

## DirectCare

### Terms of Use Agreement

Last Updated: 06/28/2023

PLEASE READ THIS TERMS OF USE AGREEMENT (“**TERMS**”) CAREFULLY. THIS AGREEMENT IS A LEGAL CONTRACT BETWEEN YOU AND DIRECTCARE, A DIVISION OF CARE ADVOCATES, LLC (“**DIRECTCARE**,” “**WE**,” OR “**US**”).

By accessing or using the DirectCare website with an authorized link to the Terms (“**Site**”), utilizing our virtual care telemedicine services (the “**Virtual Care Services**”), our consumer direct services, accessing or using any content, information, services, features or resources available or enabled via the Site (collectively with the Site, consumer direct services, and Virtual Care Services, the “**Services**”), clicking on a button or taking any other action to signify your acceptance of the Terms, or completing our account registration process, you: (1) agree to be bound by the Terms; (2) represent you are of legal age in your jurisdiction of residence to form a binding contract with DirectCare; and (3) represent that you have the authority to enter into this Agreement personally. The term “**You**” refers to the individual or legal entity, as applicable, identified as the end user when you registered through the Site. **Except as otherwise provided herein, if you do not agree to be bound by the Terms, you may not access or use the Services.**

**SECTION 15 OF THE TERMS IS AN ARBITRATION CLAUSE THAT REQUIRES MOST DISPUTES BETWEEN US TO BE RESOLVED ON AN INDIVIDUAL, NON-CLASS ACTION BASIS THROUGH BINDING AND FINAL ARBITRATION INSTEAD OF IN COURT. SEE SECTION 15 FOR MORE INFORMATION REGARDING THIS ARBITRATION CLAUSE, AND HOW TO OPT OUT.**

Your use of the Services is also subject to any additional terms, conditions, and policies that we separately post on the Services and any agreements that you have separately executed with DirectCare (“**Supplemental Terms**”) which are incorporated by reference into the Terms. To the extent there is any conflict between the Terms and the Supplemental Terms, the Supplemental Terms will control with respect to the subject matter of such agreement. For example, if you are a User who has agreed to the Client Engagement Letter or other related agreements with DirectCare (“**Services Agreements**”), the terms of the Services Agreements will control and supersede the Terms with respect to the subject matter of such Services Agreements. The Terms and any applicable Supplemental Terms are referred to herein as the “**Agreement.**”

PLEASE NOTE THAT THE AGREEMENT IS SUBJECT TO CHANGE BY DIRECTCARE IN ITS SOLE DISCRETION AT ANY TIME. When changes are made, DirectCare will make a new copy of the Terms available on the Site, and any new Supplemental Terms will be made available from within, or through, the affected Service on the Site. We will also update the “Last Updated” date at the top of the Terms. If we make material changes to the Terms, we may (and, where required by law, will) also provide notification of changes in another way that we believe is reasonably likely to reach you, such as via e-mail if you have an Account (as defined in Section 2) or another manner through the Services (which may include posting an announcement on our Site). DirectCare may require you to provide consent to the updated Agreement in a specified manner before further use of the Site and/or the Services are permitted. If you do not agree to any change(s) after receiving a notice of such change(s), you shall stop using the Site and/or the

Services. Otherwise, your continued use of the Site and/or Services constitutes your acceptance of such change(s). PLEASE REGULARLY CHECK THE SITE TO VIEW THE THEN-CURRENT TERMS.

**1. Description of Services.** DirectCare offers a variety of Services, including, but not limited to, consumer lab, its Virtual Care Services where DirectCare assists Users access virtual care telemedicine related services with our contracted medical providers. Once you submit a request to receive Services, DirectCare will gather information to determine if you are eligible to receive the Services.

