

TERMS AND CONDITIONS OF SERVICE
UNIVERSAL APPLICATION

PARTIES. These TERMS AND CONDITIONS OF SERVICE (“Agreement”) are made and entered into by and between NavigateHCR (“NavigateHCR”) and the undersigned client (“Employer”) (collectively referred to as “Parties” or individually as “Party”). Any reference to either Party in this Agreement applies to any and all employees, personnel, and/or other authorized agents directly or indirectly acting for or with either Party in the performance of this Agreement and all such entities or individuals are bound by this Agreement unless otherwise indicated herein.

TERM. This Agreement shall commence on the date Employer executes this Agreement (“Effective Date”) and shall continue for the then-current calendar year (“Term”), unless sooner terminated in accordance with the terms herein. Employer may renew this Agreement for additional one (1) year terms to begin on January 1 of each year. Term includes all renewal terms.

SERVICES. NavigateHCR provides various services that are listed on its website at www.navigatehcr.com (“Services”). Employer may choose the Services it would like to receive at the time of enrollment for each Term. Employer understands and agrees that Services shall apply to the then-current calendar year reporting period and related data, commencing January 1 of such year. Additionally, NavigateHCR shall respond to any and all questions received from the IRS regarding ACA reporting on behalf of Employer through Employer’s authorized primary contact. NavigateHCR shall not respond to any questions from the IRS regarding any of Employer’s employees, regardless of subject matter.

FEES AND PAYMENT. Service fees are listed in Employer’s Billing Summary or other similar billing notices provided by NavigateHCR at the time of enrollment for each Term and shall apply to Services for the current Term (“Fees”). Fees shall be pre-paid and are nonrefundable. NavigateHCR reserves the right to make reasonable changes and increases to Fees from time to time in its sole discretion for subsequent Renewal Terms.

Fee payments shall be made automatically by electronic funds withdrawal from Employer’s bank account or charged to Employer’s credit card on a monthly or annual basis as elected by Employer. Employer’s failure to pay Fees and any delinquent payments may result in a suspension of Services until all outstanding Fees are paid in full. Employer may change its payment information or preferences by providing NavigateHCR written notification of such change at any time. Changes may take up to thirty (30) days before going into effect.

TERMINATION. Employer may terminate this Agreement for convenience at any time upon at least sixty (60) days of written notice to NavigateHCR. Either Party may terminate this Agreement at any time with written notice if: (i) a Party breaches any of its obligations, representations, and/or warranties hereunder and such breach has not been cured within thirty (30) days of written notice specifying the nature of the breach by the non-breaching Party; (ii) a Party attempts to assign this Agreement, or any obligation hereunder, without the other Party’s written consent except as otherwise allowed by this Agreement or applicable law; or (iii) any assignment is made of a Party’s business for the benefit of creditors, a petition in bankruptcy is filed by or against a Party (except an involuntary filing and such filing is dismissed within 30 days of such filing), a receiver or similar officer is appointed to take charge of all or part of a Party’s property, or if a Party is adjudicated as bankrupt. If any breach cannot be cured, termination shall be effective upon written notice by the terminating Party.

Either Party may terminate this Agreement by written notice, effective immediately, if: (i) the other Party is named as a defendant in a criminal proceeding for a violation of HIPAA or other security or

privacy laws, or (ii) there is a finding or stipulation that the other Party has violated any standard or requirement of HIPAA or other security or privacy laws by any administrative or civil proceeding in which such Party has been joined. NavigateHCR may terminate this Agreement at any time by written notification if Employer or its staff repeatedly abuse or harass NavigateHCR's employees or personnel.

Any obligation the Parties may otherwise have under this Agreement shall cease on the date of termination unless otherwise expressly stated herein or by the Parties in writing. In the event of termination of this Agreement, any pre-paid fees shall not be prorated or refunded and any outstanding Fees (for non-annual payment structures) shall become immediately due and payable.

