

## ARIA HOME PT DASHBOARD TERMS OF SERVICE

IMPORTANT – READ CAREFULLY. THESE TERMS OF SERVICE (“**TOS**”) ARE A LEGAL AGREEMENT BETWEEN YOU AND SMITH & NEPHEW, INC. AND OUR AFFILIATES (COLLECTIVELY, “**S+N**”, “**WE**”, “**US**”, OR “**OUR**”) FOR ARIA HOME PT ONLINE DASHBOARD AND ANY UPDATES, MODIFICATIONS, IMPROVEMENTS, OR ENHANCEMENTS THERETO PROVIDED BY S+N (COLLECTIVELY, THE “**SERVICE**”). BY AGREEING TO THESE TOS OR BY ACCESSING OR OTHERWISE USING THE SERVICE, YOU AGREE TO BE BOUND BY THESE TOS. IF YOU DO NOT AGREE TO THESE TOS, THEN DO NOT ACCESS OR USE THE SERVICE.

WHEN YOU ACCEPT THESE TOS, YOU AGREE TO THEM ON YOUR INDIVIDUAL BEHALF AND ON BEHALF OF THE ENTITY OR ORGANIZATION BY WHICH YOU ARE EMPLOYED OR RETAINED AND FOR WHOSE BENEFIT YOU ARE USING THE SERVICE (“**EMPLOYER**”). YOU REPRESENT AND WARRANT THAT YOU (A) HAVE READ AND UNDERSTAND THESE TOS, (B) ARE OF A LEGAL AGE TO ENTER INTO A BINDING AGREEMENT, AND (C) ARE AUTHORIZED BY EMPLOYER TO AGREE TO THESE TOS ON ITS BEHALF. REFERENCES HEREIN TO “**YOU**” (INCLUDING “you”) SHALL MEAN “YOU AND/OR EMPLOYER.”

You may access the Service only if authorized by an entity or organization that has purchased the right to use the Service (“**S+N Customer**”). Your access is subject to the discretion and control of the S+N Customer as well as S+N under these TOS. You may access information about patients who are patients of the S+N Customer and that You are treating (“**Patients**”) and communicate with them through the Service. The Service considers Patients to be the patients of the applicable S+N Customer.

These TOS provide that all disputes between you and S+N with respect to your use of the Service will be resolved by BINDING ARBITRATION, to the fullest extent permitted under applicable law. YOU AGREE TO GIVE UP YOUR RIGHT TO GO TO COURT to assert or defend your rights under this contract, except for matters that may be taken to small claims court, to the fullest extent permitted under applicable law. Your rights will be determined by a NEUTRAL ARBITRATOR and NOT a judge or jury, and your claims cannot be brought as a class action, to the fullest extent permitted under applicable law. Please review Section 23.2 for the details regarding your agreement to arbitrate any disputes with S+N.

### 1. Eligibility

By agreeing to these TOS, you represent and warrant to us that: (a) you are an individual who is at least 18 years old and located in the United States; (b) you have not previously been suspended or removed from the Service; and (c) your use of the Service is in compliance with all applicable laws and regulations.

### 2. User Communication Requirements

You acknowledge and agree that except as expressly stated in these TOS, the Service facilitates your communications made through the Service, and you are solely responsible for the communications you and your account initiates and receives using the Service. Without limiting the foregoing, you are solely responsible for ensuring your own compliance with applicable international, federal, state, and local laws, regulations, and rules (including consent requirements) associated with electronic communications by text

message and electronic mail including, without limitation, the Telephone Consumer Protection Act, the U.S. CAN-SPAM Act, and similar state laws. You acknowledge and agree that you select and agree to the timing, content, and recipients of the communications you and your account initiate through the Service and that S+N acts solely as a service provider providing a platform facilitating the transmission of such communications. You agree that you and your account are prohibited from using the Service for telemarketing and other related purposes. S+N in our sole discretion may restrict, suspend, or permanently stop any and all use of the Service for communications by you and your account including, without limitation, restricting the timing, content, and recipients of communications. You agree that S+N may impose additional terms and conditions associated with communications made through the Service by you, and you must comply with such terms and conditions or cease using the Service to initiate communications.

### **3. Medical Disclaimer**

THE SERVICE IS NOT A SUBSTITUTE FOR YOUR PROFESSIONAL JUDGMENT IN DIAGNOSING AND TREATING PATIENTS. NEITHER S+N NOR OUR SERVICE OR DEVICES OR SOFTWARE OR THE ASSOCIATED FEATURES OF THE SAME IS INTENDED, DESIGNED, OR IMPLIED TO DIAGNOSE OR PREVENT ANY CONDITION OR DISEASE, TO ASCERTAIN THE STATE OF THE PATIENT'S HEALTH, OR TO BE A SUBSTITUTE FOR MEDICAL CARE. RELIANCE UPON THE SERVICE BY YOU IS SOLELY AT YOUR OWN RISK. YOU ACKNOWLEDGE AND AGREE THAT S+N IS IN NO WAY RESPONSIBLE FOR THE USE OF ANY PHARMACOLOGICAL, MEDICAL, LEGAL, OR SIMILAR INFORMATION CONTAINED IN, ENTERED INTO, OR USED IN CONNECTION WITH THE SERVICE, AND YOU, AS APPLICABLE, SHOULD VERIFY THE ACCURACY OF THE INFORMATION AND COMPLETENESS OF SUCH INFORMATION WHENEVER NECESSARY TO DO SO FOR PROVIDING HEALTH CARE SERVICES. YOU ACKNOWLEDGE AND AGREE THAT THE USE OF THE SERVICE BY YOU FOR ANY PURPOSE RELATED TO PATIENT CARE SHOULD BE UNDER THE SUPERVISION OF A HEALTH CARE PROFESSIONAL RESPONSIBLE FOR ASSURING PATIENT-EXERCISE SUITABILITY AND PERFORMANCE ADEQUACY, INCLUDING, BUT NOT LIMITED TO, PATIENT ASSESSMENT, EXERCISE GUIDANCE, AND MEDICAL APPROVAL PRIOR TO USE. ALL PATIENT PERFORMANCE INFORMATION STORED AND PROVIDED BY THE SERVICE IS INTENDED ONLY AS AN AID TO A CLINICIAN WHEN ASSESSING A PATIENT'S PROGRESS AND/OR UPDATING AND MANAGING A PATIENT'S EXERCISE PROGRAM. PATIENT PERFORMANCE DATA IS NOT INTENDED TO REPLACE AN IN-PERSON PHYSICAL THERAPY ASSESSMENT.

