

## TERMS OF SERVICE

**WELLOVATE, LLC** ("**Wellovate**") is prepared to provide Client (hereinafter defined as the purchasing and/or subscribing entity entering into this Agreement with Wellovate) access to various tools depending on Client's needs, including virtual and/or augmented reality applications, services supporting such applications, software, materials, websites, and content (collectively, the "**Services**"). These Terms of Service ("**Terms**") apply to Client's purchase, access to, and/or use of, any Services. By using and/or accessing any of the Services, Client accepts all of these Terms and agrees to be legally bound by them. These Terms do not alter in any way the terms or conditions of any other agreement Client may have with Wellovate for products, services or otherwise. If Client is using the Services on behalf of any entity, Client represents and warrants that it is authorized to accept these Terms on such entity's behalf and that such entity agrees to be responsible to Wellovate if Client or that entity violate these Terms. If Client does not agree to these Terms, or any amended Terms, Client may not access or use the Services, as that term is defined herein, and Client shall promptly discontinue such access and use of the Services. Client and any users, customers, and/or clients of Client with access to Services hereby agree to be bound by all of these Terms, as well as the attached Appendix, if applicable.

### 1. **HARDWARE, EQUIPMENT, AND/OR PHYSICAL COMPONENTS (if applicable)**

The Client acknowledges that all hardware, equipment, and/or physical components, as described on their invoice, are purchased by Client, and Client assumes all risk and liability resulting from the possession, use or disposition of such hardware, equipment, and/or physical components.

### 2. **SOFTWARE**

#### A. **LIMITED LICENSE**

- (1) Copyright. The Software contains original virtual reality content ("**Materials**"), the copyright for which is owned by Wellovate, and which utilizes software ("**Software**") developed and licensed to search, retrieve, interact with, and/or display the Materials. All other information displayed, transmitted or carried on the Software (including, but not limited to, directories, guides, articles, opinions, reviews, text, photographs, images, illustrations, audio clips, video clips, rendered content, trademarks, service marks and the like, collectively the "**Content**") are protected by copyright and other intellectual property laws. Client acknowledges that the Materials, Software and/or Content, and the rights thereto, are owned outright by Wellovate, its affiliates or third-party licensors. Client agrees to abide by all copyright notices and restrictions attached to any Materials, Software and/or Content accessed through the Software, not alter the Materials, Software and/or the Content in any way, and not to alter or remove any trademark, copyright or any other notice from copies of the Materials, the Software and/or the Content.
- (2) Subscription Access. Client will take no unauthorized action to extend Client's access to the Materials, the Software, the Content and/or the Documentation beyond the authorized Subscription, as described in the attached invoice. These Terms and all of Client's rights to the Materials, Software, the Content and/or the Documentation shall cease and terminate immediately in the event of a breach by Client of any of these Terms.
- (3) Subscription Auto-Renewal. At the conclusion of any Subscription period, all Subscriptions automatically renew for subsequent one-year terms unless Wellovate is notified in writing by Client as described herein.
- (4) Permitted Use by Client. Subject to these Terms, and only during the Term, as that term is defined herein and provided Client has paid the appropriate Subscription fees, Wellovate grants Client and its designated internal Clients, a non-transferable, limited and revocable license to access and use the Materials, Software, Content and/or Documentation only as permitted by these Terms. Subject to the foregoing, the Client may use the Software solely to access and use the Materials, the Content and/or the Documentation, provided the Client has paid the appropriate Subscription fee(s). This limited license grants Client only the right to access and use the Materials, Software, Content and/or Documentation for purposes directly related to Client's business; provided, however, Client does not remove any trademarks, copyright and other notice contained in such Materials, Software, Content and/or Documentation.
- (5) Permitted Use of Client Data by Wellovate. Wellovate or others working for Wellovate may collect, use, retain and process technical data and related information that is gathered periodically to facilitate the provision of Software updates, support and other services to Client (if any) related to the Services described herein. Wellovate or others working for Wellovate may use this information to improve and/or to provide to Client its products, processes, services or technologies, or as required by law or legal

process. Wellovate, others working for Wellovate, and/or Wellovate affiliates may also use this information for research, development, and/or marketing purposes. Wellovate will comply with all applicable laws with regard to such data, and, unless restricted by applicable law, shall have the unrestricted right to use such data for any purpose in the course of its business.

- (6) Rights Limited to Client. Any and all rights under these Terms granted to Client are limited to a specific designated business entity (and its designated internal Clients) that has paid or for whom has been paid to Wellovate the appropriate Subscription fee established by Wellovate for access to and use of the Materials, Software, Content and/or Documentation as provided in this Agreement, and to whom a specific password and/or license key has been issued. All passwords, license keys, and/or access codes to the Materials, Software, the Content and/or the Documentation are personal to the Client and are not transferable or assignable by Client.
- (7) Cancellation. Client may cancel a Subscription renewal by providing 60 days' notice to Wellovate in writing via email to [cancel@wellovate.com](mailto:cancel@wellovate.com). Client must cease access and use of the Software after cancellation.
- (8) Subscription Fee(s). Subscription(s) are to be paid in full following execution of agreement. Invoices are due 30 days after receipt.

