

# Clomr Terms of Service and Privacy Policy

Last Updated: January 31, 2025

PLEASE READ THESE TERMS OF SERVICE AND PRIVACY POLICY CAREFULLY BEFORE USING THE SERVICE. THESE TERMS AND POLICY (the “**Terms**”) ARE BETWEEN CLOMR INCORPORATED (“**Clomr**,” “**we**,” “**our**,” or “**us**”) AND THE CUSTOMER (“**Customer**” or “**you**”), INCLUDING THE INDIVIDUAL OR ENTITY IDENTIFIED ON ANY ORDER FORM OR AGREEMENT REFERENCING THESE TERMS. THESE TERMS (OR, IF APPLICABLE, YOUR WRITTEN AGREEMENT WITH US) AND ANY ORDER FORMS TOGETHER WITH ALL DOCUMENTS REFERENCED HEREIN FORM THE “**AGREEMENT**” BETWEEN CUSTOMER AND US. BY SIGNING AN ORDER FORM OR USING THE SERVICE, YOU AGREE TO THESE TERMS AND POLICY. IF YOU DO NOT AGREE, DO NOT ACCESS OR USE THE SERVICE.

**Please read these terms carefully to ensure you understand each provision. This Agreement contain a jury trial waiver provision and a mandatory arbitration provision.**

If you subscribe to, or access or use the Services, create an organization, invite users to that organization, or use or allow use of that organization after being notified of a change to these Agreement, you acknowledge your understanding of the then-current Agreement and agree to the Agreement on behalf of Customer. Please make sure you have the necessary authority to enter into the Agreement on behalf of Customer before proceeding.

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## 1. General Provisions

### 1.1 Customers, Authorized Users, and Customer Content

“**Customer**” or “**you**” is either you, if you are an individual entering into the Agreement on your own behalf, or the organization that you represent in agreeing to the Agreement. If your organization is being set up by someone who is not formally affiliated with a business entity or other organization, Customer is the individual creating the organization. If you signed up for a subscription plan using your corporate email domain or are otherwise entering into a subscription plan on behalf of a business entity or other organization, the business entity or other organization on whose behalf you signed up is the Customer. By signing up on behalf of your business entity or other organization, you represent and warrant that you have all right, power, and authority to bind such entity or organization to the Agreement.

Individuals authorized by Customer to access the Services (each an “**Authorized User**”) may submit content or information to the Services, which includes Personal Data (defined below) and User Content (defined below) (“**Customer Content**”), and Customer will have the sole right and responsibility for managing your use of it. Customer will be solely responsible for all of the acts and omissions of its Authorized Users in relation to the Services and the Agreement. The Services are not intended for and should not be used by anyone under the age of 13. Customer must ensure that all Authorized Users are over 13 years old.

Customer will (a) inform Authorized Users of all Customer policies and practices that are relevant to their use of the Services and of any settings that may impact the processing of Customer Content; and (b) obtain all rights, permissions or consents from Authorized Users and other Customer personnel that are necessary to grant the rights and licenses in the Agreement and for the lawful use and transmission of Customer Content and the operation of the Services.

**1.2 Services Provided, Subscriptions:** This Agreement governs your use of Clomr’s software-as-a-service (SaaS) platform, Clomr’s web-based software platform and related services (the “**Service**”), as further specified in the applicable order form entered into between Customer and us (each an “**Order Form**”). The Service includes features for surgical case logging and patient onboarding, as well as subscriptions which may be procured through the Services interface, or in some cases, via an Order Form). Subscriptions commence when we make them available to Customer and continue for the term specified in the Services or in the Order Form, as applicable (the “**Subscription Period**”).

**1.3 Beta Products:** Occasionally, we look for beta testers to help us test our new features. These features will be identified as “beta” or “pre-release,” or words or phrases with similar meanings (each, a “**Beta Product**”). Beta Products are made available on an “as is,” and “as available” basis and, to the extent permitted under applicable law, without any warranties or contractual commitments we make for other Services.

**1.3 Policies Incorporated by Reference:** By using the Services, you understand and acknowledge that: (i) your personal information will be collected, used and disclosed as set forth in our Privacy Policy and (ii) your use of the Service is also governed by the incorporated Business Associate Agreement (“**BAA**”), which applies if Customer handles Protected Health Information (PHI) under HIPAA.