AS BETWEEN S+N AND YOU, YOU SHALL BE SOLELY RESPONSIBLE AND LIABLE FOR YOUR TREATMENT AND CARE OF PATIENTS, INCLUDING ALL RESPONSIBILITY FOR PERSONAL OR PSYCHOLOGICAL INJURY OR LOSS OF LIFE. YOU ACKNOWLEDGE AND AGREE THAT S+N IS NOT ENGAGED IN THE PRACTICE OF MEDICINE AND THAT S+N IS NOT DETERMINING APPROPRIATE MEDICAL OR OTHER USE OF THE SERVICE.

### **4. Account and Profile**

You must provide and maintain accurate, current, and complete user profile information as prompted by the account profile form. You are responsible for the confidentiality and security of your device, account, and access to the Service by your account, including your username and password. You agree not to permit any other person to use your username or password to gain access to the Service, and you agree that you are responsible for any

and all activities conducted using your username and password. If you believe that the confidentiality of your password has been compromised, you must immediately notify S+N and if possible, you should immediately change your password.

## 5. Right to Use the Service

Subject to S+N Customer's continued right to use the Service and your compliance with these TOS, S+N grants, in accordance with these TOS, to you a limited nonexclusive, nontransferable, non-sublicenseable, revocable right to access and use the Service solely in accordance with these TOS for your internal lawful business purposes (and not for redistribution) and for no other purpose. Without limiting the foregoing, any and all goodwill associated with your use of the S+N IP (as defined below) or the intellectual property rights therein will inure to the benefit of S+N.

## 6. Reservation of Rights and Ownership

S+N and/or our licensors are the owner of all right, title, and interest in and to the Service, including all rights to the design, software code, scripts, database structures, trademarks, copyrights, and other intellectual property included in or utilized by the Service, and any updates thereto ("**S+N IP**"). S+N IP does not include any data you submit to the Service. S+N IP is protected by applicable intellectual property and other laws, including laws governing patents, copyrights, trade secrets, trademarks, and unfair competition.

S+N reserves all rights not expressly granted to you in these TOS. Except for the limited rights and licenses expressly granted under these TOS, nothing in these TOS grants, by implication, waiver, estoppel, or otherwise, to you or any third party any intellectual property rights or other right, title, or interest in or to S+N IP. You may not and shall not permit any other person to copy, distribute, display, modify, or otherwise use any S+N IP except as expressly permitted by these TOS.

If you choose to provide input or suggestions regarding your experience with the Service ("**Feedback**"), then you hereby grant S+N an unrestricted, perpetual, irrevocable, non-exclusive, fully-paid, royalty-free right to exploit such Feedback in any manner and for any purpose, including to improve the Service and create other products and services.

## 7. User Content

**7.1 User Content Generally.** Certain features of the Service may permit you or other users to upload content to the Service, including documents, messages, reviews, images, text, and other types of information ("**User Content**") and to publish or deliver User Content on or through the Service. The licensor of the User Content retains any copyrights, moral rights, and any other proprietary rights held in the User Content that is posted to the Service.

**7.2 Limited License Grant to S+N.** By posting or publishing User Content, you grant S+N a worldwide, non-exclusive, royalty-free, fully paid, unrestricted right and license (with the right to sublicense) to use, host, store, transfer, display, perform, reproduce, modify, and distribute your User Content, in whole or in part, in accordance with our Privacy Policy at [www.think-aria.com](http://www.think-aria.com), in any media formats and through any media channels now known or hereafter developed.

**7.3 Limited License Grant to Other Users.** By posting or sharing User Content with other users of the Service, you grant those users a non-exclusive license to access and use that User Content as permitted by these TOS and the functionality of the Service.

**7.4 User Content Representations and Warranties.** You are solely responsible for your User Content and the consequences of posting or publishing User Content. By posting or publishing User Content, you affirm, represent, and warrant that: (a) you are the creator and owner of the User Content, or have the necessary licenses, rights, consents, and permissions to authorize S+N and users of the Service to use and distribute your User Content as necessary to exercise the licenses granted by you in this Section 7.4, in the manner contemplated by the Service, S+N, and these TOS; and (b) your User Content, and the use of the Service as contemplated by these TOS, does not and will not: (x) infringe, violate, or misappropriate any third-party right, including any copyright, trademark, patent, trade secret, moral right, privacy right, right of publicity, or any other intellectual property or proprietary right; (y) slander, defame, libel, or invade the right of privacy, publicity or other property rights of any other person; or (z) cause S+N to violate any law or regulation, including laws related to the privacy of personal or health information.

