corporation (“**Best Doctors**”) will provide services to the company (“**Client**”) named in the applicable Best Doctors application (“**Application Form**”).

1. Scope.

This Agreement sets forth the terms and conditions under which Best Doctors provides the services identified in the Application Form (“**Services**”) to certain of Client’s employees (“**Eligible Employees**”) and their dependents (“**Eligible Dependents**”), collectively and individually referred to as **Members**. The Application Form is hereby incorporated into by reference and made a part of this Agreement.

In accepting the Services, Client acknowledges and agrees to the following and further acknowledges that Best Doctors is relying upon such agreement in providing the Services:

(a) Best Doctors is a medical information services company and, as such, Best Doctors does not provide medical treatment or medical diagnoses, and the Services do not create or otherwise give rise to a physician-patient relationship between any Best Doctors medical professional and a Member. All treatment decisions are made by each Member in consultation with his/her treating physician(s).

(b) Best Doctors may be unable to provide the Services to a Member if Best Doctors does not have the data required including, without limitation, medical records and related test reports, radiology, and pathology, or if Best Doctors does not have the authorizations and/or consents it deems necessary to obtain such data.

(c) Best Doctors may refuse to provide or may terminate the provision of the Services to a Member if Best Doctors determines, in Best Doctors’ reasonable discretion, that Member’s use of any Services is or was for a purpose other than to better Member’s outcome in relation to Member’s treatment by his/her treating physician (e.g., for litigation purposes).

(d) Best Doctors does not and will not have any authority to make benefit determinations, and any such decisions will be made by Client in accordance with Client’s benefit programs.

(e) Use of the Services by the Members is not a condition of participation in or payment under Client’s program(s) of insurance.

(f) Client will be responsible for providing Best Doctors with timely and accurate lists of Eligible Employees so that Best Doctors may perform eligibility checks prior to providing Services.

(f) Best Doctors will have no power or authority on behalf of Client to waive, alter, or modify by estoppel or otherwise, any of the terms or conditions of any benefit program provided by

Client. Best Doctors will have no power or authority to bind Client to any insurance or other risk.

2. Intellectual Property Rights.

2.1 Client acknowledges and agrees that Best Doctors shall solely own and shall retain all right, title, and interest in and to (the “**Best Doctors IP**”):

(a) All Best Doctors patents, including Canadian Patents Nos. 2,283,976; 2,427,446; and 2,776,989; and their foreign counterparts.

(b) All Best Doctors trademarks and servicemarks including, without limitation, Best Doctors[®], InterConsultationSM, FindBestDocSM, FindBestCareSM, Ask the ExpertSM, Best Doctors 360[®], Medical Records eSummarySM, Elite Diagnostic Imaging ServiceSM, LeBonSpécialiste^{MC}, SoinsHorsCanada^{MC}, InterConsultation^{MC}, Services médicaux 360^{MD}, Consultez l’expert^{MC}, e-Récapitulatif médical^{MC}, and Service IDÉ^{MC}.

(c) All Best Doctors logos including, without limitation, and  ,  , and  When you need to be absolutely sure.

(d) All Best Doctors domains including, without limitation, www.BestDoctors.com.

(e) All Best Doctors proprietary methods, trade secrets, the names of all Best Doctors medical professionals and consultants, inventions, and/or other confidential and proprietary information of Best Doctors.

In addition, Best Doctors shall have a royalty-free, worldwide, perpetual license to use and to incorporate into the Best Doctors IP any suggestions, ideas, enhancement requests, feedback, or recommendations provided by Client or its affiliates, employees, agents, or Members with respect to the Services.

Client acknowledges and agrees that except as may be specifically granted by Best Doctors in this Agreement, Client shall acquire no rights or interest in or to the Best Doctors IP.

2.2 During the Term, Best Doctors grants Client a limited license to utilize the Best Doctors IP solely in connection with the promotion and use of the Services and strictly in accordance with the Best Doctors usage policies as set forth at <http://www.bestdoctors.com/us/trademark>, as may be amended from time to time by Best Doctors. Client acknowledges these usage policies and agrees to comply with them. The Services will not be re-branded by Client but instead always must reference the delivery of such Services by Best Doctors. Before Client publishes or disseminates any

materials to Members promoting the Services, Client will deliver a sample of the materials to Best Doctors for prior approval, which will not be unreasonably withheld.