We care about the integrity and security of your personal information. However, we cannot guarantee that unauthorized third parties will never be able to defeat our security measures or use your personal information for improper purposes. You acknowledge that you provide your personal information at your own risk.

#### **1.4 Our License to Customer:**

(a) **Ownership of the Services, Documentation, and Company Data**

We own and will continue to own our Services and Documentation, including all related intellectual property and other proprietary rights related thereto. Further, Customer acknowledges and agrees that we may collect data relating to Customer’s and its Authorized Users’ usage of the Services, including but not limited to case volume (“**Usage Data**”) and collect, analyze, and use data derived from User Content that has been aggregated and/or anonymized such that it does not identify Customer or any identifiable individual person (“**Derivative Data**” and, collectively with Usage Data, “**Company Data**”). All Company Data will be owned solely and exclusively by us and, for purposes of clarity, you agree that we may use the Company Data in perpetuity for any purpose permitted by applicable law.

We may, from time to time, make available certain third-party products and services, including but not limited to open source software (“**Third-Party Products**”) for use in connection with the Services. Such Third-Party Products may be made available under separate or additional terms

and conditions, including but not limited to open source licenses, which we will make available to you as necessary.

(b) Licenses to the Services and Documentation

During the Subscription Period, we grant the Customer a non-exclusive, non-transferable license to access and use, and to permit Authorized Users to access and use the Services, in accordance with the Agreement, for the Customer's own internal business purposes.

To the extent that we may make downloadable software components available, via app stores or other channels, as part of the Services, During the Subscription Period, we grant to Customer a non-sublicensable, non-transferable, non-exclusive, limited license for Customer and its Authorized Users to use the object code version of these components, but solely as necessary to use the Services. Minor updates, bug fixes, and the like to such downloadable software components will be included under this license for the duration of the subscription.

From time to time, we may make available product documentation for the Services (the “**Documentation**”) via a method of our choosing (e.g., via the Services). During the Subscription Period, we grant to Customer a non-sublicensable, non-transferable, non-exclusive, limited license for Customer and its Authorized Users to use the Documentation to support Customer’s and its Authorized Users’ use of the Services.

All rights and licenses granted herein are subject to you and your Authorized Users’ full compliance with all of the terms and conditions of the Agreement. All rights in the Services and Documentation not expressly granted herein are expressly reserved by us. **1.4 Payment Processing and Deposits:** For Customers that purchase a subscription to use our Services, fees are specified through the Services interface or in the Order Form(s). If enabled, Clomr may facilitate the collection of deposits from patients on behalf of the Customer (“Deposit Services”). These services:

- Are subject to processing fees as specified in the applicable Order Form.
- Include third-party transaction fees payable to Stripe or other payment processors, which will be deducted from the transaction amount.
- Require the Customer to comply with all applicable payment processing laws and provide accurate patient payment information.
- Are subject to Stripe’s **Privacy Policy** (available at <https://stripe.com/privacy>) and **Connected Account Agreement** (available at <https://stripe.com/legal/connect-account>), which Customers and end-users must adhere to.

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## 2. Customer Responsibilities

### 2.1 Customer Licenses to Us:

(a) Ownership of Customer Content

As between us on the one hand, and Customer and any Authorized Users on the other, Customer will own all Customer Content, including, for purposes of clarity, Personal Data and User Content.

(b) License to Personal Data

Subject to the terms and conditions of the Agreement, Customer (for itself and all of its Authorized Users) grants us a worldwide, non-exclusive, limited term license to access, use, process, copy, distribute, perform, export and display Personal Data, only as reasonably necessary (a) to provide and maintain the Services; (b) to prevent or address service, security, support or technical issues; (c) as required by law; and (d) as expressly permitted in writing by Customer. Customer represents and warrants that it has secured all rights in and to Personal Data from its Authorized Users or any third parties as may be necessary to grant this license.

Notwithstanding the foregoing, Customer agrees that we may collect, analyze, use and disclose, during or after the Subscription Period, data derived from Personal Data, which is anonymized and/or aggregated in a manner, that makes the identification of Customer or any Authorized User or third party impossible, for any business purpose, including without limitation, to operate, analyze, improve, and market the Services and our other products and services and share such anonymized data with our affiliates and business partners. Customer further agrees that we will have the perpetual right to use, store, transmit, distribute, modify, copy, display, sublicense, and create derivative works of such derived data.