**7.5 User Content Disclaimer.** We are under no obligation to monitor, edit, or control User Content that you or other users post or publish, and will not be in any way responsible or liable for User Content or any failure to review or act upon User Content. S+N may, however, at any time and without prior notice, screen, remove, edit, or block any User Content that in S+N's sole judgment violates these TOS or is otherwise objectionable. To the fullest extent allowed under applicable law, you agree to waive, and do waive, any legal or equitable right or remedy you have or may have against S+N with respect to User Content. S+N expressly disclaims any and all liability in connection with User Content, to the fullest extent allowed under applicable law. If notified by a user or content owner that User Content allegedly does not conform to these TOS, S+N may investigate the allegation and determine in S+N's sole discretion whether to remove the User Content, which S+N reserves the right to do at any time and without notice.

## **8. Procedure for Unlawful User Content**

**8.1 General Notifications.** If you believe that any User Content does not conform to these TOS or if you have any notices that fall under the TOS, please contact us at the following address:

Smith & Nephew, Inc.  
Attn: Legal Department  
7135 Goodlett Farms Parkway  
Cordova, TN 38016  
Tel: 1-800-821-5700 (USA toll free)

**8.2 DMCA Notifications.** We comply with the provisions of the Digital Millennium Copyright Act (the "**DMCA**") applicable to our operations (17 U.S.C. §512, as amended). If you have an intellectual property rights-related complaint about material posted on the Service, you may contact our designated agent at the following address:

Smith & Nephew, Inc.  
Attn: Legal Department (Copyright Notification)  
7135 Goodlett Farms Parkway  
Cordova, TN 38016  
Tel: 1-800-821-5700 (USA toll free)

Please note that under applicable law, if you knowingly give false, misleading or inaccurate information that User Content is infringing, you may be subject to civil or criminal penalty. Any notice under the DMCA alleging that materials hosted by or distributed through the Service infringe intellectual property rights must include all of the information required by the DMCA for such notices.

**8.3 Repeat Infringers.** S+N will take steps to promptly terminate without notice the accounts of users that are determined by S+N to be "Repeat Infringers." A Repeat Infringer is a user who has been notified of infringing activity or has had User Content removed from the Service at least three times.

## 9. Restrictions

You may not (a) reverse engineer, copy, decompile, disassemble, or otherwise attempt to discover the source code or algorithms of the Service; (b) modify or disable any features of the Service; (c) create derivative works based on the Service; (d) publicly display, publicly perform, transfer, sell, license, distribute, create derivative works of, rent, lease, lend, sublicense or provide commercial hosting Services with the Service; (e) infringe our intellectual property rights or those of any third party in relation to your use of the Service (to the extent that such use is not licensed by these TOS); (f) use the Service in any unlawful manner, for any unlawful purpose, or in any manner inconsistent with these TOS, or act fraudulently or maliciously, for example, by hacking into or inserting malicious code, including viruses, or harmful data, into the Service or any operating system; (g) use the Service in a way that could damage, disable, overburden, impair or compromise our systems or security or interfere with or harm other users; (h) collect or harvest (e.g., scrape) any information or data manually or technologically from the Service or our systems or attempt to decipher any transmissions to or from the servers running the Service; (i) use or access the Service from a jurisdiction where such use or access is not authorized; or (j) violate any right of a third party, including a person's privacy rights. If you are prohibited under applicable law from using the Service, you may not use it. You may not attempt to do any of the acts described in this Section 9, or assist or permit any person in engaging in any of the acts described in this Section 9.

Use of the Service and its full functionality may require you to use qualifying devices and software. It is your responsibility to ensure that you have such devices and software and your failure to do so may affect the performance or availability of the Service.

## 10. Update, Change, or Suspension of the Service

S+N may, at any time, provide or make available updates or upgrades to the Service ("**Updates**"), including without limitation bug fixes, Service enhancements, new features, deletion of existing functions, or modification of the Service. Updates will be governed by these TOS unless separate terms and conditions are provided with such Updates, in which case that separate terms and conditions shall govern the Updates.

S+N expressly reserves the right to change, suspend, remove, limit the use of or disable

the access to the Service or any portion thereof at any time without notice or liability.

## **11. Right to Monitor - Third Party Services and Content**

**11.1 Right to Monitor.** S+N reserves the right to gather data on the Service usage to ensure that the Service is being used in accordance with the TOS. Any unauthorized use shall be considered by S+N to be a violation of the TOS. S+N reserves the right to remedy violations immediately upon discovery. You agree not to block, electronically or otherwise, the transmission of data required for compliance with the TOS. Any blocking of data required for compliance under the TOS is considered to be violation of the TOS and may result in immediate termination of your right to use the Service. S+N reserves the right, but has no obligation, to monitor or become involved in disputes between you and other users.

**11.2 Third Party Services and Content.** Third party services and/or content may also be available to you in connection with the Service. S+N disclaims any warranty or representation to any third party services or content in all aspects including, but not limited to, quality, accuracy, effectiveness, lack of viruses, privacy practices, non-infringement of third-party rights and compliance of any applicable laws or regulations. The use of third-party services and content may be governed by such third-party provider's terms of use, license agreement, privacy policy, and/or other such agreement.