3. No Joint Undertaking. The provision of the Services by Best Doctors does not constitute a joint undertaking between Best Doctors and Client to furnish any service or services to the Members or to any other party. The Parties are independent parties and shall not be deemed or construed, by virtue of this Agreement, to be the employee, representative, partner, or joint venturer of the other. Neither Party shall have the power to bind the other or to incur obligations on the other's behalf without the other Party's prior written consent.

4. Personal Information; Confidential Information.

4.1 Personal Information. Best Doctors agrees that with respect to Member's medical and individually identifiable information ("Personal Information"):

(a) it shall not use, access, manage, transfer, or disclose Personal Information collected in the performance of the Services, beyond what is necessary to perform the Services;

(b) as of the Effective Date and continuously during the Term of this Agreement, it shall have in place the technological, physical and organization security safeguards to protect Personal Information against anticipated threats or hazards, loss, theft, unauthorized access, disclosure, copying, use, modification, disposal and destruction;

(c) it will protect Personal Information in its possessions as required by, and in compliance with, all privacy laws and this Agreement; and

(d) to the extent permitted by law it shall cooperate with Client and/or Member to respond to any complaints initiated against Client related to compliance obligations of Personal Information.

4.2 Confidential Information. Each Party acknowledges that in performing its obligations hereunder it may have access to and receive ("Receiving Party") certain confidential and/or proprietary information including without limitation lists of clients, software, knowledge, data, tools, methodologies, processes, plans, procedures, techniques, manuals, treatment protocols, clinical indicators, case rates, provider payment structure information, underwriting methodology, proprietary rating plans, provider practice data, employee-outcomes data, audit reports and actuarial analyses (collectively "Confidential Information") from the other Party ("Disclosing Party"). Receiving Party agrees not to give, sell or in any way transfer, either directly or indirectly, Confidential Information to any third party except with the express written consent of Disclosing Party. Receiving Party agrees not to use, either directly or indirectly, Confidential Information for its own purposes or the purposes of others at any time other than as provided for in this Agreement.

Confidential Information will not include information which: (a) is or becomes a part of the public domain through no act or omission of Receiving Party; (b) information lawfully obtained by Receiving Party from a third party who is not under any legal obligation to refrain from disclosing such information; (c) is independently developed by employees of Receiving Party who are not recipients of the Confidential Information as provided by written documentation evidencing same; or (d) is disclosed by legal requirement as provided by an opinion of counsel, and in such case only upon prompt written notice to Disclosing Party providing an opportunity to limit such disclosure.

Receiving Party agrees to maintain the confidential nature of the Confidential Information by limiting access to such information to only those individuals that are directly involved in performing obligations under this Agreement. The Parties agree to keep the Confidential Information of Disclosing Party secure and confidential to the same extent Receiving Party maintains its own Confidential Information, and no less than commercially reasonable protections.

Upon a termination of this Agreement, Receiving Party agrees to return any and all Confidential Information of Disclosing Party upon written notice.

5. Representations of the Parties; Disclaimer.

5.1 Each Party warrants and represents that (a) it has the necessary and actual right and authority to enter into and to perform its obligations under this Agreement, (b) it has taken all necessary corporate action to authorize the execution, delivery, and performance of this Agreement, (c) this Agreement constitutes a valid and binding obligation enforceable against the Party in accordance with its terms, and (d) neither the execution of this Agreement nor the performance of its terms will violate any law to which such Party is or may be bound.

5.2 Best Doctors represents that during the Term, it will maintain professional liability errors and omissions insurance coverage of at least \$5 million (the "**Insurance Amount**") to cover claims made by Clients or Members against Best Doctors for alleged acts, errors, and omissions by Best Doctors or its employees or agents in the provision of the Services.