(c) License to User Content

With respect to that portion of Customer Content that consists of videos, images, music, comments, questions, documents, spreadsheets, and any other content submitted, posted, or otherwise made available by Customer and its Authorized Users through the Services (“**User Content**”), by submitting, posting, storing, or otherwise making such User Content available through the Services, Customer grants, and represents and warrants that it has all rights necessary to grant (including without limitation any necessary consents and authorizations from individual persons identified in the User Content and licenses from third-parties whose content is included in the User Content), to us a royalty-free, sublicensable, transferable, perpetual, irrevocable, non-exclusive, worldwide license to use, host, store, reproduce, modify, publish, list information regarding, translate, distribute, publicly perform, publicly display, and make derivative works of all such User Content, and the names, voice, and/or likeness contained in the User Content, in whole or in part, and in any form, media, or technology, whether now known or hereafter developed, solely for use in connection with our provision of the Services as described in the Agreement and our product documentation.

To the extent permitted under applicable law, we take no responsibility and assume no liability for any User Content that Customer or any Authorized User or third-party submits, posts, or otherwise makes available through the Services. As between Customer and us, Customer shall be fully responsible for the User Content and the consequences of submitting, posting, or otherwise making it available via the Services, and Customer acknowledges and agrees that we are acting only as a passive conduit for Customer’s and its Authorized Users’ online distribution of such User Content.

## **2.2 Responsibilities for Customer Content:**

We are not responsible for the content of any Customer Content or the way Customer or its Authorized Users choose to use the Services to store or process any Customer Content. Customer represents and agrees that Customer is solely responsible for (i) providing notices and obtaining consents as legally required from its Authorized Users for the collection, use, processing and transfer of Customer Content in connection with the Services; and (ii) ensuring compliance with all laws in all jurisdictions that may apply to Customer Content provided hereunder, including but not limited to all applicable international, federal, state, provincial and local laws, rules, and regulations relating to data privacy and security.

## **2.2 Restrictions:**

You agree not to engage in any of the following prohibited activities: (i) copying, distributing, or disclosing any part of the Services in any medium, including without limitation by any automated or non-automated “scraping”; (ii) using any automated system, including without limitation “robots,” “spiders,” “offline readers,” etc., to access the Services in a manner that sends more request messages to the servers hosting the Services than a human can reasonably produce in the same period of time by using a conventional on-line web browser; (iii) transmitting spam, chain letters, or other unsolicited email; (iv) attempting to interfere with, compromise the system integrity or security or decipher any transmissions to or from the servers running the Services; (v) taking any action that imposes, or may impose at our sole discretion an unreasonable or disproportionately large load on our infrastructure; (vi) uploading invalid data, viruses, worms, or other software agents through the Services; (vii) Sell, rent, or lease the Service to any third party (except as explicitly allowed in the BAA); (viii) using the Services for any commercial solicitation purposes; (ix) impersonating another person or otherwise misrepresenting your affiliation with a person or entity, conducting fraud, hiding or attempting to hide your identity; (x) interfering with the proper working of the Services; (xi) accessing any content on the Services through any technology or means other than those provided or authorized by the Services; or (xii) bypassing the measures we may use to prevent or restrict access to the Services, including without limitation features that prevent or restrict use or copying of any content or enforce limitations on use of the Services or the content

**2.4 Security:** Customer is responsible for maintaining the confidentiality of access credentials and notifying Clomr of any unauthorized use or security breach. Customer must comply with the Agreement and ensure that its Authorized Users comply with the Agreement. We may review conduct for compliance purposes, but we have no obligation to do so. If we believe there is a violation of the Agreement that can be remedied by Customer’s removal of certain Customer Content, we will, in most cases, ask Customer to take direct action rather than intervene. However, to the extent legally permissible, we reserve the right to take further appropriate action, when we deem it reasonably appropriate if Customer does not take appropriate action, or if we believe there is a credible risk of harm to us, the Services, Authorized Users, or any third parties.