## **12. Consent for Collection and Use of Data – Privacy**

You acknowledge and agree that S+N and/or parties that are entrusted by S+N may collect and use information necessary to provide the Service and Updates and improve or enhance the Service. Your information will be treated by S+N in accordance with the Privacy Policy applicable to the Service, which can be viewed at: [www.think-aria.com](http://www.think-aria.com). S+N may update the Privacy Policy from time to time, so please periodically review the Privacy Policy. S+N is not responsible for information you share outside of the Service, including other applications on your device and data storage and communications services you use. S+N is also not responsible for the privacy practices of third parties to which you share information.

By providing us with your contact information and using the Service, you agree to receive communications, including via e-mail and phone calls (including text messages and calls made using an auto dialer or prerecorded voice message) from or on behalf of S+N at the email address or telephone number you provided even if that number is on a National or State Do Not Call List. These calls and messages may be for informational and marketing purposes, such as to provide you with the information or consultation you requested or to provide you with more information about S+N's products and services. Standard text messaging and telephone minute charges applied by your cell phone carrier will apply.

S+N and our service providers on our behalf may, without further notice or warning and in our discretion, monitor and/or record video and voice calls and text message-based communications for our business purposes, such as quality assurance and training purposes and to protect our rights and the rights of others, and you hereby consent to such monitoring and recording.

IF YOU WISH TO OPT OUT OF MARKETING EMAILS FROM US, YOU CAN UNSUBSCRIBE BY

FOLLOWING THE UNSUBSCRIBE OPTIONS IN THE MARKETING EMAIL ITSELF. You understand and agree that you may continue to receive communications while S+N processes your opt-out request, and you may also receive a communication confirming the receipt of your opt-out request.

### **13. Data Transmissions and Costs**

The Service requires your device to have access to the internet and may be subject to restrictions imposed by your network or internet provider. The Service may require access through your mobile network, which may result in additional charges depending on your payment plan. In addition, your enjoyment of some features of the Service may be affected by the suitability and performance of your device hardware or data access. You are solely responsible for any charges incurred from your internet and network providers related to the use of the Service.

### **14. HIPAA and Patient Information**

**14.1 Business Associate.** You acknowledge that S+N is a "business associate" as that term is defined at 45 C.F.R. § 160.103 with the S+N Customer that authorized your use of the Service.

**14.2 Permissible Uses of Patient Information.** You acknowledge and agree that S+N, and any sub-business associates working on our behalf, may use and disclose the information associated with Patients, including Protected Health Information ("**PHI**") (as defined at 45 C.F.R. § 160.103), received or maintained by or on behalf of you in and made accessible through the Service for S+N Customer and you ("**Patient Information**"), for providing the Service and related services, fulfilling the requirements of these TOS, to meet legal obligations or requests, and as otherwise permitted by these TOS and the agreements between S+N and the applicable S+N Customer, including to request an authorization on our behalf from Patients to use or disclose their Patient Information for any purpose for which use or disclosure may be made with a valid authorization, including for marketing purposes. You further acknowledge and agree that such authorizations shall be incorporated into the Service for review by the Patient, though Patients will not be obligated to accept such authorizations in order to access the Service. The Service may also share Patient Information among S+N Customers and their users who are providing or have provided care to a mutual patient and are using the Service to record the mutual patient's episode of care information. The information is shared to improve patient continuity of care.

**14.3 HIPAA Compliance.** You represent and warrant that you will comply with all applicable confidentiality and privacy laws and regulations with respect to Patient Information in connection with your use of the Service and any disclosures by you to S+N and S+N Customer. Without limiting the generality of the foregoing, you are solely responsible and liable for your use of the Service, including without limitation for using the Service in compliance with the Health Insurance Portability and Accountability Act of 1996, as amended, and its implementing regulations ("**HIPAA**"). You acknowledge that Patient Information that is downloaded to a printer, an Excel file, or otherwise, is outside of the scope of the Service, and S+N shall have no responsibility for the use and protection of

such Patient Information. You agree not to send Patient Information to S+N via any unsecured means, including via unsecured (non-encrypted) email or text messages. You also agree that you are solely responsible for any Patient Information sent to Patients outside of the Service or via unsecured means, including via unsecured (non-encrypted) email or text messages.

**14.4 Exporting Patient Information into Your System of Record.** You acknowledge that the Patient Information available to you through the Service is not an electronic medical record, and the Service should not be treated as a system of record. For clarity, S+N is not responsible for responding to Patient requests to access or amend the Patient Information available to you through the Service or the Patient Information transmitted or exported by you out of or separate from the Service.

## **15. Data Provisions**

**15.1 Data.** S+N will receive Patient-related data through your use of the Service which S+N will treat as S+N Customer's data ("**S+N Customer Data**"). S+N may use and disclose such S+N Customer Data as stated in the contract(s) with the S+N Customer. You are responsible for the means by which you acquire the data you submit to the Service, for your use and dissemination of the S+N Customer Data, and for the use and dissemination of S+N Customer Data by your account. You represent and warrant that you have and will continue to have the rights to lawfully (a) provide access to the data you submit to the Service, and (b) permit S+N to retain, process, use, and disclose the data you submit to the Service for the purposes of providing the Service. You represent and warrant that your provision and use of the data you submit to the Service will not violate the rights of any third party or any applicable law, rule, or regulation.

**15.2 Government Access Requests.** If S+N or our subcontractor(s) receives a request for S+N Customer Data from a law enforcement agency, S+N will redirect the law enforcement agency to request that data directly from the applicable S+N Customer.