#### B. SOFTWARE USE RESTRICTIONS

Except as expressly authorized pursuant to Section 2, Client may not and may not permit others to:

- (1) Use the Software on or gain access to the Materials, Software, Content and/or Documentation from more than one machine at a time, nor install them in a fashion that makes the Materials, Software, Content and/or Documentation available on, running on or access from more than one machine at a time unless Client has paid the additional fee(s) and any other charges imposed by Wellovate for such use or access;
- (2) Sell, rent, lease, license, sublicense, or assign the Materials, Software, the Content and/or the Documentation, or the use of the Materials, Software, the Content and/or the Documentation to others;
- (3) Transfer the Materials, the Content and/or the Documentation or any copy thereof to another party.
- (4) Reverse engineer, decompile, disassemble, or otherwise derive the source code from the Software;
- (5) Alter, modify, adapt, reconfigure, or prepare derivative works of the Materials, Software, the Content and/or the Documentation;
- (6) Provide or permit access to the Materials, Software, the Content and/or the Documentation except for the sole use of Client;
- (7) Archive or retain any of the Materials, Software, the Content and/or the Documentation in any form without the written permission from Wellovate;
- (8) Distribute (including via e-mail or the Internet), or otherwise make available, copies of the Materials, Software, the Content and/or the Documentation to others, whether or not for payment or other consideration, without the written permission from Wellovate. Requests for permission to retain, distribute or reproduce may be submitted to Wellovate at its regular business address;
- (9) Copy, extract, summarize, distribute or otherwise use the Materials, Software, the Content and/or the Documentation in any manner which competes with or substitutes for Wellovate's distribution of the Materials, Software, the Content and/or the Documentation to its customers.

#### C. SETUP

Upon execution of these Terms by the parties hereto, Wellovate shall be allowed a reasonable delay or lead-time within which to setup or create Client's Subscription account by and through which the Client and its internal Clients shall access the Materials, Content and/or Documentation. This delay or lead-time shall not exceed 90 days.

### 3. DISCLAIMER AND LIMITATION OF LIABILITY

Wellovate's services described herein are for informational, educational, and quality improvement purposes only, and do not constitute medical advice. None of the services described herein are intended to be a substitute for professional medical advice and are not intended to diagnose, treat, prevent, mitigate or cure any disease. Use of these services does not create an express or implied physician-patient relationship. In using these services, client agrees that Wellovate is not, or will not be, liable or otherwise responsible for any decision made or any action taken or any action not taken due to client's use of the services. These services have not been evaluated by the food and drug administration or any equivalent regulatory authority in any other jurisdiction.

Wellovate's services, including but not limited to its provision of the physical components, materials, software, content and/or the documentation contain facts, views, opinions, statements and recommendations of third-party individuals and organizations. Wellovate does not represent or endorse the accuracy, currentness or reliability of any advice, opinion, statement or other information displayed, uploaded or distributed through its services. Client acknowledges that any reliance upon any such opinion, advice, statement or information shall be at client's sole risk. Wellovate does not make any warranty regarding its services. The services are provided to client "as-is" and "as available", without any warranty of any nature, express or implied, and Wellovate expressly disclaims any and all warranties, including, without limitation: (a) any warranties as to the availability, accuracy or completeness of the materials, software, content, documentation, information, or physical components which are part of Wellovate's services; and (b) warranties of fitness for a particular purpose, or merchantability or against infringement. Wellovate also does not make any warranty that the services will meet client's requirements or that use of the services will be uninterrupted, timely, secure or error free; nor does Wellovate make any warranty as to the results that may be obtained from use of the services.

In no event will Wellovate, its subsidiaries, affiliates, licensors, employees, agents or contractors be liable to client for any damages or losses, including without limitation indirect, consequential, special, incidental or punitive damages resulting from or caused by Wellovate's services, its public posting bulletin boards or any errors or omissions in the services, even if Wellovate is advised of the possibility of such damages. Any liability of Wellovate, its subsidiaries, affiliates, licensors, employees, agents or contractors, including without limitation any liability for damages caused by any failure of performance, error, omission, interruption, deletion, defect, delay in operation or transmission, computer virus, communications line failure, theft, and/or destruction, and/or unauthorized access to, alteration of, or use of records, whether for breach of contract, tortious behavior, negligence, personal injury or property damage of any nature whatsoever resulting from client's access to and use of services, any unauthorized access to or use of Wellovate's computer servers and/or any and all personal information and/or financial information stored therein, and/or under any other cause of action, claims or damages, including, without limitation, damages for loss of business, business profits, business interruption, business information, data loss or corruption, or any other pecuniary loss arising out of or relating to the use of or the inability to use the services, shall be strictly limited to \$100.00 (one hundred dollars). Some states do not allow for some of the limitations or exclusions as set forth herein. Client may have other rights which vary from state to state.

