

INTELLIJOINT VIEW PLATFORM TERMS OF SERVICE

For a printable version of these Terms of Service , click see www.intelijointsurgical.com/view/terms-of-service.

If you have any questions about these Terms of Service or if you wish to provide any feedback with respect to the Services, please contact us at: support@intellijoint.com

1. GENERAL

- 1.1 Product Description.** The Intellijoint VIEW platform is designed to allow surgeons to plan total joint arthroplasty procedures using patient x-rays, implant templates, and modelling tools. The product allows surgeons to overlay patient x-rays with implant schematics and perform measurement and implant positioning tasks. Information from the Intellijoint VIEW platform may be saved, printed, or exported to other Intellijoint products including Intellijoint HIP and Intellijoint KNEE.
- 1.2 Terms of Service.** This Agreement ("**Terms of Service**") govern your access to and use of Intellijoint Surgical Inc. ("**IJS**") services including the Intellijoint VIEW platform (the "**Services**") as identified in one or more evaluation agreements or order forms executed and accepted by IJS, an applicable IJS Fee Per Use Agreement or made available by IJS from time-to-time including, without limitation, any trial, or pre-release software (each a "**Subscription Agreement**"). IJS may update these terms from time-to-time and will provide you with notice of such changes.
- 1.3 Acceptance.** By using or visiting the Services, You accept and agree to be bound by (i) these Terms of Service, (ii) all Subscription Agreements which are incorporated herein by reference and (iii) our Privacy Notice, found at <https://www.intelijointsurgical.com/privacy-notice/> (the "**Privacy Notice**") which is incorporated herein by reference (and collectively referred to as the "**Agreement**"). This Agreement constitutes a binding agreement between you (the "**Client**", "**You**" and "**Your**") and IJS. This Agreement represents the parties' entire understanding regarding the Services and shall govern over any prior oral or written agreement or discussions.

2. OUR SERVICES

- 2.1 Subscription Service.** Unless otherwise set out in a Subscription Agreement, Services are purchased by or on behalf of Clients and provided as subscriptions. All rights not expressly granted to You in this Agreement are reserved and retained by IJS. IJS will make the Service available to You pursuant to this Agreement and provide reasonable product support to You at no additional charge.
- 2.2 Not Professional Advice.** The Services provided by IJS under this Agreement are intended to provide surgeons with comprehensive pre-operative planning tools that enable the implementation of modern best practices for total joint arthroplasty procedures. However, the documents and other materials available through the Services and any advice provided, (collectively, the "**Service Materials**") are for informational purposes only; they are not guaranteed to be correct, complete or up-to-date, and all final decisions belong to You. In particular, IJS does not review the Service Materials or any information the Client inputs to the Services or provides to IJS for accuracy, completeness or sufficiency.

YOU ACKNOWLEDGE AND AGREES THAT THE SERVICES PROVIDED UNDER THIS AGREEMENT ARE AN ADJUNCT TO, AND NOT A REPLACEMENT FOR, A SURGEON'S KNOWLEDGE, EXPERTISE, AND JUDGMENT AND AS SUCH, RESPONSIBILITY FOR THE USE OF THE SERVICES, THE SERVICE MATERIALS OR RELIANCE UPON ANY RECOMMENDATIONS MADE BY THE SERVICES REMAINS WITH THE SURGEON.

- 2.3 Access and Security.** In order to use the Service, You will have to register and create a user account (each an "Account") with IJS and provide one or more names, email addresses, login usernames and passwords (together, "ID"). You are responsible for maintaining the confidentiality of Your IDs. You are responsible for any and all activity that occurs on Your Account. If You suspect any unauthorized use with Your Account, You must notify IJS immediately.
- 2.4 Territories.** The Services are subject to specific territorial regulations and are offered for sale and use in only the following locations: Canada, New Zealand, Australia, Japan and United States (the "Territories"). IJS takes all reasonable efforts to ensure that use of the Services is restricted to the Territories but You are responsible for compliance with this limitation.