**2.5 Deposit Services Compliance:** For any deposits collected on behalf of the Customer:

- The Customer acknowledges and agrees that Clomr acts as a facilitator and not as a guarantor of payments.
  - The Customer is solely responsible for refund policies, disputes, patient communications, and compliance with applicable payment processing laws.
  - The Customer and any end-users involved in payment transactions are subject to Stripe's terms and conditions.
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### 3. Payment Terms

**3.1 Fees:** Customer must pay all fees as specified on the applicable Order Form. Processing fees for Deposit Services are included as detailed in the Order Form. Payment obligations are non-cancelable and, except as expressly stated in the Agreement, fees paid are non-refundable. For clarity, in the event Customer downgrades any subscriptions from a paid plan to a free plan, Customer will remain responsible for any unpaid fees under the paid plan, and Services under the paid plan will be deemed fully performed and delivered upon expiration of the initial Subscription Period. If we agree to invoice Customer by email, full payment must be received within thirty (30) days from the invoice date. Fees are stated exclusive of any taxes, levies, duties, or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction (collectively, "**Taxes**"). Customer will be responsible for paying all Taxes associated with its purchases, except for those taxes based on our net income.

**3.2 Invoicing and Payment Due Dates:** Unless otherwise stated in the Order Form, invoiced charges are due upon receipt.

**3.3 Suspension of Service for Non-Payment:** Clomr may suspend and/or terminate Customer's access to the Service or portions thereof if Customer has not paid amounts owed to Clomr when due. Clomr will provide prior notice before any suspension or termination due to non-payment.

**3.4 Third-Party Costs:** Any fees charged by third-party payment processors, such as Stripe, will be included in the total transaction fees deducted from deposits.

**3.5 Early Termination:** If Customer terminates the Agreement before the end of the agreed term specified in the Order Form without cause, Clomr reserves the right to charge a termination fee equal to the remaining fees due for the term. Any such fees will be invoiced and payable immediately upon termination.

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### 4. Privacy and Data Protection

**4.1 Data Collection:** Clomr collects only the data necessary to provide the Service, such as patient information, case logs, and billing details.

**4.2 Data Usage:** Customer Data will only be used to deliver and improve the Service. Clomr does not sell or share Customer Data with third parties, except as required by law or to provide the Service.

**4.3 Data Protection:** All data is encrypted at rest and in transit using encryption. Clomr conducts regular security audits to ensure data integrity.

#### **4.4 Patient Data Privacy and Rights:**

- **Patient Data Usage:** Clomr enables Customer to manage patient data through the Service. Customer is responsible for ensuring compliance with applicable privacy laws, including HIPAA.
- **Patient Portal:**
  - Patients will be required to accept Clomr's **Patient Terms of Use and Privacy Policy** before accessing the portal.
  - Clomr will never share patient personal data with any third party including but not limited to name, phone number, mobile phone number, address, date of birth, any provided documents. Clomr does not intend patient data to be used for marketing purposes.
  - Clomr will never share mobile data with third parties for any campaign.
  - Patients have the right to access or modify their personal information in compliance with applicable laws.
  - Patients have the right to opt-out of receiving SMS messages at any time
  - Clomr provides tools to assist the Customer in responding to patient data requests but is not directly responsible for handling such requests unless legally required.
- **Data Retention:** Patient data will be retained only as necessary to provide the Service or comply with legal obligations.

**4.5 Customer Rights:** Customers may access, modify, or delete their data through the Service. For assistance, contact Clomr at [support@clomr.com](mailto:support@clomr.com).

**4.6 Business Associate Agreement (BAA):** If Customer handles PHI, the BAA governs the use and protection of such data. By signing the Order Form, Customer acknowledges and agrees to the BAA.

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## **5. Term and Termination**

**5.1 Term:** This Agreement remains effective during the Subscription Period specified in the applicable Order Form, or until subscriptions ordered under the Agreement have expired or

been terminated or the Agreement itself terminates. Termination of the Agreement will terminate all subscriptions and all Order Forms.

**5.2 Termination for Cause:** We or Customer may terminate the Agreement on notice to the other party if the other party materially breaches the Agreement and such breach is not cured within thirty (30) days after the non-breaching party provides notice of the breach. Customer is responsible for its Authorized Users, including for any breaches of the Agreement caused by its Authorized Users. We may terminate the Agreement immediately on notice to Customer if we reasonably believe that the Services are being used by Customer or its Authorized Users in violation of applicable law.