**1.1 No Medical Services.** DIRECTCARE DOES NOT PERFORM DIRECT MEDICAL SERVICES. OUR SERVICES DO NOT INCLUDE THE PROVISION OF ANY HEALTHCARE SERVICES, INCLUDING, BUT NOT LIMITED TO MEDICAL DIAGNOSIS OR TREATMENTS, OR ADVICE CONCERNING THE SAME. DIRECTCARE IS NOT A HEALTHCARE PROVIDER AND IS NOT AUTHORIZED TO PROVIDE HEALTHCARE SERVICES THAT REQUIRE PROFESSIONAL LICENSURE. ALL MEDICAL SERVICES ARE PROVIDED BY A LICENSED HEALTHCARE PROFESSIONAL CONTRACTED BY DIRECTCARE.

**1.2 Not Insurance.** THE PRODUCTS AND SERVICES OFFERED BY DIRECTCARE ARE NOT INSURANCE AND SHOULD NOT BE CONFUSED WITH A PRODUCT OFFERED THROUGH AN INSURANCE POLICY.

**1.3 Eligibility Requirements.** In order to access the Services, you must: (a) be at least eighteen (18) years old; (b) not a person barred from using Services under the laws of the United States, your place of residence or any other applicable jurisdiction. By using the Services, you represent and warrant that you meet all of the eligibility requirements set forth in this Section and the Agreement. We may still refuse to let certain people access or use of the Services, and we may change our eligibility criteria at any time, in our sole discretion.

**2. REGISTRATION.** When registering an account for the Services (“**Account**”) or submitting a request for Services, you agree to provide only true, accurate, current and complete information requested by the registration form (the “**Registration Data**”) and to promptly update the Registration Data thereafter as necessary to keep it current. You represent that will be responsible for all activities that occur under your Account. You agree to monitor your Account to restrict its use by minors and other unauthorized users and agree not to share your Account or password with anyone. You further agree to notify DirectCare immediately of any unauthorized use of your password or any other breach of the security of your Account and to exit from your Account at the end of each session. You agree not to create an Account using a false identity or alias or if you previously have been banned from using any of the Services. You further agree that you will not maintain more than one Account at any given time. DirectCare reserves the right to remove or reclaim any usernames at any time and for any reason. You acknowledge and agree that you have no ownership or other property interest in your Account and that all rights in and to your Account are owned by and inure to the benefit of DirectCare. YOU WILL BE SOLELY RESPONSIBLE FOR ALL ACCESS TO AND USE OF THE SERVICES BY ANYONE USING YOUR ACCOUNT WHETHER OR NOT SUCH ACCESS TO AND USE OF YOUR ACCOUNT IS ACTUALLY AUTHORIZED BY YOU.

### **3. OWNERSHIP OF AND LICENSE TO USE SERVICES.**

**3.1 Use of the Services.** DirectCare and its suppliers own all rights, title and interest in the Services. The Services are protected by servicemarks and other intellectual property laws throughout the world. Subject to the Agreement, DirectCare grants you a limited, non-transferable license to use the Services solely for your personal non-commercial purposes. DirectCare, its suppliers, and its service providers reserve all rights not granted in this Agreement.

**3.2 Service Marks.** DirectCare's stylized name and other related graphics, logos, service marks and trade names used on or in connection with the Services are the service marks of DirectCare and may not be used without permission in connection with any third-party products or services. Other service marks and trade names that may appear on or in the Services are the property of their respective owners. You will not remove, alter or obscure any copyright notice, trademark, service mark or other proprietary rights notices incorporated in or accompanying the Services.

### **4. USER CONTENT.**

**4.1 Responsible Party for Content.** You acknowledge that all content is the sole responsibility of the party from whom such content originated. This means that each User is entirely responsible for all content that that User makes available through the Services ("**User Content**"). DirectCare has no obligation to pre-screen any content. You use all User Content and interact with other Users at your own risk. Without limiting the foregoing, DirectCare reserves the right in its sole discretion to pre-screen, refuse, or remove any content. DirectCare shall have the right to remove any content that violates this Agreement or is otherwise objectionable.

**4.2 Ownership of Your Content.** DirectCare does not claim ownership of any User Content you make available on the Services ("**Your Content**"). However, when you as a User post or publish Your Content on or in the Services, you represent that you have all of the necessary rights to grant DirectCare the license set forth in Section 4.3. Except with respect to Your Content, you agree that you have no right or title in or to any content that appears on or in the Services.