3. IJS CONTENT AND SERVICE LICENSING

- 3.1 IJS Content.** The Services and Service Materials contain content owned by IJS, its suppliers or licensors including, without limitation, documentation, implant templates, and software ("IJS Content"). IJS, its suppliers and licensors own and retain all rights, including all intellectual property rights, in and to the Services and IJS Content. The Services and IJS Content are protected by copyright, trademark, patent, trade secret and other laws.
- 3.2 Ownership and License.** Subject to Your compliance with this Agreement, IJS grants You a limited, revocable, non-transferable, non-exclusive and personal right to access, use and display the Services and IJS Content in the Territories during the period set out in the applicable Subscription Agreement ("Subscription Term"). You may publicly display or perform the Services, including the capture and publication of any user interfaces, only for academic, research, education and demonstration purposes as long as You respect all branding guidelines published by IJS. You may not otherwise reproduce, modify, display, perform or distribute the Services without the prior written consent of IJS.
- 3.3 Restrictions.** You shall not (and shall not permit others to): (i) license, sub-license, sell, resell, transfer, rent, lease, lend, assign, distribute or share the Services or IJS Content or make any of them available for access by third parties; (ii) create derivative works based on or otherwise modify the Services or IJS Content; (iii) disassemble, reverse engineer or decompile the Services or IJS Content; (iv) access the Service or IJS Content in order to develop a competing product or service; (v) use the Service or IJS Content to provide a service for others; (vi) remove or modify a copyright or other proprietary rights notice on or in the Services or IJS Content; (vii) use the Services or IJS Content to violate any applicable law or regulation; (viii) disable, hack or otherwise interfere with any security, digital signing, digital rights management, verification or authentication mechanisms implemented in or by the Services; (ix) include, send, store or run software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs from the Services; or (x) interfere with or disrupt the integrity or performance of the Service or IJS Content.
- 3.4 Feedback.** In the course of using the Services You may provide IJS with input regarding the Services, including, without limitation, comments or suggestions regarding the possible creation, modification, correction, improvement or enhancement of the Services ("Feedback"). Nothing in this Agreement

or in the parties' dealings arising out of or related to this Agreement will restrict IJS's right to use, profit from, disclose, publish, keep secret, or otherwise exploit the Feedback, without compensating or crediting You or the individual providing such Feedback, except to the limited extent that Section 10 - Confidentiality governs Feedback that constitutes Your Confidential Information. Notwithstanding the provisions of Section 10 – Confidentiality, You may not designate Feedback as Confidential Information to the extent that such Feedback relates to IJS's products or services. You shall not challenge the enforceability or validity of this provision which shall survive termination or expiration of this Agreement.

3.5 Updates. IJS may modify or update the Services and IJS Content from time-to-time in order to adapt it technically, adjust documentation, change user interfaces, or to expand or limit functionality.

4. USER CONTENT AND LICENSES

4.1 User Content. The Services provide the ability for You to upload, publish, export and input content including, without limitation, x-ray images, patient information, surgical notes and pre-operative planning measurements ("**User Content**"). Subject to Section 5.9 – Anonymized Data, IJS does not monitor, view, analyze or edit any User Content and IJS is not responsible for preventing or identifying infringement of intellectual property rights or non-compliance with applicable laws pertaining to User Content. IJS will not be liable, directly or indirectly, in any way for any damage or loss caused or alleged to be caused by or in connection with User Content.

4.2 Ownership and License. As between You and IJS, You retain ownership in the User Content. By uploading, displaying or publishing User Content to the Service, You grant IJS a worldwide, royalty-free, fully paid-up, non-exclusive, sublicensable and transferable license to use, reproduce, modify, distribute, display and perform the User Content during the Term of this Agreement only in connection with the delivery of Services for You. This license grant is subject to our Privacy Notice. This license is necessary for IJS to deliver, test and improve the Services.

4.3 Private Information. The User Content may contain personal information or personally identifiable information (collectively, "**PII**") and personal health information ("**PHI**"). In accordance with our Privacy Notice, IJS makes every effort to safeguard the privacy of PII and PHI through the use of appropriate storage and processing facilities as described further in Section 6.