#### **4. INDEMNIFICATION**

Client agrees to defend, indemnify and hold Wellovate and its affiliates, subsidiaries, owners, members, directors, officers, employees and agents harmless from and against any and all claims, demands, suits, proceedings, liabilities, judgments, losses, damages, expenses and costs (including without limitation reasonable attorneys' fees) assessed or incurred by Wellovate, directly or indirectly, with respect to or arising out of: (i) Client's failure to comply with these Terms and Appendix, if applicable; (ii) Client's breach of its obligations under these Terms and Appendix, if applicable; (iii) Client's use of the rights granted hereunder, including without limitation any claims made by any third parties; (iv) Client's violation of any third party right, including without limitation any copyright, property, or privacy right; (v) Client's gross negligence, willful misconduct, and/or fraud; and (vi) any other applicable terms, policies, warnings or instructions provided by a third party in relation to the Products, including failure to obtain consent to collect data.

#### **5. PROFESSIONAL RESPONSIBILITY**

Client acknowledges that Client is purchasing the Services described herein to assist Client in Client's regular course of business. Client understands and acknowledges that the services are not intended for children under 13 that are unaccompanied by his or her parent or legal guardian or under the direct supervision of Client's medical, clinical or allied health professional staff. Client agrees to monitor the use of these Services by Client's internal clients, and to exercise regular and diligent control over its internal clients in a manner and to an extent necessary to ensure each and every internal client's strict compliance with these Terms.

#### **6. UNCOLLECTED AMOUNTS**

Wellovate shall have the right to recover expenses including collection costs and reasonable attorney's fees incurred in collecting overdue amounts. At Wellovate's option, the entire payment due under any agreement that Client may have with Wellovate shall become due and payable upon Client's breach of any term, provision or condition of these Terms, and/or of any other agreement that Client may have with Wellovate.

**7. DEFAULT**

In the event Client defaults on any payment invoiced to Client by Wellovate, or otherwise breaches any of these Terms, Wellovate reserves the right to terminate these Terms and Client's rights hereunder by giving Client written or on-line notice of termination and to retain all sums paid by Client hereunder. The provisions of Section 3, General Disclaimer and Limitation of Liability, as well as Section 4, Indemnification, and Appendix, if applicable, shall survive any termination of these Terms.

**8. ARBITRATION**

It is expressly agreed between Client and Wellovate that any controversy or claim arising out of or relating to these Terms and Appendix, if applicable, (expressly excepting therefrom any claim by Wellovate for payment due from Client hereunder) shall be settled by binding arbitration in Avery, Watauga, Mecklenburg, or Buncombe County, North Carolina, in accordance with the substantive laws of the State of North Carolina (excluding choice of law) and the Commercial Arbitration Rules of the American Arbitration Association. It is further expressly agreed between Client and Wellovate that judgment upon any award rendered by a single arbitrator may be entered in any court of competent jurisdiction.

**9. GOVERNING LAW**

These Terms shall be governed by and construed in accordance with the laws of the State of North Carolina, without regard to its conflicts of law provisions. Copyright issues are an exception, as copyright is governed by the laws of the United States. Venue is proper in North Carolina federal and state courts.

**10. ENFORCEABILITY/WAIVER**

If any provision of these Terms shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired thereby. The failure of either party to exercise in any respect any right provided for herein shall not be deemed a waiver of any right hereunder.

**11. ENTIRE AGREEMENT**

Each party acknowledges that it has read these Terms, understands them, and agrees to be bound by these Terms and Appendix, if applicable, and further agrees that they are the complete and exclusive statement of the agreement between the parties, which supersedes and merges all prior proposals, understandings and all other agreements, oral or written between the parties relating to these Terms. These Terms may not be modified or altered except by written instrument executed by an authorized corporate officer of Wellovate.

**APPENDIX****CLIENT CONTENT**

As part of these Terms, Client may provide Wellovate with one or more items of Client Content, such as patient instructions owned by the Client, educational materials owned by the Client, Client branding, and/or Client logo(s) (hereinafter "**Client Content**") to display in the course of tailoring the Software to the Client's needs. Client represents that it owns all rights to any and all Client Content provided to Wellovate. Client hereby grants Wellovate a non-exclusive right to display said Client Content using the Software for this purpose. Client represents that it has reviewed all Client Content provided to Wellovate, and Client assumes responsibility for any and all Client Content. Furthermore, Client agrees to assume sole liability for any disputes arising from, and/or relating to, any and all Client Content provided to Wellovate and agrees to indemnify and hold harmless Wellovate for any and all disputes arising from, and/or relating to, any Client Content provided.