**4.3 License to Your Content.** Subject to any applicable Account settings, you grant DirectCare a right to copy, use, and display Your Content (in whole or in part) and create derivative works from Your Content for purposes of operating and providing the Services. Note that other Users may search for, see, use, modify and reproduce any of Your Content that you submit to any "public" area of the Services.

**4.4 Other Restrictions on User Conduct.** You agree not to use the Services for any purpose prohibited by this Agreement or by applicable law. You shall not (and shall not permit any third party to) (a) take any action or (b) make available any content on or through the Services that: (i) infringes any patent, service mark, trade secret, copyright, right of publicity or other right of any person or entity; (ii) is unlawful, threatening, abusive, harassing, defamatory, libelous, deceptive, fraudulent, invasive of another's privacy, tortious, obscene, offensive, or profane; (iii) constitutes unauthorized or unsolicited advertising, junk or bulk e-mail; (iv) involves commercial activities and/or sales without DirectCare's prior written consent, such as contests, sweepstakes, barter, advertising, or pyramid schemes; (v) impersonates any person or entity, including any employee or representative of DirectCare; or (vi) discloses any personal or confidential information about another person without the express written consent of such person.

## 5. RESTRICTIONS ON USE OF THE SERVICES.

**5.1 Acceptable Use.** The rights granted to you in this Agreement are subject to the following restrictions: (a) you shall not license, sell, rent, lease, transfer, assign, reproduce, distribute, host or otherwise commercially exploit Services or any portion of Services; (b) you shall not frame or utilize framing techniques to enclose any service mark, logo, or other Services (including images, text, page layout or form); (c) you shall not use any metatags or other “hidden text” using DirectCare’s name or service marks; (d) you shall not modify, translate, adapt, merge, make derivative works of, disassemble, decompile, reverse compile or reverse engineer any part of Services except to the extent the foregoing restrictions are expressly prohibited by applicable law; (e) you shall not use any manual or automated software, devices or other processes (including but not limited to spiders, robots, scrapers, crawlers, avatars, data mining tools or the like) to “scrape” or download data from the Services; (f) you shall not access Services in order to build similar or competitive products or services; (g) except as expressly stated herein, no part of Services may be copied, reproduced, distributed, republished, downloaded, displayed, posted or transmitted in any form or by any means; (h) you shall not remove or destroy any copyright notices or other proprietary markings contained on or in Services; (i) you shall not circumvent, remove, alter, deactivate, degrade, or thwart any of the protections of the Services; (j) you will not take any action that imposes or may impose (in our sole determination) an unreasonable or disproportionately large load on our technical infrastructure; and (k) you will not interfere with or attempt to interrupt the proper operation of the Services through any virus, device, information collection or transmission mechanisms, software or routine, or access or attempt to gain access to any data, files, or passwords related to the Services through hacking, password or data mining, or any other means. Any future release, update or other addition to Services shall be subject to this Agreement. DirectCare reserves all rights not granted in this Agreement. Any unauthorized use of Services terminates the licenses granted by DirectCare pursuant to this Agreement. The foregoing sentence is not exclusive of any other rights or remedies that may be available to DirectCare under law, equity, statute, or otherwise.

**6. FEEDBACK.** You agree that your submission of any ideas, suggestions, documents, and/or proposals to DirectCare (“**Feedback**”) is at your own risk and that DirectCare has no obligations (including without limitation obligations of confidentiality) with respect to such Feedback. You represent and warrant that you have all rights necessary to submit the Feedback. You hereby grant to DirectCare a fully paid, royalty-free, perpetual, irrevocable, worldwide, non-exclusive, and fully sublicensable right and license to use, reproduce, perform, display, distribute, adapt, modify, re-format, create derivative works of, and otherwise commercially or non-commercially exploit in any manner, any and all Feedback, and to sublicense the foregoing rights.