4.4 Consents. You are responsible for obtaining all necessary consents, licenses and waivers required to create, record, submit, publish and use User Content in connection with the Services. You shall not submit or otherwise disclose User Content to IJS or the Service that contains PII or PHI relating to other individuals, unless You have obtained prior voluntarily informed written consent from the individual concerned ("**Patient Consent**") or are otherwise permitted by applicable law. Whenever possible, You shall only submit or disclose anonymized or otherwise de-identified data that does not contain PII or PHI relating to other individuals. You shall not use User Content for any other purposes than those specified by the disclosing individual. Upon request of the disclosing individual or any person entitled, You shall immediately cease using and delete the appropriate User Content. Patient Consent must refer to the processing of PII and PHI by Intellijoint VIEW, a web-based service owned and operated by Intellijoint Surgical Inc. Patient consent must also permit, in case of a catastrophic event requiring a data recovery and for necessary maintenance of the Services, PII and PHI to be temporarily transferred to a back up location.

4.5 Representations and Warranties. You represent and warrant that: (i) You own or have the necessary licenses, rights, consents and permissions to collect, use and publish the User Content that You submit to the Services; (ii) such collection, use, transfer and disclosure is not prohibited by any

applicable law; (iii) the uploading of Your User Content on the Service and the licenses granted to IJS under this Agreement do not and will not violate the rights of any individual or entity; and (iv) no payments of any kind shall be due by IJS to any organization for the use or distribution of User Content.

- 4.6 Prohibited Content.** You agree that You will not upload or use User Content in connection with the Service that is obscene, threatening, predatory, libelous, misleading, defaming or otherwise violates or attempts to violate the privacy rights, publicity rights, copyrights, trademark rights, contract rights or any other rights of any individual or entity. IJS reserves the right to investigate and take appropriate action against anyone who, in our sole discretion, violates these provisions including removing the offending User Content without prior notice.
- 4.7 Necessary Disclosure.** IJS may preserve, store or disclose User Content if required to do so by law or in the good faith belief that such preservation or disclosure is reasonably necessary to: (i) comply with legal processes, as further described in our Privacy Notice; (ii) comply with this Agreement; (iii) respond to claims that any User Content violates the rights of any individual or entity; or (iv) protect the rights, property, or personal safety of IJS, Customers or the public.
- 4.8 Anonymized Data.** In using the Services You hereby grant IJS full rights to anonymize Your User Content and any usage information so that it does not identify You as a user, identify specific transactions carried out by You, or contain any other confidential, PHI or PII of Your or any other individual or entity ("**Anonymous Data**"). You agree that IJS: (i) has full ownership over Anonymous Data; (ii) has full license to create derivative works and extract information from Anonymous Data; (iii) has full license to combine Anonymous Data with other information and services ("**Aggregate Data**"); (iv) has the right to use the Aggregate Data only in the furtherance of IJS's business; and (v) may disclose, sell and publish Aggregate Data to any party through any means. IJS asserts that Aggregate Data will not be used in a manner that discloses any individually or personally identifiable information about any individual or entity. IJS is prohibited from disclosing User Content and usage information to any party except in accordance with this clause, the Privacy Notice or Your express consent.

5. PRIVACY AND SECURITY

- 5.1 Privacy Notice.** IJS's collection and use of Your information, including your Account, ID and User Content, is governed by our Privacy Notice. You understand that through Your use of the Services, You consent to the collection and use of this information, including the transfer of this information to or from other countries for storage, processing and use by IJS. You understand, as further described in our Privacy Notice, that IJS may use third party providers to store, process and transfer personal information (including PII and PHI) on servers located outside of your jurisdiction of use and in jurisdictions whose data protection laws may differ from those of your jurisdiction of use, including but not limited to the United States of America. As a result, personal information may be subject to access requests from governments, courts, or law enforcement in those jurisdictions according to the laws in those jurisdictions. For example, information may be shared in response to valid demands or requests from government authorities, courts and law enforcement officials in jurisdictions other than your own. Subject to applicable laws in such other jurisdictions, IJS will use reasonable efforts to ensure that appropriate protections are in place to require our third parties to maintain protections on personal information that are equivalent to those that apply in your jurisdiction. If you have questions regarding our policies and practices with respect to our use of third-party service