## **16. Notice of Defects or Security Incident**

You shall promptly report to S+N any significant defects or problems with the Service observed by you. In addition, you shall immediately report to S+N any actual or suspected security incident involving the Service and/or Patient Information (including loss or compromise of the Service account credentials) that you becomes aware of, and you will fully cooperate with S+N, law enforcement and/or any other applicable regulatory body in addressing the incident. Without limiting S+N's other rights and remedies, if there is a violation of any of the security-related requirements under these TOS by you, that violation shall be a breach of these TOS, and S+N shall have the immediate right in our sole discretion to suspend or terminate your access to the Service.

## **17. Notifications and Automatic Alerts**

Under some circumstances, the Service may present you with notifications, alerts, prompts with links to additional information, or suggested actions based on information collected by the Service. S+N makes no representations or warranties about the accuracy, reliability, completeness, or timeliness of any notifications or alerts. You accept that any reliance on these notifications will be at your own risk, and S+N disclaims all liability arising from your



use of them or reliance upon them.

## **18. Compliance with Law**

You acknowledge and agree to comply with any and all applicable laws and regulations in using the Service including without limitation, all applicable export restriction laws and regulations.

## **19. Termination**

**19.1 Effective Date.** The TOS is effective upon your acceptance of the TOS, or upon your accessing or otherwise using the Service. The Service has no predetermined termination date and may continue until such time as S+N decides to terminate the Service, the S+N Customer that authorized your account no longer can access the Service, or when the TOS is terminated consistent with the terms herein. You may terminate your use of the Service at any time by removing the Service from your device.

**19.2 Termination by S+N.** S+N may immediately suspend or terminate these TOS and/or your access to and use of the Service or any portion thereof, at any time and for any or no reason. In addition, if you fail, or S+N reasonably suspects that you have failed to comply with any of the provisions of the TOS, without limiting S+N's other rights and remedies, all of which are expressly reserved, at our sole discretion and without notice to you, S+N may immediately discontinue your access to the Service and terminate the TOS, and you will remain liable for all amounts due (if any) up to and including the date of termination, and all rights granted to you by these TOS will terminate, and you lose status as an authorized user.

**19.3 Effects of Termination.** Upon termination, you shall no longer have any right to use the Service under these TOS, and you must immediately (a) cease use of the Service, (b) delete any connection to the Service on any system used by you, and (c) delete all S+N IP in your possession or control.

## **20. Disclaimer of Warranty**

THE SERVICE AND ALL MATERIALS AND CONTENT AVAILABLE THROUGH THE SERVICE IS PROVIDED "AS IS", "WHERE IS" AND "AS AVAILABLE" AND WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED. S+N AND OUR LICENSORS MAKE NO REPRESENTATIONS OR WARRANTIES OR GUARANTEES OF ANY KIND OR NATURE, WHETHER EXPRESS OR IMPLIED, REGARDING THE SERVICE, AND SPECIFICALLY DISCLAIMS AND YOU EXPRESSLY WAIVE ALL SUCH WARRANTIES, INCLUDING WITHOUT LIMITATION, (A) ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, QUIET ENJOYMENT, AND NON-INFRINGEMENT (B) ANY WARRANTY ARISING OUT OF COURSE OF DEALING, USAGE, OR TRADE; AND (C) ANY WARRANTY AS TO WHETHER THE DATA OR OTHER INFORMATION AVAILABLE THROUGH OR TRANSMITTED BY THE SERVICE IS TRUE, COMPLETE OR ACCURATE.

WITHOUT LIMITING THE PREVIOUS DISCLAIMER, S+N AND OUR LICENSORS DO NOT REPRESENT, WARRANT OR GUARANTEE THAT THE SERVICE OR THE CONTENT THEREIN (W) WILL OPERATE IN AN UNINTERRUPTED, TIMELY, SECURE OR ERROR-FREE MANNER, (X) WILL ALWAYS BE AVAILABLE OR FREE FROM ALL HARMFUL COMPONENTS, VIRUSES, OR ERRORS, (Y) WILL BE SECURE OR IMMUNE (INCLUDING THE CONTENT DELIVERED TO

YOU OR THE INFORMATION YOU PROVIDED) FROM UNAUTHORIZED ACCESS, (IV) WILL BE ACCURATE, COMPLETE, OR RELIABLE, OR (Z) THAT THE QUALITY OF THE SERVICE WILL BE SATISFACTORY TO YOU, OR THAT ERRORS WILL BE CORRECTED.

NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM S+N OR ANY MATERIALS OR INFORMATION AVAILABLE THROUGH THE SERVICE WILL CREATE ANY WARRANTY REGARDING S+N OR THE SERVICE THAT IS NOT EXPRESSLY STATED IN THESE TOS. YOU ASSUME ALL RISK FOR ANY HARM OR DAMAGE THAT MAY RESULT TO YOU FROM YOUR USE OF OR ACCESS TO THE SERVICE AND ANY MATERIALS OR INFORMATION AVAILABLE THROUGH THE SERVICE. YOU UNDERSTAND AND AGREE THAT YOU USE THE SERVICE, AND USE, ACCESS, DOWNLOAD, OR OTHERWISE OBTAIN MATERIALS OR CONTENT THROUGH THE SERVICE AND ANY ASSOCIATED SITES OR SERVICES, AT YOUR OWN DISCRETION AND RISK, AND THAT YOU ARE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOU OR YOUR PROPERTY (INCLUDING YOUR COMPUTER SYSTEM OR MOBILE DEVICES USED IN CONNECTION WITH THE SERVICE), OR THE LOSS OF DATA THAT RESULTS FROM THE USE OF THE SERVICE OR THE DOWNLOAD OR USE OF THAT MATERIAL OR INFORMATION.