## 7. THIRD-PARTY SERVICES.

**7.1 Third-Party Websites, Apps and Ads.** The Services may contain links to third-party websites (“**Third-Party Websites**”) and apps (“**Third-Party Apps**”) and advertisements for third parties (“**Third-Party Ads**”). When you click on a link to a Third-Party Website, Third-Party App or Third-Party Ad, we will not warn you that you have left the Services and are subject to the terms and conditions (including privacy policies) of another website or destination. Such Third-Party Websites, Third-Party Apps and Third-Party Ads are not under the control of DirectCare. DirectCare is not responsible for any Third-Party Websites, Third-Party Apps or Third-Party Ads. DirectCare provides these Third-Party Websites, Third-Party Apps and Third-Party Ads only as a convenience and does not review, approve, monitor, endorse, warrant, or make any representations with respect to Third-Party Websites, Third-Party Apps or Third-

Party Ads, or any product or service provided in connection therewith. You use all links in Third-Party Websites, Third-Party Apps and Third-Party Ads at your own risk. When you leave our Website, the Agreement and policies no longer govern. You should review applicable terms and policies, including privacy and data gathering practices, of any Third-Party Websites or Third-Party Apps, and make whatever investigation you feel necessary or appropriate before proceeding with any transaction with any third party

## **8. PAYMENT.**

**8.1 Payment Terms for Services.** Please refer to your Membership Agreement for information on any fees related to Virtual Care Services. Fees for consumer direct services are charged as listed on the site as of the date of purchase. Non-refundable handling fees are applied to all consumer lab purchases.

**8.2 Payment Terms for Other Services.** You agree to pay all fees or charges to your Account in accordance with the fees, charges and billing terms in effect at the time a fee or charge is due and payable. You must provide DirectCare with a valid credit card (Visa, MasterCard, or any other issuer accepted by us) ("**Payment Provider**"). Your Payment Provider agreement governs your use of the designated credit card, and you must refer to that agreement and not to the Terms to determine your rights and liabilities. By providing DirectCare with your credit card number and associated payment information, you agree that DirectCare is authorized to immediately invoice your Account for all fees and charges due and payable to DirectCare hereunder and that no additional notice or consent is required. You agree to immediately notify DirectCare of any change in your billing address or the credit card used for payment hereunder. DirectCare reserves the right at any time to change its prices and billing methods, either immediately upon posting on Services or by e-mail delivery to you.

**8.3 Refund Policy for Services.** All payments made through the Services are final, and DirectCare will only issue refunds in the event purchases services are unavailable in your area. No refunds will be issued for handling fees.

**8.4 Third Party Payment Processor.** DirectCare may use Stripe ("**STRIPE**") as its third-party service provider for payment services (e.g., card acceptance, merchant settlement, and related services). By using the Services, you agree to be bound by Stripe's Privacy Policy: <http://www.stripe.com> and hereby consent and authorize Care Advocates and STRIPE to share any information and payment instructions you provide with one or more third party service provider(s) to the minimum extent required to complete your transactions. By making reservations on the Services, you also agree to be bound by Stripe.com terms.

**9. INDEMNIFICATION.** You agree to indemnify and hold the DirectCare, its parents, subsidiaries, affiliates, officers, directors, employees, contractors, and agents and its licensors and suppliers ("**DirectCare Parties**") harmless from any losses, costs, liabilities and expenses (including reasonable attorneys' fees) relating to or arising out of: (a) Your Content; (b) your misuse of the Services; (c) your violation of the Agreement; (d) your violation of any rights of another party; or (e) your violation of any applicable laws, rules or regulations. DirectCare reserves the right, at its own cost, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, in which event you will fully cooperate with DirectCare in asserting any available defenses. You agree that the provisions in this Section will survive any termination of the Agreement or your access to Services.

## **10. DISCLAIMER OF WARRANTIES AND CONDITIONS.**

**10.1 As Is.** YOU EXPRESSLY UNDERSTAND AND AGREE THAT TO THE EXTENT PERMITTED BY APPLICABLE LAW, YOUR USE OF THE SERVICES IS PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS, WITH ALL FAULTS. DIRECTCARE PARTIES EXPRESSLY DISCLAIM ALL WARRANTIES, REPRESENTATIONS, AND CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT ARISING FROM USE OF THE SERVICES.