providers outside of your jurisdiction, including with respect to the collection, use, disclosure or storage of personal information by service providers outside of your jurisdiction for us or on our behalf, please contact us as set out in the Privacy Notice. As part of providing the Services, IJS may need to provide You with certain communications, such as service announcements and administrative messages. These communications are considered part of the Services. As part of signing up to receive the Services, You may have also opted in to receive email communications from IJS. If You opted-in to receive such communications, IJS may use the information to: (i) communicate with You regarding the Services and promotions; (ii) provide You with other information that You request; or (iii) improve the Services. In compliance with applicable laws, You will always have the opportunity to "unsubscribe" from receiving any e-mail or other communications at any time and IJS will ensure that all e-mails include instructions on how to unsubscribe if You no longer wish to receive future e-mails from IJS. IJS provides an on-going opportunity to unsubscribe or opt-out of contact by accessing our website at www.intelijointsurgical.com/view-unsubscribe/ or by contacting privsec@intelijointsurgical.com. If You decide to unsubscribe, IJS will only contact You (i) for the purposes allowed under applicable law; (ii) to send You notices of changes to our Privacy Notice; or (iii) to receive Service related messages.

- 5.2 Security.** The Services are provided by IJS using third party services and data center facilities including, without limitation, data storage and processing with HealthCareBlocks (<https://www.healthcareblocks.com/>) and hosted with Amazon Web Services, to which You have remote access via the Services. You consent to IJS subcontracting these services to third parties. IJS implements security procedures to help protect Your User Content from security attacks. However, You understand that use of the Services necessarily involves transmission of Your User Content over networks that are not owned, operated or controlled by us, and IJS is not responsible for any User Content that is lost, altered, intercepted, copied or stored across such networks. IJS cannot guarantee that our security procedures will be error-free, that transmissions of Your User Content will always be secure or that unauthorized third parties will never be able to defeat our security measures or those of our third-party service providers. If You become aware of any security breach in the Services, You agree to promptly notify IJS. IJS agrees to notify You in the event of a confirmed detected security breach or suspicious access of Your User Content.
- 5.3 Data Encryption.** All User Content will be encrypted at rest and in transit using a strong cryptographic protocol that is consistent with industry standards.
- 5.4 Support.** IJS may offer remote support services in connection with the Services. You acknowledge and agree that, when using such remote support services, IJS or its affiliates may see User Content that contains PII or PHI. You warrant and represent that You are authorized to disclose such data to IJS.
- 5.5 Maintenance and Repairs.** IJS uses reasonable efforts to ensure that availability of the Services will be uninterrupted and that transmissions will be error-free. However, due to the nature of the internet, this cannot be guaranteed. Also, Your access to Services may be occasionally suspended or restricted to allow for repairs, maintenance or the introduction of new facilities or services. IJS will attempt to limit the frequency and duration of any such suspension or restriction, and IJS will use reasonable efforts to alert or notify You in the event of any scheduled or non-scheduled suspension of Services for maintenance or repair purposes. Due to the nature of technical outages, IJS cannot guarantee notice prior to unplanned outages. IJS will not be held

responsible for any delay or failure to comply with our obligations under these conditions if the delay or failure arises from any cause which is beyond our reasonable control.