5.3 CLIENT ACKNOWLEDGES AND AGREES THAT BEST DOCTORS HAS MADE NO REPRESENTATIONS, AND HAS EXPRESSLY DISCLAIMED, TO THE MAXIMUM EXTENT PERMITTED BY LAW, ALL WARRANTIES OR REPRESENTATIONS OF EVERY KIND OR NATURE, EITHER EXPRESS, IMPLIED, OR STATUTORY, AS TO THE SERVICES INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS.

6. Indemnification; Limitations of Liability.

6.1 Best Doctors agrees to indemnify and hold Client harmless from and against claims for direct damages for any act or failure to act by Best Doctors, or by any officer, employee, or representative of Best Doctors relating to or arising out of the Services provided pursuant to this Agreement; **provided, however, that Client expressly waives any right to seek indirect, special, incidental, consequential, or punitive damages from Best Doctors including, without limitation, claims for loss of business, revenue, profits, or goodwill, and provided further,** that Best Doctors' total liability, including the liability of any of its officers, employees, or agents to Client or any Member for any and all causes of action or claims of every kind or nature for, arising from, or relating in any manner to, directly or indirectly, this Agreement and/or the Services provided pursuant to this Agreement including, without limitation, claims for breach of contract, gross negligence, bodily injury, damage to property, willful misconduct or other intentional, fraudulent, or criminal acts, and interference with contractual relations, shall be limited to the lesser of Client's proven direct damages or the Insurance Amount; *provided, however,* that in the event of a decision of liability attributed to both Parties, Best Doctors' obligation will be limited by its relative fault as compared to Client's or a Member's in such matter.

6.2 Except for claims relating to Client's unauthorized use of Best Doctors IP or either Party's disclosure of Confidential Information of the other, no actions (regardless of form) arising out of or related in any way to this Agreement may be commenced by either Party more than one year after the cause of action accrued, even if the basis for such action was not known or discovered during such one-year period.

7. OFAC Compliance. Nothing in this Agreement shall require, or be construed to require, Best Doctors to provide any Service to any Member that would be in violation of any U.S economic or trade sanctions, or any rules issued by the Office of Foreign Asset Control of the U.S. Department of the Treasury (OFAC).

8. Publicity. Upon prior written consent from Client, Best Doctors may use, in Best Doctors' promotional and marketing materials and on Best Doctors' websites, the name, logo, and other marks of Client as a user of the Services, as well as Client-authorized quotations about Best Doctors or the Services, for so long as Client uses the Services (and for a reasonable period thereafter to remove Client's name and marks from Best Doctors' websites).

9. Term and Termination. The term of the Agreement between the Parties is defined in the Application Form completed by Client ("**Term**").

The following sections shall survive the termination of this Agreement: Intellectual Property Rights, Personal Information; Confidential Information, and Indemnification; Limitations of Liability.

10. Dispute Resolution.

10.1 All disputes arising out of or in connection with this Agreement that cannot be resolved through good faith negotiation between the Parties shall be resolved through binding arbitration governed by the rules and procedures of the Canadian Arbitration Association; provided, however, that Best Doctors reserves the right to seek equitable relief in any court of competent jurisdiction against threatened violations of Best Doctors' intellectual property rights. The Parties shall endeavor to select a mutually acceptable arbitrator knowledgeable about issues relating to the subject matter of this Agreement. If the Parties are unable to agree to such a selection, each Party will select an arbitrator and those arbitrators in turn shall select a third arbitrator. The arbitration will take place at a location mutually agreed by the Parties. This agreement to arbitrate shall be specifically enforceable by either Party.

10.2 With the exception of privileged, confidential, proprietary, or trade secret information, all documents, materials, and information in the possession of each Party that are in any way materially relevant to the claim(s) or dispute(s) shall be made available to the other Party for review and copying no later than 45 days after the notice of arbitration is served.

10.3 Except as provided in Section 12.8 (Severability), the arbitrator(s) shall not have the authority, power, or right to alter, change, amend, modify, add, or subtract from any provision of this Agreement or to award punitive damages. The award rendered by the arbitrator(s) shall state the reasons for the award and shall be final and binding on the Parties. Judgment may be entered on such award in any court having jurisdiction.