**(a)** DIRECTCARE PARTIES MAKE NO WARRANTY, REPRESENTATION OR CONDITION THAT: (1) THE SERVICES WILL MEET YOUR EXPECTATIONS OR REQUIREMENTS; (2) THE INFORMATION, CONTENT, AND DATA ON THE SERVICES IS ACCURATE, COMPLETE, OR CURRENT; (3) YOUR USE OF THE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE OR ERROR-FREE; (4) ANY ERRORS ON THE SERVICES WILL BE CORRECTED; (5) YOUR USE OF THE SERVICES WILL NOT EXPOSE YOUR HARDWARE OR NETWORKS TO ADDITIONAL SECURITY RISK; OR (6) THE SERVICES WILL BE COMPATIBLE WITH YOUR DEVICES.

**(b)** ANY CONTENT DOWNLOADED FROM OR OTHERWISE ACCESSED THROUGH THE SERVICES IS ACCESSED AT YOUR OWN RISK, AND YOU SHALL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR PROPERTY, INCLUDING, BUT NOT LIMITED TO, YOUR COMPUTER SYSTEM AND ANY DEVICE YOU USE TO ACCESS THE SERVICES, OR ANY OTHER LOSS THAT RESULTS FROM ACCESSING SUCH CONTENT.

**(c)** THE SERVICES MAY BE SUBJECT TO DELAYS, CANCELLATIONS AND OTHER DISRUPTIONS. DIRECTCARE MAKES NO WARRANTY, REPRESENTATION OR CONDITION WITH RESPECT TO THE SERVICES, INCLUDING BUT NOT LIMITED TO, THE QUALITY, EFFECTIVENESS, REPUTATION AND OTHER CHARACTERISTICS OF THE SERVICES.

CERTAIN STATE LAWS DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES. IF THESE LAWS APPLY TO YOU, SOME OR ALL OF THE FOREGOING DISCLAIMERS MAY NOT APPLY TO YOU, AND YOU MIGHT HAVE ADDITIONAL RIGHTS.

**10.2 No Liability for Conduct of Third Parties.** YOU ACKNOWLEDGE AND AGREE THAT DIRECTCARE PARTIES ARE NOT LIABLE, AND YOU AGREE NOT TO SEEK TO HOLD DIRECTCARE PARTIES LIABLE, FOR THE CONDUCT OF THIRD PARTIES, INCLUDING OPERATORS OF EXTERNAL SITES, AND THAT THE RISK OF INJURY FROM SUCH THIRD PARTIES RESTS ENTIRELY WITH YOU.

## **11. LIMITATION OF LIABILITY.**

**11.1 Disclaimer of Certain Damages.** TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DIRECTCARE PARTIES SHALL NOT BE LIABLE FOR ANY LOSS OF PROFITS OR REVENUE OR FOR INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, OR DAMAGES OR COSTS DUE TO LOSS OF DATA, PRODUCTION, OR USE, BUSINESS INTERRUPTION OR PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, WHETHER OR NOT DIRECTCARE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**11.2 Cap on Liability.** UNDER NO CIRCUMSTANCES WILL THE TOTAL AGGREGATE AMOUNT THAT THE DIRECTCARE PARTIES ARE LIABLE TO YOU EXCEED \$100. THE LAWS OF SOME STATES DO NOT ALLOW FOR THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES. IF THESE LAWS APPLY TO YOU, SOME OR ALL OF THE LIMITATIONS SET FORTH IN THIS SUBSECTION MAY NOT APPLY TO YOU AND YOU MIGHT HAVE OTHER RIGHTS.

**11.3 User Content and Settings.** The DirectCare Parties assume no responsibility for the timeliness, deletion, mis-delivery, or failure to store any content, User communications, or personalization settings.

**11.4 Basis of the Bargain.** The limitations of damages set forth above are fundamental elements of the basis of the bargain between DirectCare and you.