NAVIGATEHCR REPRESENTATIONS AND WARRANTIES. NavigateHCR represents and warrants that: (i) NavigateHCR has full power and authority to enter into this Agreement; (ii) execution of this Agreement and performance of Services will not violate, conflict with, or constitute a default under any third-party agreement between NavigateHCR and any other entity or individual or any judgment or decree; (iii) NavigateHCR is in compliance with any and all applicable laws and regulations as it relates to this Agreement and performance of Services, including obtaining and maintaining all the required licenses, permits, and other governmental authorization necessary to perform Services; and (iv) NavigateHCR shall use its best efforts in the performance of Services and shall do so diligently and conscientiously.

EMPLOYER REPRESENTATIONS AND WARRANTIES. Employer represents and warrants that: (i) Employer has full power and authority to enter into this Agreement; (ii) execution of this Agreement will not violate, conflict with, or constitute a default under any third-party agreement between Employer and any other entity or individual or any judgment or decree; (iii) Employer shall act and remain in full compliance with any and all applicable laws and regulations as it relates to this Agreement and Services; (iv) Employer shall not act recklessly or negligently; (v) Employer shall provide NavigateHCR complete and accurate data to the best of Employer's knowledge; (vi) only Employer's authorized representatives shall be given access to Employer's portal on the NavigateHCR website and provide sensitive data to NavigateHCR; (vii) Employer shall not misrepresent data in any way that a reasonable individual, the IRS, or other regulatory body would consider to be fraudulent or deceptive (in which case would void NavigateHCR's audit defense guarantee); (viii) and Employer shall not use NavigateHCR's Services or provide data in any way to avoid compliance with applicable laws and regulations; and (ix) Employer has read and agrees to be bound by NavigateHCR's [Terms of Use](#) and [Privacy Policy](#), as amended, which is published on its [website](#) and hereby incorporated herein by reference and expressly made a part hereof by this reference.

PROTECTED INFORMATION. NavigateHCR acknowledges that it may receive certain confidential information from, or create on behalf of, Employer regarding its employees that may include protected health information (PHI), protected personal information (PPI), or personally identifiable information (PII), (collectively referred to as "Protected Information") in connection with Services. Such Protected Information may be governed by federal, state, and local privacy laws and regulations such as the Health Insurance Portability and Accountability Act of 1996 as amended ("HIPAA"), 45 CFR Parts 160 and 164 (the "Privacy Rule"), and 45 CFR Parts 160, 162 and 164 (the "Security Rule") (collectively referred to as "Privacy Laws").

NavigateHCR may use and/or disclose Protected Information solely in connection with this Agreement and the performance of Services. NavigateHCR shall be in compliance with any and all Privacy Laws as required. NavigateHCR shall not further use or disclose Protected Information otherwise than as permitted or required by this Agreement or Privacy Laws. NavigateHCR shall use appropriate safeguards to prevent use or disclosure of Protected Information while in its possession unless otherwise provided for by this Agreement, by Privacy Laws, or agreed to in writing by the Parties. NavigateHCR shall maintain a written privacy policy regarding Protected Information and a security program that includes

administrative, technical, and physical safeguards appropriate for NavigateHCR's operations and activities.

NavigateHCR shall notify Employer as soon as reasonably possible after discovering any breach of security or any unauthorized use or disclosure of Protected Information in violation of Privacy Laws. NavigateHCR shall take prompt corrective action to cure any such deficiencies and any action as required by Privacy Laws. Any and all employees, personnel, and/or other authorized agents directly or indirectly acting for or with NavigateHCR in the performance of this Agreement to whom NavigateHCR provides Protected Information agrees to the same restrictions and conditions that apply to NavigateHCR with respect to such Protected Information.

Employer shall be solely responsible for handling, protecting, and using appropriate safeguards to maintain the confidentiality, privacy, and security of any and all Protected Information being transmitted to NavigateHCR, pursuant to this Agreement, in accordance with the standards and requirements of Privacy Laws until all such Protected Information is received by NavigateHCR. NavigateHCR is not liable whatsoever for any Protected Information prior to acceptance of such Information into NavigateHCR's secure environment including during transmission.