**5.3 Data Return:** Upon termination, Clomr will provide Customer access for 30 days before deletion.

**5.4 Effect of Termination:** Upon any termination for cause by Customer, we will refund Customer any prepaid fees covering the remainder of the Subscription Period after the effective date of termination. In no event will any termination relieve Customer of the obligation to pay any fees payable to us for the period prior to the effective date of termination.

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## 6. Indemnity

To the maximum extent allowed by law, Customer must indemnify, defend (at Clomr's option), and hold harmless Clomr, including its officers, directors, employees, agents, successors, and assigns against all third-party claims (including, without limitation, by governmental agencies), demands, damages, costs, penalties, fines, and expenses (including reasonable attorneys' fees and costs) arising out of or related to:

- The use of the Service by Customer;
- Customer's breach of any term in the Agreement;
- Customer Information;
- Any unauthorized use, access, or distribution of the Service by Customer; or
- Violation of any individual's privacy rights related to information submitted under Customer's account, or fraudulent, invalid, duplicate, incomplete, unauthorized, or misleading information submitted under Customer's account or by Customer.

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## 7. Disclaimers and Limitations of Liability

**7.1 Representations; Disclaimer:** Customer represents and warrants that it has validly entered into the Agreement and has the legal power to do so. Customer further represents and warrants that it is responsible for the conduct of its Authorized Users and their compliance with the terms of the Agreement. EXCEPT AS EXPRESSLY PROVIDED FOR HEREIN, THE SERVICES AND ALL RELATED COMPONENTS AND INFORMATION ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT ANY WARRANTIES OF ANY KIND, AND



WE EXPRESSLY DISCLAIM ANY AND ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. CUSTOMER ACKNOWLEDGES THAT WE DO NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE.

SOME JURISDICTIONS DO NOT ALLOW THE DISCLAIMER OF CERTAIN TYPES OF WARRANTIES, SO THE ABOVE DISCLAIMERS MAY NOT APPLY TO YOU. THE AGREEMENT GRANTS SPECIFIC LEGAL RIGHTS, AND CUSTOMER AND AUTHORIZED USERS MAY ALSO HAVE OTHER RIGHTS THAT VARY FROM JURISDICTION TO JURISDICTION. THE FOREGOING DISCLAIMERS WILL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

**7.2 Limitations Related to Deposit Services:** Clomr is not liable for any issues related to the collection, processing, or disbursement of deposits, including delays or errors caused by third-party payment processors.

**7.3 General Limitation of Liability:** IN NO EVENT WILL OUR AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THE AGREEMENT (WHETHER IN CONTRACT OR TORT OR UNDER ANY OTHER THEORY OF LIABILITY) EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER HEREUNDER IN THE six (6) MONTHS PRECEDING THE LAST EVENT GIVING RISE TO LIABILITY. THE FOREGOING WILL NOT LIMIT CUSTOMER'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT.

IN NO EVENT WILL WE HAVE ANY LIABILITY TO YOU OR TO ANY THIRD PARTY FOR ANY LOST PROFITS OR REVENUES OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER OR PUNITIVE DAMAGES HOWEVER CAUSED, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

Customer is responsible for all login credentials, including usernames and passwords, for administrator accounts as well the accounts of your Authorized Users. We will not be responsible for any damages, losses or liability to Customer, Authorized Users, or anyone else, if such information is not kept confidential by Customer or its Authorized Users, or if such information is correctly provided by an unauthorized third party logging into and accessing the Services.

The limitations under this "General Limitation of Liability" section apply with respect to all legal theories, whether in contract, tort or otherwise, and to the extent permitted by law. The provisions of this "General Limitation of Liability" section allocate the risks under the Agreement between the parties, and the parties have relied on these limitations in determining whether to enter into the Agreement and the pricing for the Services.

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF CERTAIN TYPES OF DAMAGES, SUCH AS INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU. THE AGREEMENT GRANTS SPECIFIC LEGAL RIGHTS, AND CUSTOMER AND AUTHORIZED USERS MAY ALSO HAVE OTHER RIGHTS THAT VARY FROM JURISDICTION TO JURISDICTION. THE FOREGOING

DISCLAIMERS AND LIMITATIONS WILL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW..