**12. Procedure for Making Claims of Copyright Infringement.** If you believe content posted on the Services infringes your copyright rights, please provide our Copyright Agent with the following information: (1) an electronic or physical signature of the person authorized to act on behalf of the owner of the copyright interest; (2) a description of the copyrighted work that you claim has been infringed; (3) a description of the location on the Services of the material that you claim is infringing; (4) your address, telephone number and e-mail address; (5) a written statement that you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent or the law; and (6) a statement by you, made under penalty of perjury, that the above information in your notice is accurate and that you are the copyright owner or authorized to act on the copyright owner's behalf. Correspondence to our Copyright Agent regarding notice of claims of copyright infringement should be addressed to: [compliance@directcareforall.com](mailto:compliance@directcareforall.com).

**13. TERMINATION.** At its sole discretion, DirectCare may modify or discontinue the Services, or may modify, suspend, or terminate your access to the Services, for any reason, with or without notice to you and without liability to you or any third party. In addition to suspending or terminating your access to the Services, DirectCare reserves the right to take appropriate legal action, including without limitation pursuing civil, criminal, or injunctive redress. Even after your right to use the Services is terminated, the Agreement will remain enforceable against you and unpaid amounts you owe to DirectCare for any purchases will remain due.

**14. INTERNATIONAL USERS.** Services cannot be accessed from countries outside of the United States and may contain references to services and content that are not available in your country. These references do not imply that DirectCare intends to announce or promote the availability of such services or content in your country. Services are controlled and offered by DirectCare from its facilities in the United States of America. DirectCare makes no representations that Services are appropriate or available for use in other locations. Those who access or use Services from other countries do so at their own volition and are responsible for compliance with local law.

**15. DISPUTE RESOLUTION.** *Please read the following arbitration agreement in this Section ("Arbitration Agreement") carefully. It requires you to arbitrate disputes with DirectCare and limits the manner in which you can seek relief from us.*

**15.1 Applicability of Arbitration Agreement.** You agree that any dispute between you and us relating in any way to the Services or the Agreement, will be resolved by binding arbitration, rather than

in court, except that (1) you and we may assert claims in small claims court if the claims qualify; and (2) you or DirectCare may seek equitable relief in court for infringement or other misuse of intellectual property rights (such as service marks, trade dress, domain names, trade secrets, copyrights, and patents). **This Arbitration Agreement shall apply, without limitation, to all claims that arose or were asserted before the Effective Date of the Terms or any prior version of the Terms.**

**15.2 Arbitration Rules and Forum.** The Federal Arbitration Act governs the interpretation and enforcement of this Arbitration Agreement. To begin an arbitration proceeding, you must send a letter requesting arbitration and describing your claim to our registered agent: 8300 E. Thorn Drive, Suite 330 Wichita, Kansas 67226. The arbitration will be conducted by JAMS, an established alternative dispute resolution provider. Disputes involving claims and counterclaims with an amount in controversy under \$250,000, not inclusive of attorneys' fees and interest, shall be subject to JAMS' most current version of the Streamlined Arbitration Rules and procedures available at <http://www.jamsadr.com/rules-streamlined-arbitration/>; all other claims shall be subject to JAMS's most current version of the Comprehensive Arbitration Rules and Procedures, available at <http://www.jamsadr.com/rules-comprehensive-arbitration/>. JAMS's rules are also available at [www.jamsadr.com](http://www.jamsadr.com) or by calling JAMS at 800-352-5267. If JAMS is not available to arbitrate, the parties will select an alternative arbitral forum. If the arbitrator finds that you cannot afford to pay JAMS's filing, administrative, hearing and/or other fees and you cannot obtain a waiver from JAMS, DirectCare will pay them for you.

You may choose to have the arbitration conducted by telephone, based on written submissions, or in person in the U.S. County where you live or at another mutually agreed location. Any judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction.