NOTHING IN THESE TOS IS INTENDED TO EXCLUDE OR LIMIT ANY CONDITION, WARRANTY, RIGHT, OR LIABILITY IN A MANNER THAT IS NOT PERMISSIBLE UNDER APPLICABLE LAW. SOME JURISDICTIONS DO NOT PERMIT THE EXCLUSION OF CERTAIN WARRANTIES OR CONDITIONS, THE EXCLUSION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR LOSS OR DAMAGE CAUSED BY NEGLIGENCE, BREACH OF CONTRACT, OR BREACH OF IMPLIED TERMS. ACCORDINGLY, ONLY THE ABOVE LIMITATIONS WHICH ARE LAWFUL IN YOUR JURISDICTION WILL APPLY TO YOU, AND THE LIABILITY OF S+N AND THEIR LICENSORS AND SERVICE PROVIDERS WILL BE LIMITED TO THE MAXIMUM EXTENT PERMITTED BY LAW.

## **21. Limitation of Liability**

TO THE FULLEST EXTENT PERMITTED BY LAW, IN NO EVENT SHALL S+N, OUR PARENT, SUBSIDIARIES OR AFFILIATES, OR THEIR RESPECTIVE LICENSORS, OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, OR REPRESENTATIVES OR ANY PARTY ACTING ON S+N'S BEHALF ("S+N GROUP")\_ BE LIABLE TO YOU FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, PUNITIVE DAMAGES OR LOST PROFITS, ARISING UNDER THESE TOS OR ASSOCIATED WITH YOUR USE OF THE SERVICE OR WITH RESPECT TO ANY S+N IP EVEN IF S+N HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION WILL APPLY REGARDLESS OF THE THEORY OF LIABILITY, WHETHER FRAUD, MISREPRESENTATION, BREACH OF CONTRACT, NEGLIGENCE, PERSONAL INJURY, PRODUCT LIABILITY, STRICT LIABILITY, FAILURE TO WARN, INFRINGEMENT OR ANY OTHER THEORY REGARDLESS OF WHETHER OR NOT S+N HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS MEANS THAT YOU HEREBY WAIVE ANY AND ALL RIGHTS TO ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, PUNITIVE DAMAGES OR LOST PROFITS FROM THE S+N GROUP. THIS LIMITATION AND WAIVER ALSO APPLIES TO ANY CLAIMS YOU MAY BRING AGAINST ANY OTHER PARTY TO THE EXTENT THAT S+N WOULD BE REQUIRED TO INDEMNIFY THAT PARTY FOR SUCH CLAIM. THE S+N GROUP SHALL NOT BE LIABLE FOR ANY LOSS OF DATA, BREACH OF SECURITY ASSOCIATED WITH THE SERVICE, OR FOR ANY CONTENT, VIDEO OR COMMUNICATIONS ON THE SERVICE, OR OTHERWISE ARISING OUT OF THE USE OF

THE SAME, REGARDLESS OF THE FORM OF ACTION OR BASIS OF ANY CLAIM. IF YOU HAVE A DISPUTE WITH US OR ARE DISSATISFIED WITH THE SERVICE, TERMINATION OF YOUR USE OF THE SERVICE IS YOUR SOLE REMEDY. THE S+N GROUP HAS NO OTHER OBLIGATION, LIABILITY, OR RESPONSIBILITY TO YOU. IF, NOTWITHSTANDING THE FOREGOING LIMITATIONS, A COURT OR DISPUTE RESOLUTION AUTHORITY WITH JURISDICTION OVER S+N FINDS THAT ANY MEMBER OF THE S+N GROUP MUST PAY DAMAGES, THE S+N GROUP'S MAXIMUM AGGREGATE LIABILITY OF ANY KIND ARISING UNDER OR RELATING TO THESE TOS, THE SERVICES, OR S+N IP SHALL BE ONE HUNDRED DOLLARS (\$100.00).

THE FOREGOING LIMITATIONS SHALL APPLY TO ALL CAUSES OF ACTION, WHETHER ARISING FROM BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE OR OTHER TORT, OR ANY OTHER LEGAL THEORY; MOREOVER, THESE LIMITATIONS WILL APPLY NOTWITHSTANDING A FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

## **22. Indemnification**

TO THE FULLEST EXTENT PERMISSIBLE BY APPLICABLE LAW, YOU WILL DEFEND, INDEMNIFY, AND HOLD HARMLESS S+N, OUR PARENT, SUBSIDIARIES AND AFFILIATES, AND THEIR RESPECTIVE LICENSORS, OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, AND REPRESENTATIVES AND ANY PARTY ACTING ON S+N'S BEHALF ("**S+N INDEMNITEES**"), FROM AND AGAINST ANY AND ALL CLAIMS, ACTIONS, LIABILITIES, LOSSES, DAMAGES, JUDGMENTS, FINES, COSTS AND EXPENSES, INCLUDING REASONABLE ATTORNEYS' FEES (COLLECTIVELY, "**CLAIMS**") ARISING OUT OF OR RELATED TO (A) ANY USE OF THE SERVICE BY YOU OR BY ANY PERSON THAT YOU ALLOW TO USE THE SERVICE, (B) ANY BREACH OF THE TOS BY YOU OR BY ANY PERSON THAT YOU ALLOW TO USE THE SERVICE, OR (C) ANY VIOLATION OF ANY LAWS, REGULATIONS OR THE RIGHTS OF ANY THIRD PARTY BY YOU OR BY ANY PERSON THAT YOU ALLOW TO USE THE SERVICE.