11. Miscellaneous.

11.1 Entire Agreement; Amendment. This Agreement, together with the Application Form, constitutes the entire agreement among the Parties and supersedes and cancels any prior agreements, representations, warranties, or communications, whether oral or written, among the Parties relating to the subject matter of the Agreement. Neither this Agreement nor the Application Form may be modified, changed, waived, discharged, or terminated orally. Such agreements may only be modified, changed, waived, discharged, or terminated by an agreement in writing signed by the party against whom or which the enforcement of such modification, change, waive, discharge, or termination is sought.

11.2 Waiver. Any failure on the part of a Party to comply with any of its obligations, agreements, or responsibilities under this Agreement may be waived by the other Party to whom such compliance is owed. No waiver of any provision of such agreements shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a waiver of any failure other than that waived.

11.3 Assignment. Neither Party may assign or otherwise transfer any of its rights, duties, or obligations under this Agreement to any person or entity without the prior written consent of the other Party, except to a successor entity or to an entity it controls, is controlled by, or is under common control with.

11.4 No Third Party Beneficiaries. No person other than the Parties and their respective successors and permitted assigns is intended to be a beneficiary of this Agreement. In executing this Agreement, the Parties do not intend to create third-party beneficiary rights in anyone not a party to the Agreement.

11.5 Force Majeure. Neither Party shall have liability to the other as a result of a Force Majeure Event. For purposes of this Agreement, "**Force Majeure Event**" means an event not reasonably foreseeable, beyond a Party's reasonable control, and occurring without its fault or negligence including, without limitation (a) an act of nature, such as fire, flood, earthquake, storm, tornado, lightning, landslide, sink hole, or outbreak of disease, (b) a service failure caused by third parties, such as a power or utility outage or a labor dispute affecting suppliers or subcontractors, (c) a civil disruption such as war, invasion, insurrection, trade embargo, or activities by terrorists or public enemies, or (d) action by a governmental body that enjoins or prevents performance by a Party. Neither Party shall be liable, nor shall any credit or other remedy be extended, for any failure or delay in performance under this Agreement where such failure or delay is proximately caused by a Force Majeure Event; *provided, however*, that the nonperforming Party uses commercially reasonable efforts to avoid or remove such causes of nonperformance and restores performance as soon as such causes are removed.

11.6 Further Assurances. Each Party covenants that (a) it will comply in all material respects with any applicable laws in the performance of this Agreement, and (b) at any time, and from time to time during the Term, it will execute such additional instruments and take such actions as may be reasonably requested by the other Party to confirm or perfect or otherwise to carry out the intent and purposes of this Agreement.

11.7 Notice. All notifications, consents, reports, requests, demands, and other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed given when mailed (with return receipt requested), emailed (receipt for which is confirmed), faxed (which is confirmed), or sent via a recognized overnight courier service, to the Parties at the following addresses, or pursuant to such other instructions as may be designated in writing by the Party to receive such notice:

If to Best Doctors:

Best Doctors, Inc.
Attn: Chief Legal Officer
60 State Street, Suite 600
Boston, MA 02109
Fax: (617) 391-6473
Email: legalnotices@bestdoctors.com

With a copy to:

Best Doctors Canada Inc.
145 King Street, Suite 700
Toronto, ON M5H 1J8
Attention: Account Management

If to Client:

To the address, email, and/or fax number listed in the Application Form.

11.8 Severability. Any term or provision of this Agreement that is held to be invalid, void, or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions of such agreements or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction. If any term or provision of this Agreement is declared invalid, void, or unenforceable, the Parties agree that the arbitral tribunal, court, or other authority making such determination shall have the power to reduce the scope, duration, or applicability of the term or provision, to delete specific words or phrases, or to replace any invalid, void, or unenforceable term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision. If the economic or legal substance of the transactions contemplated by such agreements is affected in any manner adverse to any Party as a result thereof, the Parties agree to negotiate in good faith such modifications as are appropriate to ensure that the burdens and benefits of each Party under such modified agreement are reasonably comparable to the burdens and benefits originally contemplated.

11.9 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario, without regard to provisions relating to conflict of laws. Any action brought in connection with this Agreement will be brought only in the courts in the City of Toronto, in the Province of Ontario and both Parties consent to the personal jurisdiction of such courts and waive any objections to venue of such courts.