**15.3 Authority of Arbitrator.** The arbitrator shall have exclusive authority to resolve any dispute related to the interpretation, applicability, enforceability, or formation of this Arbitration Agreement including, but not limited to any claim that all or any part of this Arbitration Agreement is void or voidable. The arbitrator will decide the rights and liabilities, if any, of you and DirectCare. The arbitration proceeding will not be consolidated with any other matters or joined with any other proceedings or parties. The arbitrator shall have the authority to grant motions dispositive of all or part of any claim or dispute. The arbitrator shall have the authority to award monetary damages and to grant any non-monetary remedy or relief available to an individual party under applicable law, the arbitral forum's rules, and this Agreement (including the Arbitration Agreement). The arbitrator shall issue a written award and statement of decision describing the essential findings and conclusions on which any award (or decision not to render an award) is based, including the calculation of any damages awarded. The arbitrator shall follow the applicable law. The arbitrator has the same authority to award relief on an individual basis that a judge in a court of law would have. The award of the arbitrator is final and binding upon you and us.

**15.4 Waiver of Jury Trial.** YOU AND DIRECTCARE HEREBY WAIVE ANY CONSTITUTIONAL AND STATUTORY RIGHTS TO SUE IN COURT (OTHER THAN SMALL CLAIMS COURT AS PERMITTED HEREIN) AND HAVE A TRIAL IN FRONT OF A JUDGE OR A JURY. You and DirectCare are instead electing that all covered claims and disputes shall be resolved by arbitration under this Arbitration Agreement, except as specified in Section 15.1 above. An arbitrator can award on an individual basis the same damages and relief as a court and must follow the Agreement as a court would. However, there is no judge or jury in arbitration, and court review of an arbitration award is subject to very limited review.



**15.5 Waiver of Class or Other Non-Individualized Relief.** ALL CLAIMS AND DISPUTES WITHIN THE SCOPE OF THIS ARBITRATION AGREEMENT MUST BE ARBITRATED ON AN INDIVIDUAL BASIS AND NOT ON A CLASS OR COLLECTIVE BASIS, ONLY INDIVIDUAL RELIEF IS AVAILABLE FOR CLAIMS COVERED BY THIS ARBITRATION AGREEMENT, AND CLAIMS OF MORE THAN ONE USER CANNOT BE ARBITRATED OR CONSOLIDATED WITH THOSE OF ANY OTHER USER OR PERSON. If a decision is issued stating that applicable law precludes enforcement of any of this Section 15.5's limitations as to a given claim for relief, then the applicable claim must be severed from the arbitration and brought into the state or federal courts located in Kansas in accordance with Section 16.4. All other claims shall be arbitrated.

**15.6 30-Day Right to Opt Out.** You have the right to opt out of the provisions of this Arbitration Agreement by sending a timely written notice of your decision to opt out to the following address: DirectCare 8300 E. Thorn Drive, Suite 330 Wichita, Kansas 67226 or e-mail [compliance@directcareforall.com](mailto:compliance@directcareforall.com) within 30 days after first becoming subject to this Arbitration Agreement. Your notice must include your name and address and a clear statement that you want to opt out of this Arbitration Agreement. If you opt out of this Arbitration Agreement, all other parts of this Agreement will continue to apply to you. Opting out of this Arbitration Agreement has no effect on any other arbitration agreements that you may currently have with us or may enter into in the future with us.

**15.7 Severability.** Except as provided in Section 15.5, if any part or parts of this Arbitration Agreement are found under the law to be invalid or unenforceable, then such specific part or parts shall be of no force and effect and shall be severed and the remainder of the Arbitration Agreement shall continue in full force and effect.

**15.8 Survival of Agreement.** This Arbitration Agreement will survive the termination or expiration of the Agreement or your relationship with DirectCare.

**15.9 Modification.** Notwithstanding any provision in the Agreement to the contrary, we agree that if DirectCare makes any future material change to this Arbitration Agreement, you may reject that change within thirty (30) days of such change becoming effective by writing DirectCare at the following address: 8300 E. Thorn Drive, Suite 330 Wichita, Kansas 67226.