S+N SHALL PROVIDE THE EMPLOYER WRITTEN NOTICE OF CLAIMS AGAINST ANY OF THE S+N INDEMNITEES WITHIN A REASONABLE PERIOD OF TIME (PROVIDED, HOWEVER, THAT A DELAY IN NOTIFICATION SHALL EXCUSE YOUR DEFENSE AND INDEMNIFICATION OBLIGATIONS ONLY TO THE EXTENT SUCH DELAY MATERIALLY PREJUDICES THE DEFENSE OF SUCH CLAIMS). NOTWITHSTANDING YOUR OBLIGATION TO DEFEND S+N INDEMNITEES AGAINST CLAIMS AS SET FORTH IN IN THIS THESE TOS, S+N SHALL HAVE THE RIGHT TO EXCLUSIVE CONTROL OF THE DEFENSE AND SETTLEMENT OF THE CLAIMS AND/OR TO SELECT COUNSEL TO DEFEND AGAINST AND NEGOTIATE RESOLUTION OF SUCH CLAIMS. YOU (INCLUDING THE EMPLOYER) SHALL GIVE S+N ALL REASONABLE ASSISTANCE, AT YOUR EXPENSE. YOU MAY NOT SETTLE ANY CLAIM AGAINST THE S+N INDEMNITEES UNLESS THE SETTLEMENT UNCONDITIONALLY AND FULLY RELEASES S+N INDEMNITEES OF ALL LIABILITY AND FAULT AND THE S+N INDEMNITEES HAVE PROVIDED WRITTEN CONSENT TO SUCH SETTLEMENT.

## **23. General Terms**

**23.1 Choice of Law.** These TOS, including all revisions and amendments thereto, are governed by and construed in accordance with the laws of Tennessee, without regard to its conflict or choice of law principles. If a lawsuit or court proceeding is permitted under these TOS, then you and S+N agree to submit to the exclusive jurisdiction of the state courts and federal courts located within Shelby County, Tennessee for the purpose of

litigating any dispute, and you hereby consent to the personal jurisdiction and venue thereof.

**23.2 Arbitration.** YOU UNDERSTAND AND AGREE THAT, BY ENTERING INTO THESE TOS, YOU AND S+N EACH WAIVE THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE IN A CLASS ACTION, TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW. Any controversy or claim arising out of or relating to these TOS, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association (“AAA”) in accordance with its Commercial Arbitration Rules by a sole arbitrator. The parties hereto shall endeavor to agree upon the arbitrator, and if they fail to do so within twenty-one (21) days of the commencement of the arbitration, the appointment shall be made by the AAA in accordance with the Commercial Arbitration Rules. The place, or legal seat of arbitration, shall be Tennessee, and the language of the arbitration shall be English.

You may only bring claims in your individual capacity on your own behalf, and not in any representative capacity or on behalf of any class or purported class, and no arbitration you commence hereunder may be joined with or include any claims by any other persons. The arbitrator may not consolidate more than one person’s claims, and may not otherwise preside over any form of a representative or class proceeding. If the foregoing two sentences are found to be unenforceable or if the entirety of this Section 23.2 (Arbitration) is found to be unenforceable, then the entirety of this Section 23.2 (except this sentence) will be null and void and, in that case, the parties agree that the exclusive jurisdiction and venue described in Section 23.1 (Choice of Law) will govern any action arising out of or related to these TOS. Each party shall bear its own arbitration filing fees.

The arbitrator shall issue a reasoned award and shall have the power to grant any interim or provisional measures that the arbitrator deems appropriate, including, but not limited to, injunctive relief and specific performance, and any interim or provisional measures ordered by the arbitrator may be specifically enforced by any court of competent jurisdiction as a final award. Nothing herein, however, shall authorize the arbitrator to act as amiable compositeur to proceed ex aequo et bono. Each party hereto retains the right to seek interim measures from a judicial authority, and any such request shall not be deemed incompatible with the agreement to arbitrate or a waiver of the right to arbitrate. The arbitrator shall award the prevailing party, if any as determined by the arbitrator, its reasonable costs, including reasonable attorney’s fees. Judgment on any award rendered by the arbitrator may be entered in any court of competent jurisdiction. No information concerning an arbitration, beyond the names of the parties, their counsel or the relief requested, may be unilaterally disclosed to a third party by any party unless required by law. Any documentary or other evidence given by any party or witness in any arbitration shall be treated as confidential by any party whose access to such evidence arises exclusively because of its participation in the arbitration and shall not be disclosed to any third party (other than a witness or expert), except as may be required by law. Any party who commences any judicial proceeding in connection with an arbitration initiated hereunder shall endeavor to have the judicial record of any such proceeding sealed to the extent permitted by law.

You can choose to reject this arbitration agreement by mailing us a written opt-out notice (“**Opt-Out Notice**”) in accordance with the terms of this Section 23.2. For new users, the Opt-Out Notice must be postmarked no later than thirty (30) days after the date you use the Service for the first time. You must Email the Opt-Out Notice to

Company.Secretary@smith-nephew.com. The Opt-Out Notice must state that you do not agree to the arbitration agreement and must include your name, address, phone number, and the email address(es) used to log in to the Service to which the opt-out applies. You must sign the Opt-Out Notice for it to be effective. This procedure is the only way you can opt out of the arbitration agreement. If you opt out of the arbitration agreement, S+N will likewise not be bound by these arbitration provisions. All other terms of these TOS will continue to apply. Opting out of the arbitration agreement has no effect on any previous, other, or future arbitration agreements that you may have with us. Service users who accepted a previous version of these TOS that included an arbitration agreement, and who did not timely opt out of that arbitration agreement, remain bound by the last arbitration agreement that they accepted. Upon receipt of a valid Opt-Out Notice, S+N will provide the opting out user with a copy of the arbitration agreement from the last version of the TOS that the user accepted, if any exists.