Employer may inspect NavigateHCR's facilities, systems, and records related to Services under this Agreement and Protected Information during NavigateHCR's normal business hours for reasonable purposes, including to verify NavigateHCR's compliance with this Agreement and Privacy Laws and certification of security practices as legally required of Employer by Privacy Laws. Employer must provide NavigateHCR with at least 24-hour written notification prior to the requested date and time of inspection. NavigateHCR reserves the right to choose a different date and time as requested by Employer within a reasonably close time frame if needed. Additionally, Employer may request from NavigateHCR written assurance of adequate safeguards for Protected Information received or created by NavigateHCR pursuant to this Agreement. NavigateHCR shall provide such assurance to Employer within a reasonable amount of time to satisfy the standards and requirements of Privacy Laws.

Upon termination of this Agreement for any reason, NavigateHCR, at the request of Employer, shall return to Employer or confidentially destroy any and all Protected Information left in its possession if doing so is reasonable and permitted by Privacy Laws and any record retention requirements. If the return or destruction of Protected Information is not feasible, NavigateHCR shall continue to extend the protections granted by this Agreement or Privacy Laws to Protected Information and limit any further use of such Information to those purposes that make its return or destruction infeasible.

The Parties acknowledge that federal, state, and local laws relating to electronic data security and privacy are rapidly evolving and that any changes in law will automatically apply to this Agreement. NavigateHCR may execute an amendment of this Agreement to reflect such changes if needed. Employer agrees that such amendment may be done by a Notice of Amendment from NavigateHCR to Employer pursuant to the Notice provisions herein. Employer shall execute an acknowledgment of receipt and such Notice shall be attached and incorporated herein by reference. The Parties agree to immediately implement the Notice of Amendment and the standards and requirements of Privacy Laws.

CONFIDENTIALITY. Employer acknowledges that during the Term of this Agreement, the Parties are entering into a confidential relationship and Employer will have access to and become acquainted with proprietary and confidential information as defined herein (collectively referred to as "Confidential Information").

"Confidential Information" is all non-public information, documentation, and knowledge which has or could have commercial value or other utility in the business in which NavigateHCR is engaged or contemplates engaging in, or if the unauthorized disclosure of such information could be detrimental to the interests of NavigateHCR, whether or not such information is identified by NavigateHCR. This includes but is not limited to: intellectual property and rights worldwide that relate to NavigateHCR's business,

affairs, and products, including pricing of Services; specifications owned or licensed and/or used by NavigateHCR in connection with the operation of NavigateHCR's business, including specifically NavigateHCR's Compliance Materials as defined herein; and any other proprietary information that is maintained as confidential and Employer reasonably should know is confidential. Confidential Information also includes any copies or duplicates of items containing Confidential Information and any third-party information in Employer's possession under an obligation of confidential treatment. Confidential Information does not include, established by competent evidence or proof, any information that:

1. Was in the public domain at the time of disclosure, through no fault of Employer, and was lawfully obtained by Employer from publicly available sources generally known by the public and not protected by any valid intellectual property right;
2. Later became part of the public domain through (i) no act or omission of Employer, its employees, agents, successors, or assigns, or (ii) no breach by a third party with an obligation of confidentiality to NavigateHCR;
3. Was lawfully disclosed to Employer by a third party having the right to disclose it and was not bound by a confidentiality agreement with respect to such Confidential Information;
4. Was already known by Employer at the time of disclosure that was free of any obligation to keep it confidential;
5. Was independently acquired or developed by Employer and was not acquired, directly or indirectly, from Employer in violation of its obligations under this Agreement;
6. Is subject to written permission provided by NavigateHCR for use or disclosure of such Information, including for any transmission, removal, or transport of tangible embodiments of or electronic files containing Confidential Information; and/or
7. Is required by law or regulation, including state public records laws, to be disclosed, provided however, that Employer shall first give NavigateHCR sufficient written notice and adequate opportunity to object to such order, seek a protective order limiting such disclosure, and/or to take other legal steps necessary to protect its interests. In any event, the disclosure shall be limited to only that portion of the Confidential Information which is legally required to be disclosed.

Employer agrees that this Agreement, performance of Services, all information related to this Agreement and Services, and its relationship with NavigateHCR are received in strict confidence, may only be used for purposes of this Agreement, and shall not disclose any Confidential Information to any third parties, in any manner directly or indirectly unless specified herein. Employer shall not use such Confidential Information for its own personal or professional objectives, interest, or gain.