## **16. GENERAL PROVISIONS.**

**16.1 Electronic Communications.** The communications between you and DirectCare use electronic means, whether you visit Services or send DirectCare e-mails, or whether DirectCare posts notices on Services or communicates with you via e-mail. For contractual purposes, you (1) consent to receive communications from DirectCare in an electronic form; and (2) agree that all terms and conditions, agreements, notices, disclosures, and other communications related to the Agreement that DirectCare provides to you electronically satisfy any legal requirement that such communications would satisfy if they were made in writing in a physical document. The foregoing does not affect your statutory rights.

**16.2 Assignment.** The Agreement, and your rights and obligations hereunder, may not be assigned, subcontracted, delegated, or otherwise transferred by you without DirectCare's prior written consent, and any attempted assignment, subcontract, delegation, or transfer in violation of the foregoing will be null and void.

**16.3 Force Majeure.** DirectCare shall not be liable for any delay or failure to perform resulting from causes outside its reasonable control, including, but not limited to, acts of God, war, terrorism, riots, embargos, acts of civil or military authorities, fire, floods, accidents, strikes or shortages of transportation facilities, fuel, energy, labor, or materials.

**16.4 Exclusive Venue.** To the extent the parties are permitted under the Agreement to initiate litigation in a court, both you and DirectCare agree that all claims and disputes arising out of or relating to the Agreement or the Services will be litigated exclusively in the state or federal courts in Kansas.

**16.5 Governing Law.** THE AGREEMENT AND ANY ACTION RELATED THERETO WILL BE GOVERNED AND INTERPRETED BY AND UNDER THE LAWS OF THE STATE OF KANSAS, CONSISTENT WITH THE FEDERAL ARBITRATION ACT, WITHOUT GIVING EFFECT TO ANY PRINCIPLES THAT PROVIDE FOR THE APPLICATION OF THE LAW OF ANOTHER JURISDICTION. THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS DOES NOT APPLY TO THE AGREEMENT.

**16.6 Notice.** Where DirectCare requires that you provide an e-mail address, you are responsible for providing DirectCare with your most current e-mail address. In the event that the last e-mail address you provided to DirectCare is not valid, or for any reason is not capable of delivering to you any notices required/ permitted by the Agreement, DirectCare's dispatch of the e-mail containing such notice will nonetheless constitute effective notice. You may give notice to DirectCare at the following address: 8300 E. Thorn Drive, Suite 330 Wichita, Kansas 67226. Such notice shall be deemed given when received by DirectCare by letter delivered by nationally recognized overnight delivery service or first-class postage prepaid mail at the above address.

**16.7 Questions, Complaints, Claims.** If you have any questions, complaints or claims with respect to the Services, please contact us at: 8300 E. Thorn Drive, Suite 330 Wichita, Kansas 67226 or e-mail [compliance@directcareforall.com](mailto:compliance@directcareforall.com). We will do our best to address your concerns. If you feel that your concerns have been addressed incompletely, we invite you to let us know for further investigation.

**16.8 Waiver.** Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

**16.9 Severability.** Subject to Section 15.7, if any portion of the Agreement is held invalid or unenforceable, that portion shall be construed in a manner to reflect, as nearly as possible, the original intention of the parties, and the remaining portions shall remain in full force and effect.

**16.10 Export Control.** You may not use, export, import, or transfer Services except as authorized by U.S. law, the laws of the jurisdiction in which you obtained Services, and any other applicable laws. In particular, but without limitation, Services may not be exported or re-exported (a) into any United States embargoed countries, or (b) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce's Denied Person's List or Entity List. By using Services, you represent and warrant that (i) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country and (ii) you are not listed on any U.S. Government list of prohibited or restricted parties.

**16.11 Consumer Complaints.** In accordance with California Civil Code §1789.3, you may report complaints to the Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs by contacting them in writing at 400 R Street, Sacramento, CA 95814, or by telephone at (800) 952-5210.

**16.12 Entire Agreement.** The Agreement is the final, complete, and exclusive agreement of the parties with respect to the subject matter hereof and supersedes and merges all prior discussions between the parties with respect to such subject matter.