6. WARRANTY

- 6.1 Services Warranty.** IJS warrants for the Term of this agreement that the Services shall function without defects which materially affect Your use of the Services and in accordance with IJS's specifications for the Services provided that the Services are not altered by You, and provided the Services are used in conjunction with the Intellijoint HIP and Intellijoint KNEE products provided under a Subscription Agreement. In the event of any failure of the Services that materially affects Your use of the Services, Your exclusive remedy under this warranty is to require IJS to correct such failure and such remedy is conditioned upon IJS receiving written notice (or oral notice promptly confirmed in writing).
- 6.2 No Implied Warranties.** EXCEPT AS EXPRESSLY SET OUT HEREIN, THIS SERVICE (INCLUDING THE SERVICE MATERIALS AND THE IJS CONTENT) IS PROVIDED ON AN "AS-IS", "AS-AVAILABLE" BASIS, WITHOUT ANY REPRESENTATIONS, WARRANTIES OR CONDITIONS, EXPRESS, STATUTORY OR IMPLIED INCLUDING, WITHOUT LIMITATION, ANY CONDITIONS, ENDORSEMENTS, GUARANTEES, REPRESENTATIONS OR WARRANTIES OF DURABILITY, MERCHANTABILITY, MERCHANTABILITY, SATISFACTORY QUALITY, ACCURACY, TITLE, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE OR USE, ARISING FROM A STATUTE OR CUSTOM OR A COURSE OF DEALING OR USAGE OF TRADE, OR THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ERRORS WILL BE CORRECTED, OR THAT DATA WILL BE RETAINED, OR WILL NOT BE DELETED, LOST OR MODIFIED, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. THE USE OF THE SERVICES IS AT YOUR OWN RISK. WITHOUT LIMITING THE FOREGOING, IJS DOES NOT REPRESENT OR WARRANT THAT THE SERVICES SHALL FUNCTION WITHOUT FAILURE, ERROR OR INTERRUPTION.
- 6.3 Exclusion and Debarment.** Intellijoint hereby represents and warrants that it has not been debarred, suspended, excluded or otherwise determined to be ineligible to participate in federal healthcare programs (collectively, "Debarred") and acknowledges that You shall have the right to terminate this Agreement in the event that IJS is Debarred. IJS shall provide Customer with immediate notice if, during the term of this Agreement, IJS becomes Debarred, or receives notice of action or threat of action with respect to its Debarment.
- 6.4 Operations and Regulations.** IJS represents and warrants that (a) the applicable documentation will accurately describe the applicable administrative, organizational, physical, and technical/technological safeguards for protection of the security, confidentiality and integrity of Your Data, (b) the Services will comply with all statutory requirements and regulations relating to the Services in the Territories, and (c) the Services will perform materially in accordance with the applicable documentation. For any breach of this Section 7.3, Your exclusive remedies are those described in Section 11 – Term and Termination.

7. INDEMNIFICATION

- 7.1 IJS Indemnification.** IJS will indemnify, defend and hold You harmless from and against all liabilities, damages and costs (including settlement costs and reasonable legal fees) arising out of any claim by a third party against You to the extent the claim is based on an allegation that IJS's technology used to provide the Services infringes or misappropriates any copyright, registered patent or registered trademark right of a third party in the Territories. In no event will IJS have any obligations or liability under this section arising in whole or in part from any content,

information or data provided by You or other third parties or in cases where such finding of liability would not have existed but for the provision of the same. IJS shall not be required to indemnify You in the event of: (a) modification of the Services by You that is in conflict with Your obligations or as a result of any prohibited activity as set forth herein; (b) use of the Services in a manner inconsistent with the documentation; (c) use of the Services in combination with any other application, product, or service not provided by IJS if such claim would not have occurred without such combination; or (d) use of the Services in a manner not otherwise contemplated by this Agreement or in contravention of applicable law.

7.2 Client Indemnification. You shall indemnify, defend and hold harmless IJS from and against all liabilities, damages and costs (including settlement costs and reasonable legal fees) arising out of any claim by a third party against IJS or its affiliates regarding: (i) User Content or use of Third-Party Items; (ii) failure by You to obtain any of the necessary consents required under this Agreement; (iii) Your use of the Services in violation of this Agreement; or (iv) violations of Your obligations of privacy to any individual or entity; (v) any bodily injury, death or property damage resulting or arising from reliance on the Services; or, (vi) without limiting the foregoing, any bodily injury, death or property damage resulting from any modifications or alterations to the Services.

7.3 Service Infringement. If the Services or IJS Content infringe or may be alleged to infringe a third party's copyright, registered patent or registered trademark in the Territories., then IJS may: (i) obtain the right for You, at our expense, to continue using the Service; (ii) provide a non-infringing functionally equivalent replacement; or (iii) modify the Services so that they no longer infringe. If IJS does not believe that the options described in this section are reasonable, then IJS may suspend or terminate Your use of the affected Services for convenience effective immediately.