Employer shall use its best and reasonable efforts to ensure the non-disclosure, protection, confidentiality, and security of Confidential Information in its possession. Such efforts shall be no less than the degree of care employed by Employer to preserve and safeguard its own highly confidential information, but in no event less than a reasonable degree of care. Upon any knowledge of actual or potential disclosure, misuse, or misappropriation of Confidential Information, or breach of this Agreement, Employer shall promptly give written notice to NavigateHCR.

All provisions of this Agreement regarding confidentiality shall survive any termination of this Agreement.

INTELLECTUAL PROPERTY. NavigateHCR is the sole owner with all title and interest in any and all intellectual property, defined herein, related to this Agreement and Services. NavigateHCR reserves all rights in and to any and all intellectual property. Any rights, licenses, and transfers of ownership, if any, may only be expressly granted by NavigateHCR in writing and never by implication. Neither this

Agreement nor Employer's use of Services conveys or grants any rights to Employer in or related to Services or related products and materials. If any intellectual property right vests in Employer and/or Employer's employee, agent, or personnel, Employer or the individual hereby irrevocably and completely assigns and transfers all such right, title, and interest in such intellectual property to NavigateHCR without royalty or any other consideration. Intellectual property includes:

1. All trademarks, trade dress, and service and design marks including domain names, logos, slogans, and uniform resource locators;
2. All trade secrets including ideas, research and development, know-how, formulas, compositions, business practices, object code, source code, software, hardware, systems, techniques, tools, solutions, processes, procedures, methods, methodologies, applications, day-to-day business operations, technical data, designs, drawings, specifications, user lists, pricing, cost and financial information, and business and marketing plans and proposals;
3. All patents and pending patents;
4. All works of authorship and copyrightable works, including Compliance Materials; and
5. Any and all inventions and improvements regardless of status, condition, and patentability.

All intellectual property includes any and all work product, goodwill, applications and registrations, renewals, reissuances, extensions, modifications, improvements, additions, derivative works, and all related documents and matters.

All provisions of this Agreement regarding intellectual property shall survive any termination of this Agreement.

Compliance Materials

Subject to Employer's enrollment, timely payments, and adherence to this Agreement, NavigateHCR grants Employer permission to use and distribute NavigateHCR's materials, pamphlets, brochures, emails, and/or any other compliance documents and materials ("Compliance Materials") sent by NavigateHCR to Employer. Compliance Materials is proprietary and confidential and is subject to the Confidentiality terms herein and protection by applicable intellectual property laws including trade secrets and copyright. Thus, such use and distribution are exclusively limited to Employer's employees, personnel, and authorized agents.

Employer shall keep any and all Compliance Materials in strict confidence and may only distribute Compliance Materials to Employer's employees, personnel, and other authorized agents, including Employer's Broker, as recorded with NavigateHCR, and outside fiduciary counsel if reasonably necessary. All authorized individuals and entities who receive Compliance Materials are subject to this Agreement and the Confidentiality terms herein and may only use Compliance Materials in accordance with this Agreement unless otherwise approved by NavigateHCR in writing. Employer is solely responsible for any and all individuals or entities given access to Compliance Materials by Employer. Employer shall not disseminate Compliance Materials to any unauthorized or unrelated individuals or entities and shall safeguard and prevent any unauthorized use or disclosure of Compliance Materials.

LIMITED LIABILITY. EXCEPT IN CASES OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, NAVIGATEHCR, INCLUDING ANY AFFILIATES, SUCCESSORS, ASSIGNS, AND RESPECTIVE OFFICERS, DIRECTORS, AGENTS, REPRESENTATIVES, EMPLOYEES, LICENSORS, AND LICENSEES OF NAVIGATEHCR, ("RELEASED PARTIES") ARE NOT LIABLE TO EMPLOYER OR ANY RELATED PARTIES FOR ANY AND ALL SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL INJURIES OR DAMAGES, ARISING FROM OR RELATED TO THIS AGREEMENT AND SERVICES, INCLUDING BODILY INJURY, DEATH, LOSS OF REVENUE, PROFITS, OR OPPORTUNITIES, LOSS OR CORRUPTION OF DATA, AND CLAIMS BY EMPLOYER OR ANY THIRD PARTY, EVEN