**23.3 Insurance.** You agrees to maintain, at your own cost and expense, sufficient insurance coverage as shall be necessary to insure S+N, its affiliates, and its and their officers, directors, employees, agents and/or subcontractors against any and all claims of any nature that may arise from your performance under these TOS.

**23.4 No Agency.** The parties acknowledge and agree that you are engaged in the operation of your own business. The parties do not intend by entering into these TOS to create a partnership, joint venture, agency, or any other such relationship. Nothing in these TOS shall be construed to expressly or impliedly create such a partnership, joint venture, agency or other relationship and nothing in these TOS authorizes you to make any contract, agreement, warranty, or representation on behalf of S+N. Each of the parties warrants and represents that it has not and will not hold itself out as a representative, agent, servant, or employee of the other party for any purpose. Each party assumes sole responsibility for fully complying with laws applicable to its own personnel, none of whom shall be deemed employees or agents of the other party.

**23.5 No Third-Party Beneficiaries.** These TOS is for the sole benefit of the parties and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer on any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of these TOS.

**23.6 Claims.** To the fullest extent permitted under applicable law, no action arising out of, in connection with, or relating to these TOS shall be brought by you more than one (1) year after the accrual of the cause of action. This period shall not be extended for any reason, except by the written consent of both parties. All statutes or provisions of law which would toll or otherwise affect the running of the period of limitation are hereby waived, and no such statute or provision of law shall operate to extend the period limited in this paragraph, to the fullest extent permitted under applicable law.

**23.7 Entire Agreement.** These TOS are the complete and exclusive statement of these TOS with respect to the subject matter hereof and supersede all other communications or representations or agreements (whether oral, written, or otherwise) relating thereto.

**23.8 Severability.** If any term or provision of this TOS is held to be void or unenforceable by any judicial or administrative authority, such determination shall not affect the validity of enforceability of the remaining terms and provisions of this TOS. The

remaining provisions of this TOS shall remain in effect and shall be construed in accordance with its terms.

**23.9 Survival.** Sections 1, 3, and 5-23 of the TOS, and any other provision that by its nature should continue to be in effect, shall survive the expiration or earlier termination of the TOS, and shall remain valid and binding.

**23.10 Headings.** The headings contained in the TOS are for reference purposes only and shall not affect the meaning or interpretation of the TOS.

**23.11 No Waiver.** The failure of S+N to enforce at any time any of the provisions of the TOS, or the failure by S+N to require at any time performance by you of any of the provisions of the TOS, shall in no way be construed to be a present or future waiver of such provisions, nor in any way affect the right of S+N to enforce such provision thereafter. The express waiver by S+N of any provision, condition or requirement of the TOS shall not constitute a waiver of any future obligation to comply with such provision, condition or requirement.

**23.12 Third Party Services and Sites.** We may offer links or other functions or materials on the Service which allow you to interact with a third party service (e.g., third party cloud storage or email services) or browse or be redirected to a third party's website, such as a social networking platform.. We are not associated with, endorsing, or responsible for the Services, websites, or content or privacy practices of these third parties. If you have any questions about these other companies' practices, you should review their terms of use and other policies.

**23.13 Modification of these TOS.** We reserve the right, at our discretion, to change these TOS on a going-forward basis at any time. Please check these TOS periodically for changes. If a change to these TOS materially modifies your rights or obligations, we will notify you of the modified TOS by email to the address you provided in your user profile and/or in a notification in the Service or on our website. Material modifications will be effective upon your acceptance of such modified TOS or upon your continued use of the Service after we send or post our notification of the changes, whichever is earlier. Other modifications are effective upon publication. Disputes arising under these TOS will be resolved in accordance with the version of these TOS that was in effect at the time the dispute arose.

**23.14 Prohibition of Assignment.** You may not assign, transfer or sublicense any obligations or benefits under these TOS without the prior written consent of S+N. Subject to the foregoing, these TOS will bind and inure to the benefit of the parties, their respective successors and permitted assigns.

**23.15 Subcontractors.** You hereby consent to S+N's engagement of third parties (including S+N's affiliates) to perform, provide, or support the performance or provision of, all or any portion of the Service.

**23.16 Force Majeure.** To the fullest extent permitted under applicable law, S+N will be excused from performance under these TOS for any period that it is prevented from or delayed in performing any obligations pursuant to these TOS, in whole or in part, as a result of a Force Majeure Event. For purposes of this Section 23.16, "Force Majeure Event"

means an event or series of events caused by or resulting from any of the following: (a) weather conditions or other elements of nature or acts of God; (b) acts of war, acts of terrorism, insurrection, riots, civil disorders or rebellion; (c) quarantines or embargoes, (d) labor strikes; (e) telecommunications, network, computer, server or Internet disruption or downtime; (f) unauthorized access to S+N's information technology systems by third parties; (g) epidemics or pandemics; (h) criminal acts; or (i) other causes beyond the reasonable control of S+N.

**23.17 Export.** You may not use the Service if you are the subject of U.S. sanctions or of sanctions consistent with U.S. law imposed by the governments of the country where you are using the Services. You must comply with all U.S. or other export and re-export restrictions that may apply to goods, software, technology, and services.

**Effective: 1 August 2021**

**END USER**

**By:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Organization:** \_\_\_\_\_

**Date:** \_\_\_\_\_