7.4 Process. The party seeking indemnification will promptly notify the other party of the claim and cooperate with the other party in defending the claim. The indemnifying party will have full control and authority over the defense, except that: (i) any settlement requiring the party seeking indemnification to admit liability requires prior written consent, not to be unreasonably withheld or delayed; and (ii) the other party may join the defense with its own counsel at its expense.

7.5 Exclusive Remedy. The indemnities above are IJS's and Your only remedies under this Agreement for third party infringement claims and actions.

8. LIMITATIONS OF LIABILITY AND DAMAGES

8.1 Limitation of Liability. TO THE EXTENT ALLOWED BY APPLICABLE LAW, A PARTY'S LIABILITY TO THE OTHER PARTY, INCLUDING IN RELATION TO ITS OBLIGATION TO PAY DAMAGES UNDER ITS INDEMNIFICATION SHALL BE LIMITED TO THE GREATER OF: (A) THE TOTAL PAYMENTS MADE BY THAT PARTY TO THE OTHER PARTY IN RELATION TO THE SERVICES DURING THE PRECEDING CALENDAR YEAR; AND (B) THE INSURANCE COVERAGE THAT PARTY RECEIVES (INCLUDING THAT WHICH THE INSURER MAKES AVAILABLE TO PAY TO THIRD PARTIES) IN RESPECT OF THE CLAIM GIVING RISE TO THE LIABILITY.

8.2 Exclusion of Consequential Damages. IN NO EVENT WILL IJS OR ITS AFFILIATES HAVE ANY LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT FOR ANY LOST PROFITS, REVENUES, GOODWILL, OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER, BUSINESS INTERRUPTION OR PUNITIVE DAMAGES, WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF IJS OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF

SUCH DAMAGES OR IF YOUR REMEDY OTHERWISE FAILS ITS ESSENTIAL PURPOSE. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

8.3 Exceptions to Limitations. NOTWITHSTANDING ANY OTHER PROVISION, THE LIMITATIONS, EXCLUSIONS, AND DISCLAIMERS SET FORTH IN THIS AGREEMENT SHALL NOT APPLY TO: (A) ANY WILFUL MISCONDUCT OR MALICIOUS BREACH OF THIS AGREEMENT OR THE PROHIBITION AGAINST REVERSE ENGINEERING; (B) ANY WILFUL VIOLATION OR INFRINGEMENT OF THE INTELLECTUAL PROPERTY RIGHTS OF ONE PARTY BY THE OTHER PARTY; OR (C) IF AND TO THE EXTENT THAT THE LAWS OF A COMPETENT JURISDICTION REQUIRE LIABILITIES BEYOND AND DESPITE THESE LIMITATIONS, EXCLUSIONS AND DISCLAIMERS.

9. CONFIDENTIALITY

9.1 Confidential Information. As used herein, the “Confidential Information” of a Party will mean any and all technical and non-technical information disclosed by such Party (the “**Discloser**”) to the other Party (the “**Recipient**”), which may include without limitation: (a) information the Discloser has marked or identified as confidential or proprietary; (b) patent and patent applications; and (c) Discloser’s business plans, business methodologies, financial condition, financial projections, or development plans.

9.2 Obligations of Non-Disclosure. Recipient agrees that at all times and notwithstanding any termination or expiration of this Agreement it will hold in strict confidence and not disclose to any third-party any Confidential Information of the Discloser, except as approved in writing by the Discloser, and will use the Confidential Information of the Discloser only as reasonably necessary to fulfill the purposes of this Agreement. The Recipient will also protect such Confidential Information with at least the same degree of care that the Recipient uses to protect its own Confidential Information, but in no case, less than reasonable care. The Recipient will limit access to the Confidential Information of the Discloser to only those of the Recipient’s employees, partners, contractors, investors or authorized representatives having a need to know (herein “**Representatives**”). Prior to a Representative receiving Confidential Information the Representative will be advised of the obligations contained in this Agreement. Representatives must either agree in writing to be bound by this Agreement, or have previously entered into a binding confidentiality agreement with the Recipient that affords substantially similar protection of the Confidential Information as this Agreement.