IF EMPLOYER OR ANY THIRD PARTY HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL ANY CLAIMS OR DAMAGES NAVIGATEHCR IS OTHERWISE LIABLE FOR RELATED TO THIS AGREEMENT AND SERVICES EXCEED THE AMOUNT OF FEES AND COSTS FOR SERVICES UNDER THIS AGREEMENT. NAVIGATEHCR IS NOT LIABLE FOR ANY FAILURE OR DELAY DUE TO MATTERS BEYOND OUR REASONABLE CONTROL, INCLUDING FORCE MAJEURE. THIS APPLIES TO ALL CAUSES OF ACTION IN THE AGGREGATE, INCLUDING BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, AND OTHER TORTS.

IF THE PARTIES ARE CALIFORNIA RESIDENTS AND/OR PERFORMING SERVICES PURSUANT TO THESE TERMS IN CALIFORNIA, SUCH USER HEREBY WAIVES CALIFORNIA CIVIL CODE SECTION 1542, AS AMENDED, WHICH STATES: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, AND THAT IF KNOWN BY HIM OR HER WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY."

THE FOREGOING SHALL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

INDEMNIFICATION. NavigateHCR agrees to release, indemnify, defend, protect, and hold harmless Employer, and its employees, personnel, and other authorized agents, from and against any and all claims, damages, losses, costs, fees (including reasonable attorneys' fees), liabilities, or injuries suffered arising out of, or relating to, grossly negligent, willful, or unlawful acts or omissions or violation of any laws or regulations by NavigateHCR, or its employees, personnel, and other agents, as it relates to this Agreement and Services.

Employer agrees to release, indemnify, defend, protect, and hold harmless NavigateHCR, and its successors, assigns, employees, personnel, and other authorized agents, from and against any and all claims, damages, losses, costs, fees (including reasonable attorneys' fees), liabilities, or injuries suffered arising out of, or relating to, grossly negligent, willful, or unlawful acts or omissions or violation of any laws or regulations by Employer, or its employees, personnel, and other agents, as it relates to this Agreement and Services.

The indemnified Party shall promptly notify the indemnifying Party of any claim for indemnification when the indemnified Party learns of such claim. The indemnified Party shall provide indemnifying Party with all reasonable information and assistance; provided however, the indemnified Party's failure to provide timely notice of any claim shall not in any way affect the obligation to indemnify so long as the indemnifying Party has not been materially prejudiced by such failure to give timely notice. All provisions of this Agreement regarding indemnity shall survive any termination of this Agreement. The foregoing shall not apply to the extent prohibited by applicable law.

INSURANCE. NavigateHCR shall maintain insurance policies and coverage as required by law, including professional liability and cybersecurity insurance, for the Term of this Agreement.

DISPUTE RESOLUTION. EMPLOYER UNDERSTANDS AND AGREES THAT ALL CLAIMS, DISPUTES, OR CONTROVERSIES BETWEEN EMPLOYER AND NAVIGATEHCR, AND ITS PARENTS, AFFILIATES, SUBSIDIARIES, OR RELATED COMPANIES, INCLUDING, WITHOUT LIMITATION, TORT AND CONTRACT CLAIMS, CLAIMS BASED UPON ANY FEDERAL, STATE, OR LOCAL STATUTE, LAW, ORDER, ORDINANCE, OR REGULATION, AND THE ISSUE OF ARBITRABILITY, SHALL BE SUBMITTED AND RESOLVED BY FINAL AND BINDING ARBITRATION PURSUANT TO THE TERMS SET FORTH BELOW.