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## **8. Confidentiality**

### **8.1 Definition**

Each party ("**Disclosing Party**") may disclose "Confidential Information" to the other party ("**Receiving Party**") in connection with the Agreement, which is anything that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure including all Order Forms, as well as non-public business, product, technology and marketing information. Confidential Information of Customer includes Customer Content. If something is labeled "Confidential," that's a clear indicator to the Receiving Party that the material is confidential. Notwithstanding the above, Confidential Information does not include information that (a) is or becomes generally available to the public without breach of any obligation owed to the Disclosing Party; (b) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party; (c) is received from a third party without breach of any obligation owed to the Disclosing Party; or (d) was independently developed by the Receiving Party.

### **8.2 Protection and Use of Confidential Information**

The Receiving Party will (a) take at least reasonable measures to prevent the unauthorized disclosure or use of Confidential Information, and limit access to those employees, affiliates and contractors who need to know such information in connection with the Agreement; and (b) not use or disclose any Confidential Information of the Disclosing Party for any purpose outside the scope of the Agreement. Nothing above will prevent either party from sharing Confidential Information with financial and legal advisors; provided, however, that the advisors are bound to confidentiality obligations at least as restrictive as those in the Agreement.

### **8.3 Compelled Access or Disclosure**

The Receiving Party may access or disclose Confidential Information of the Disclosing Party if it is required by law; provided, however, that the Receiving Party gives the Disclosing Party prior notice of the compelled access or disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the access or disclosure. If the Receiving Party is compelled by law to access or disclose the Disclosing Party's Confidential Information, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing access to such Confidential Information as well as the reasonable cost for any support provided in connection with the Disclosing Party seeking a protective order or confidential treatment for the Confidential Information to be produced.

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## 9. Dispute Resolution

### 9.1 Governing Law

The Agreement, and any disputes arising out of or related hereto, will be governed exclusively by the internal laws of the State of California, without regard to its conflicts of laws rules or the United Nations Convention on the International Sale of Goods. The parties acknowledge that the Agreement evidences a transaction involving interstate commerce. Notwithstanding the preceding sentences with respect to the substantive law of the Agreement, any arbitration conducted hereunder shall be governed by the Federal Arbitration Act (9 U.S.C. §§ 1-16).

### 9.2 Venue; Waiver of Jury Trial Fees

1. The state and federal courts located in Alameda County, California will have exclusive jurisdiction to adjudicate any dispute arising out of or relating to the Agreement or its formation, interpretation or enforcement, including any appeal of an arbitration award or for trial court proceedings if the arbitration provision below is found to be unenforceable. Each party hereby consents and submits to the exclusive jurisdiction of such courts. Each party also hereby waives any right to jury trial in connection with any action or litigation in any way arising out of or related to the Agreement. In any action or proceeding to enforce rights under the Agreement, the prevailing party will be entitled to

### 9.3 General Mediation Process

1. The parties shall submit any and all disputes, claims, or controversies arising out of or relating to the Customer Agreement including any conduct related to or arising out of the Customer Agreement following termination hereof (each, a “**Dispute**”) as follows:
  - a. the parties will submit the dispute to non-binding mediation in Alameda County under the mediation rules of the American Arbitration Association (**AAA**); and
  - b. if no settlement is reached within sixty (60) days of the start of mediation, either party may seek legal redress in a forum of competent jurisdiction.
2. Either party may commence mediation by providing to AAA and the other party a written request for mediation, which must set forth the subject of the Dispute, the relief requested, and the factual and legal bases for such relief. The parties shall cooperate with AAA and with one another in selecting a mediator from the AAA panel of neutrals and in scheduling the mediation proceedings. The parties shall participate in the mediation in good faith.
3. If the Dispute is not resolved through mediation, the party seeking relief may pursue all remedies available at law, subject to the terms of this Agreement.
4. Notwithstanding this Section, either party may (i) terminate this Agreement according to its terms, or (ii) seek injunctive or equitable relief.

## B. PROHIBITION OF CLASS AND REPRESENTATIVE ACTIONS

1. EACH PARTY MAY BRING CLAIMS AGAINST THE OTHER ONLY ON AN INDIVIDUAL PARTY BASIS, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE ACTION OR PROCEEDING.
  2. THE MEDIATOR MAY NOT CONSOLIDATE OR JOIN MORE THAN ONE PARTY'S CLAIMS, AND MAY NOT OTHERWISE PRESIDE OVER ANY FORM OF A CONSOLIDATED, CLASS OR REPRESENTATIVE PROCEEDING.
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## 10. Miscellaneous

### 10.1 Publicity

Neither party may publicly use the other party's company name, logo, or other trademarks for any purpose without the other party's prior written consent.