Recipient will not have any obligations under this Agreement with respect to a specific portion of the Confidential Information of the Discloser if the Recipient can demonstrate that such portion of Confidential Information: (a) was in the public domain at the time it was disclosed to the Recipient; (b) entered the public domain subsequent to the time it was disclosed to the Recipient, through no fault of the Recipient; (c) was already in the Recipient’s possession at the time it was disclosed to the Recipient; (d) was communicated to the Recipient free of any obligation of confidence subsequent to the time it was disclosed to the Recipient; or (e) was independently developed by employees or agents of the Recipient.

Notwithstanding the above, the Recipient may disclose certain Confidential Information of the Discloser, without violating the obligations of this Agreement, to the extent such disclosure is required by a valid order of a court or other governmental body having jurisdiction, provided that the Recipient uses all reasonable efforts to provide sufficient notice of this requirement to the Discloser to enable the Discloser to seek an order limiting or preventing the disclosure of the Confidential Information.

9.3 Survival Period. The obligations in respect of Confidential Information shall survive for three (3) years following the expiration of this Agreement, or in the case of trade secrets, for so long as the information remains a trade secret. For clarity, the terms of this Agreement are confidential and shall not be disclosed by either Party except to those employees, agents or officers or professional advisors with a need to know the information. Notwithstanding any other term in this Agreement, neither Party is obligated to erase confidential information archived by their automatic security or disaster recovery systems. Any such retained copy shall remain subject to the confidentiality and non-use obligations herein. The provisions of this section shall survive termination or expiration of this Agreement.

9.4 Access to Books and Records. The following clause is included herein to address Section 1861(v)(1)(I) of the Social Security Act and corresponding regulations to the extent it applies to this Agreement (as well as any prior agreements for the same or similar Services). Until the expiration of four (4) years after the furnishing of Services pursuant to this Agreement, IJS shall make available upon written request of the Secretary of Health and Human Services or the United States Comptroller General or any of their duly authorized representatives, this Agreement, books, documents, and records which are necessary to verify the nature and extent of costs incurred by IJS under this Agreement; and if Intellijoint carries out any of the duties of this Agreement through a subcontract, with a value or cost of \$10,000 or more over a twelve (12) month period (including contracts for both goods and services in which the service component is worth \$10,000 or more over a twelve (12) month period), with a related organization, such subcontract must contain a clause to the effect that until the expiration of four years after the furnishing of services pursuant to such subcontract, the related organization shall make available upon written request of the Secretary of Health and Human Services or the United States Comptroller General or any of their duly authorized representatives, the subcontract, books, documents, and records of such organization that are necessary to verify the nature and extent of such costs.

10. TERM AND TERMINATION

10.1 Term. This Agreement shall commence on the date set out in each applicable Subscription Agreement and shall remain in effect through the end of the applicable Subscription Term, unless terminated earlier pursuant to the terms of this Agreement (the "**Initial Term**"). Unless otherwise set out in a Subscription Agreement: (a) Your subscription will automatically renew at the end of the Initial Term for additional 12-month periods (each a "**Renewal Term**" and together with the Initial Term the "**Term**"); and (b) the price for each Renewal Term is subject to adjustment by IJS.

10.2 Account Suspension. IJS may suspend your account at any time for a breach of Your obligations under this Agreement including, without limitation, overdue payment, usage outside the Territories, violation of any licenses or license restrictions, failure to obtain consents for User Content, or misuse of the Services. Any suspension of the Services by IJS under this section shall not relieve You of Your obligations under this Agreement. IJS will not be liable to You nor to any third party for any suspension of the Services resulting from the suspension of Your account.

10.3 Termination. Either party may terminate this Agreement at any time by giving thirty (30) days notice or by using the Services to cancel the subscription.

10.4 Effect of Termination. Upon expiration or other termination of the Service for any reason, Your right to access and use the Service shall terminate.

10.5 User Content. Upon termination You will be entitled to extract User Content stored using the Services for a period of thirty (30) days following termination (the "**Extraction Grace Period**"). Following the Extraction Grace Period, IJS shall have the right to delete all User Content at any time and terminate all access to the Services. You acknowledge and agree that archived versions of the Services may include archived copies of User Content which may be retained by automated systems that will be deleted after a reasonable period of time if the purpose for which the User Content was collected is no longer valid.