ONE ARBITRATOR SHALL BE APPOINTED AND SUCH ARBITRATOR WILL EITHER BE SELECTED BY AGREEMENT OF THE PARTIES OR, IF THERE IS NO SUCH AGREEMENT, SELECTED BY THE ARBITRATION PROVIDER IN ITS SOLE DISCRETION. THE PARTIES ACKNOWLEDGE AND AGREE THAT ANY SUCH CLAIMS SHALL BE BROUGHT SOLELY IN THE PARTY'S INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS, REPRESENTATIVE PROCEEDING, OR PRIVATE ATTORNEY GENERAL CAPACITY. THE PARTIES FURTHER AGREE THAT THE ARBITRATOR MAY NOT CONSOLIDATE MORE THAN ONE PERSON'S CLAIMS, AND MAY NOT OTHERWISE PRESIDE OVER ANY FORM OF A REPRESENTATIVE OR CLASS PROCEEDING. THE PARTIES VOLUNTARILY AND KNOWINGLY WAIVE ANY RIGHT THEY HAVE TO A JURY TRIAL, AND SUBMIT THAT THEY ENTER INTO THIS AGREEMENT TO ARBITRATE KNOWING THAT THERE IS AN EXTREMELY LIMITED RIGHT TO APPEAL ANY FINAL DETERMINATION IN AN ARBITRATION.

ANY CONTROVERSY CONCERNING WHETHER A DISPUTE IS ARBITRABLE SHALL BE DETERMINED BY THE ARBITRATOR AND NOT BY THE COURT. JUDGMENT UPON ANY AWARD RENDERED BY THE ARBITRATOR MAY BE ENTERED BY A CALIFORNIA STATE OR FEDERAL COURT HAVING JURISDICTION THEREOF. SHOULD THIS ARBITRATION CONTRACT BE MADE PURSUANT TO A TRANSACTION IN INTERSTATE COMMERCE, ITS INTERPRETATION, APPLICATION, ENFORCEMENT AND PROCEEDINGS HEREUNDER SHALL BE GOVERNED BY THE FEDERAL ARBITRATION ACT ("FAA").

The following procedures shall apply:

1. Any Party that intends to make a claim shall first notify the opposing Party in writing of such intention and shall describe in the notice, with reasonable particularity, the nature, basis, and total amount of the claim. Within thirty (30) days of receipt of such notice, the receiving Party shall provide a written response which, with reasonable particularity, sets forth its position concerning the claim. If the Parties are unable to resolve the dispute arising from the claim by good faith negotiations to be conducted within the thirty (30)-day period following the written response, either Party may initiate binding arbitration pursuant to the terms and conditions set forth below.
2. In the event a Party elects to proceed with binding arbitration, it shall provide written notice thereof to the other Party by registered or certified mail. The arbitration shall be conducted by Judicate West, and shall be conducted using the then-current Judicate West commercial rules and regulations (except as varied by this Agreement). The arbitration shall take place in San Diego County, California, but may proceed telephonically in the event the total amount of the claim does not exceed \$10,000 U.S. dollars (if the claimant so chooses).
3. Separate and apart from the agreement to arbitrate set forth above, the Parties hereby independently waive any right to bring or participate in any class action in any way related to, or arising from, this Agreement and/or the business relationship and dealings between the Parties.
4. If for any reason, this arbitration provision is deemed inapplicable or unenforceable, exclusive jurisdiction must lie with the courts of California in the county of San Diego for all disputes, actions, or proceedings arising out of or relating to this Agreement or the Services.

DISCLAIMER. Employer acknowledges that it is solely responsible for its compliance with any and all applicable laws and regulations that govern its business, including U.S. federal, state, and local laws and regulations, and laws and regulations in foreign jurisdictions. While NavigateHCR provides certain tools and services to assist Employer in its efforts to comply with certain laws and regulations, NavigateHCR does not assume any responsibility or liability for Employer's compliance obligations. Employer fully and completely releases NavigateHCR from any and all liabilities, damages, costs, or other losses arising from Employer's non-compliance with any laws or regulations.

INJUNCTIVE RELIEF. Despite the requirements herein, either Party may seek an injunction or other provisional remedies from a court of appropriate jurisdiction to aid arbitration. Additionally, both Parties acknowledge that any unauthorized use or disclosure of Confidential Information in violation of this Agreement, including Protected Information and Compliance Materials, may cause irreparable damage for which remedies other than injunctive relief may be inadequate. Thus, both Parties agree that a Party may request injunctive or equitable relief to restrain such use or disclosure.

SURVIVAL. Any right or obligation of the Parties in this Agreement which, by its nature, should survive expiration or termination of this Agreement, shall survive any such expiration or termination, including, but not limited to, confidentiality, intellectual property rights, liability, and indemnification.