### 10.2 Third Party Products, Links, and Information

The Services may integrate with, or contain, third party products, services, materials, or information, or links thereto that are not owned or controlled by us ("**Third Party Materials**"). We do not endorse or assume any responsibility for any such Third Party Materials. If Customer or any Authorized User accesses any third party website or service, it does so at its own risk, and Customer acknowledges and agrees that the Agreement and our Privacy Policy do not apply to Customer or any Authorized User's use of such sites or services. Customer expressly relieves us from any and all liability arising from its or its Authorized User's use of any Third Party Materials.

### 10.3 Force Majeure

Neither us nor Customer will be liable by reason of any failure or delay in the performance of its obligations on account of events beyond the reasonable control of a party, which may include denial-of-service attacks, a failure by a third party hosting provider or utility provider, strikes, shortages, riots, fires, acts of God, war, terrorism, and governmental action.

### 10.4 Relationship of the Parties; No Third Party Beneficiaries

The parties are independent contractors. The Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the parties. There are no third party beneficiaries to the Agreement; a person who is not a party to the Agreement may not enforce any of its terms under any applicable law.

### 10.5 Email Communications

Except as otherwise set forth herein, all notices under the Agreement will be by email, although we may instead choose to provide notice to Customer through the Services. Notices to us must be sent to support@clomr.com. Notices will be deemed to have been duly given (a) the business day after it is sent, in the case of notices through email; and (b) the same day, in the case of notices through the Services.

## **10.6 Modifications**

We may change these Terms and the other components of the Agreement (except any Order Forms) in accordance with this Section. If we make a material change to the Agreement, we will provide Customer with reasonable notice prior to the change taking effect, either by emailing the email address associated with Customer's account or by messaging Customer through the Services. Customer can review the most current version of the Terms at any time by visiting this page and by visiting the most current versions of the other pages that are referenced in the Agreement. The materially revised Agreement will become effective on the date set forth in our notice, and all other changes will become effective upon posting of the change. If Customer (or any Authorized User) accesses or uses the Services after the effective date, that use will constitute Customer's acceptance of any revised terms and conditions.

## **10.7 Waivers**

No failure or delay by either party in exercising any right under the Agreement will constitute a waiver of that right. No waiver under the Agreement will be effective unless made in writing and signed by an authorized representative of the party being deemed to have granted the waiver.

## **10.8 Severability**

The Agreement will be enforced to the fullest extent permitted under applicable law. If any provision of the Agreement is held by a court of competent jurisdiction to be contrary to law, the provision will be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of the Agreement will remain in effect.

## **10.9 Assignment**

Neither party may assign or delegate any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld). Notwithstanding the foregoing, we may assign the Agreement in its entirety (including all Order Forms), without consent of Customer, to a corporate affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. Any purported assignment in violation of this section is void. Subject to the foregoing, the Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns.

## **10.10 Entire Agreement**

The Agreement, including these Terms and all referenced pages and Order Forms, if applicable, constitutes the entire agreement between the parties and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. Without limiting the foregoing, the Agreement supersedes the terms of any online agreement electronically accepted by Customer or any Authorized Users. However, to the extent of any conflict or inconsistency between the provisions in these Terms and any other documents or pages referenced in these Terms, the following order of precedence will apply: (1) the BAA; (2) the terms of any Order Form (if any), (3) these Terms; and (4) any other documents or pages referenced in these Terms. Notwithstanding any language to the contrary therein, no

terms or conditions stated in a Customer purchase order, vendor onboarding process or web portal, or any other Customer order documentation (excluding Order Forms) will be incorporated into or form any part of the Agreement, and all such terms or conditions will be null and void.

#### **10.11 Survival**

Any section of the Agreement that, by its terms or its nature, should survive the termination or expiration of the Agreement shall so survive.

#### **10.12 Contacting Us**

Please also feel free to contact us if you have any questions about the Terms or any other part of the Agreement. You may contact us at [support@clomr.com](mailto:support@clomr.com).

If you are a California resident, in accordance with Cal. Civ. 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 1625 North Market Blvd., Suite N 112 Sacramento, CA 95834, or by telephone at (800) 952-5210 or (916) 445-1254.