11. REGULATORY

11.1 Regulatory, Export Control, Anti-Corruption and Sanctions. You will comply with any and all local, national, and international laws and regulations applicable in the Territories where the Services are provided and You. You are responsible for satisfying any import or export restrictions or requirements related to Your use of the Services, and You understand that You have an independent duty to comply with anti-corruption and anti-bribery laws. The Services, the Service Materials, IJS Content and other technology IJS makes available, and derivatives thereof may also be subject to export laws and regulations of the United States, Canada and other jurisdictions. Each party represents that it is not named on any U.S. government denied-party list. You shall not access or use any Service, Service Materials or IJS Content in a U.S. embargoed country or in violation of any U.S., Canadian or any other applicable export law or regulation.

12. GENERAL PROVISIONS

12.1 Survival. Upon termination of this Agreement for any reason, Client shall pay all amounts owed hereunder. Sections 1.3, 2.2, 4.1, 4.4, 11.5, 11.6, 13.1, 13.3, 13.4, 13.7 and 13.9 and Article 3, Article 7, Article 8, Article 9, Article 10 of this Agreement shall survive termination of this Agreement. Should any provision of this Agreement be deemed illegal or unenforceable, the remainder shall nonetheless be given full force and effect.

12.2 Assignment. You may not assign this Agreement, nor any of the rights or obligations arising thereof, in whole or in part, to any third party without prior written consent from IJS. IJS may assign this Agreement, as well as any of our obligations or rights, to a successor entity resulting from a merger, acquisition or consolidation.

12.3 Conflict. Any terms and conditions provided by or on behalf of You that are in addition to or inconsistent with the terms and conditions of this Agreement (including, without limitation, standard purchasing terms or conditions, delivery slips, packing instructions or purchase orders), shall be deemed null and void. In the event of any conflict between these Terms of Service and a Subscription Agreement, the terms of the Subscription Agreement shall govern to the extent of the conflict for that Subscription Agreement only. Any negotiated and fully executed version of this Agreement will take precedence over any standard forms of this Agreement for the term set out in the negotiated documents.

12.4 Notice. Except as otherwise provided herein, all notices shall be in writing and deemed given upon: (i) personal delivery; (ii) the second business day after mailing; or (iii) the first business day after sending by email. Notices shall be sent to the parties as established by each Account or as updated from time-to-time by the parties.

12.5 Publicity. You permit IJS to list You as a client and use Your standard logo for our promotional and marketing use during the Subscription Term.

12.6 Force Majure. Neither party will be responsible for failure of performance due to causes beyond its control. Such causes include, without limitation, accidents, acts of God, labour disputes, health pandemic, actions of any government agency, shortage of materials, acts of terrorism or the availability of the Internet.

12.7 Waiver and Amendment. Any term of this Agreement may be amended and the observance of any term of this Agreement may be waived only with the written consent of both parties.

12.8 Relationship of The Parties. The parties are independent contractors. Nothing in this Agreement shall be construed to create a partnership, joint venture or agency relationship.

12.9 Governing Law & Dispute Resolution. This Agreement will be governed and construed by the applicable laws described below and each party irrevocably waives any objection on the grounds of venue, forum non-conveniens or any similar grounds and consents to the jurisdiction of the courts as follows: (a) where You are in Canada, or any other destinations not described in the following sub-parts (b), (c) and (d), the laws of the Province of Ontario, Canada and the federal laws of Canada applicable therein (excluding any conflicts of laws rules) and the courts of Toronto, Ontario, Canada.

IN ADDITION, THE PARTIES FURTHER WAIVE ANY RIGHT TO A TRIAL BY JURY WITH RESPECT TO ANY LAWSUIT OR JUDICIAL PROCEEDING ARISING OR RELATING TO THIS AGREEMENT. THE PARTIES DISCLAIM THE APPLICATION OF THE UN CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS WITH REGARD TO THE INTERPRETATION OR ENFORCEMENT OF THIS AGREEMENT.