FORCE MAJEURE. Except as otherwise provided herein, NavigateHCR shall be excused from a delay or failure to perform this Agreement and Services if it is caused directly by an event beyond NavigateHCR's control and without fault or negligence and by its nature could not have been foreseen, or if it could have been foreseen, was unavoidable. NavigateHCR shall use reasonable diligence to avoid any such delay and resume its performance required under this Agreement as soon as reasonably possible.

ENTIRETY. This Agreement and any attachments, including NavigateHCR's Terms of Use and Privacy Policy, as amended, constitutes the entire understanding and agreement between the Parties with respect to its subject matter and supersedes all prior and contemporaneous agreements, understandings, inducements, or conditions, express or implied, written or oral, between the Parties, preceding this Agreement.

MODIFICATIONS. Any term or provision of this Agreement may be amended, changed, or modified only by written agreement duly executed by the Parties, except as otherwise provided herein.

SEVERABILITY. The Parties agree that if any part, term, or provision of this Agreement are held to be invalid, illegal, unenforceable, or in conflict with any valid controlling and applicable laws, rules, statutes, ordinances, and/or government regulations in any jurisdiction that governs this Agreement in any respect, that invalidity, illegality, unenforceability, or conflict will not affect any other provision of this Agreement. This Agreement will be construed as if the invalid, illegal, unenforceable, or conflicting term were never in this Agreement, and if applicable, such term or provision shall be modified and interpreted to reflect the intent of the Parties or deleted entirely. All remaining provisions of this Agreement shall remain in full force and effect for the duration of this Agreement.

WAIVERS. Failure or delay of any Party, at any time, to enforce any provision of or to exercise any right or remedy under this Agreement shall not be construed to be a waiver of, or the right of the Party thereafter, to enforce such provision, right, or remedy. The waiver of a specific breach may be valid and effectuated only by a written agreement duly executed by the waiving Party. Such formal waiver shall not constitute a waiver of any other provision, right, or remedy.

ASSIGNMENT. The rights, duties, and obligations are herein exclusive to Employer. Employer shall not assign, transfer, or otherwise delegate, in whole or in part, by operation of law or otherwise, this Agreement or any of its rights or benefits herein unless authorized in writing by NavigateHCR. Consent to an assignment of this Agreement will not be unreasonably withheld or delayed by NavigateHCR. Any purported assignment or delegation that is not previously approved by NavigateHCR shall be null and void and a material breach of this Agreement.

HEADINGS AND FORM. Section headings are strictly for the convenience of the Parties and shall not be used in any way to restrict the meaning or interpretation of the substantive language of the terms. The content contained in this Agreement apply to the singular and the plural forms, and to the masculine, feminine, or neuter gender forms, of such terms.

SIGNATURES. Facsimile and electronic signatures shall have the same force as original signatures and shall be legally binding on the Parties for all purposes hereunder.

GOVERNING LAW. This Agreement shall be governed by the laws of the State of California without regard to the conflicts of law principles thereof.

NOTICE. Any notice, request, or other communications with respect to this Agreement shall be deemed to have been given and effective: (1) on the day it is delivered by personal service; (2) on the day it is delivered by air courier with receipt of delivery; (3) three (3) days after it is mailed by certified U.S. mail with return receipt requested and postage prepaid; or (4) the day it is faxed or emailed, provided that the sender receives confirmation that the recipient has received such transmission, such as an express acknowledgement of receipt by the recipient, or a delivery confirmation page for faxes or a “read receipt” for emails.

Any notice given to NavigateHCR shall be addressed as follows:

NavigateHCR
Attn: Dr. Kristin Kahle
16885 W. Bernardo Drive, Suite 290
San Diego, California 92127
CareTeam@navigateHCR.com

Any notice given to Employer shall be sent to the designated contact and contact information provided to NavigateHCR during enrollment. Either Party may change its address for notices, requests, or other communications by giving written notice to the other Party in accordance with this Notice provision, or on the NavigateHCR website by Employer.

[Signature page to follow.]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed in their respective names by their duly authorized representatives.

Employer Representative Signature

NavigateHCR Representative Signature

Date

Date

Employer Representative Name (printed)

NavigateHCR Representative Name (printed)

Employer Representative Title

NavigateHCR Representative Title