

## ACCUSHIELD MARKETPLACE FACILITY TERMS OF USE

PLEASE READ CAREFULLY ALL THE TERMS AND CONDITIONS OF THESE FACILITY TERMS OF USE (THESE “**TERMS**”) FOR THE **ACCUSHIELD MARKETPLACE** (THE “**PLATFORM**”) AND THE PRIVACY POLICY. YOU HEREBY CERTIFY THAT YOU ARE AN AUTHORIZED REPRESENTATIVE OF THE SENIOR LIVING, SKILLED NURSING, OR OTHER HEALTHCARE FACILITY REFERENCED IN THE INFORMATION YOU PROVIDED DURING THE REGISTRATION PROCESS (THE “**FACILITY**” OR, HEREAFTER, “**YOU**”). BY CLICKING THE “AGREE” BUTTON BELOW, YOU ACCEPT THE TERMS AND CONDITIONS OF THESE TERMS ON BEHALF OF THE FACILITY. THESE TERMS FORM A LEGALLY BINDING AGREEMENT BETWEEN THE FACILITY AND ACCUSHIELD, LLC (“**ACCUSHIELD**”). IF YOU DO NOT AGREE TO THESE TERMS, THEN YOU MUST NOT ACCESS OR USE THE PLATFORM.

**ARBITRATION NOTICE:** THESE TERMS CONTAIN AN ARBITRATION CLAUSE AND A WAIVER OF RIGHTS TO BRING A CLASS ACTION AGAINST ACCUSHIELD. EXCEPT FOR CERTAIN TYPES OF DISPUTES MENTIONED IN THAT ARBITRATION CLAUSE, FACILITY AND ACCUSHIELD AGREE THAT DISPUTES BETWEEN US WILL BE RESOLVED BY MANDATORY BINDING ARBITRATION, AND THE FACILITY WAIVES ANY RIGHT TO PARTICIPATE IN A CLASS-ACTION LAWSUIT OR CLASS-WIDE ARBITRATION.

### 1. GENERAL TERMS

- 1.1 These Terms govern use of the Platform by the Facility and all of its Users for so long as any of them are accessing or using the Platform, including by maintaining an Account, any User Login, or any Shift Request.
- 1.2 Accushield will collect some personal and/or business information from the Facility to create an Account and grant each User a Login. All personal and/or business information collected, used or disclosed while using the Platform is governed by Applicable Law and Accushield’s Privacy Policy (“**Privacy Policy**”), which is located at [www.accushield.com/privacy-policy/](http://www.accushield.com/privacy-policy/) and which is incorporated by reference into these Terms. By using the Platform, the Facility agrees to Accushield’s use, collection and disclosure of personal and business identifiable information in accordance with the Privacy Policy. The rights and obligations of the parties under the Privacy Policy will survive any termination of the Facility’s use of the Platform.
- 1.3 Should the Facility believe that any material on the Platform is inaccurate, the Facility should forward a copy of the material to Accushield at [marketplace@accushield.com](mailto:marketplace@accushield.com) , along with an explanation of the Facility’s objection.
- 1.4 If you are an owner of intellectual property who believes your intellectual property has been improperly posted or distributed via the Platform, please notify Accushield by sending an email to [info@accushield.com](mailto:info@accushield.com).

### 2. THE PLATFORM

- 2.1 *About the Platform.* The Platform is a remotely hosted, software-based service that permits the Facility and its Users to view the Casual Staff of staffing services agencies (each, an “**Agency**”) who are available and qualified to provide certain Services. The Platform facilitates the connection of the Facility with the Casual Staff by enabling a streamlined process for the Facility to select and engage Casual Staff to fill open Shift Requests at the Facility. Accushield reserves the right, from time to time, to make modifications to the Platform; provided, however, that Accushield shall notify the Facility if Accushield makes any modification that materially diminishes the functionality of the Platform with respect to the Facility’s Account. The Platform (or certain features or functionality thereof) may be made available through an Application via a mobile or tablet device. To use any such Application, the applicable User must have a mobile or tablet device that is compatible with such Application and the User must have a Login associated with the Facility’s Account. For clarity, such access and use of the Platform (or any portions thereof) through an Application will be subject to these Terms.

- 2.2 *Use of the Platform.* Prior to using the Platform, the Facility must appoint an Administrator who shall apply and register for an account (“**Account**”) and a Login for the Administrator. Once an Administrator applies for, and Accushield approves, the set-up of an Account, a profile is created for the Facility. The Administrator, on behalf of the Facility, then assumes control over creating and managing Login credentials for additional Administrators and Users.
- 2.3 *Shift Requests.* The Facility, through its Users, may create Shift Requests on the Platform. The Facility shall ensure that each Shift Request correctly states all information required by the Platform, that such information remains current, and that no Shift Request includes any false or misleading information. The Facility acknowledges and agrees that Agencies will be relying on the information set forth in each Shift Request, and, as between the Facility and Accushield, the Facility shall be solely responsible for any damages or losses incurred by an Agency as a result of untrue, inaccurate, not current or incomplete information set forth in a Shift Request. Accushield has the right to reject any Shift Request, and to suspend the Facility’s entire Account (including the Logins of all of its Users) and refuse any current or future use of the Platform (or any portion there) by the Facility, if any Shift Request contains any information that is untrue, inaccurate, not current or incomplete. Shift Requests may be modified or removed at any time; provided, that no such modification or removal of a Shift Request will be effective if such Shift Request was properly accepted prior to the time of the modification or removal.
- 2.4 *Casual Staff Profiles.* Each Agency may create profiles for its Casual Staff on the Platform (each, a “**Staff Profile**”). The Agency, and not Accushield, is solely responsible for ensuring that each Staff Profile correctly states all information included therein, that such information remains current, and that no such Staff Profile includes any false or misleading information, including with respect to availability, skills, and credentials of the applicable Casual Staff. Staff Profiles may be modified or removed at any time; provided, that no such modification to or removal of a Staff Profile will be effective as to any Shift Request properly submitted prior to the time of the modification or removal.
- 2.5 *Verification of Agency Information.* In order to apply for and register for an Account and a Login, each Agency will be required to submit, among other things, evidence of a business license and proof of insurance (collectively, “**Agency Business Information**”). Accushield will make Agency Business Information available to the Facility through the Platform. The Facility acknowledges and agrees that Accushield has not verified the truth, accuracy, completeness, or correctness of any Agency Business Information and has relied on the applicable Agency to provide true, accurate, complete, and correct Agency Business Information. THEREFORE, WITHOUT LIMITING THE GENERALITY OF ANY OTHER LIMITATIONS OF LIABILITY OR OTHER DISCLAIMERS HEREIN, UNDER NO CIRCUMSTANCES WILL ACCUSHIELD BE LIABLE TO THE FACILITY IN ANY WAY FOR ANY FALSE, MISLEADING, INACCURATE, INCOMPLETE, OR INCORRECT AGENCY BUSINESS INFORMATION, UNLESS ANY OF THE FOREGOING RESULTED FROM THE GROSS NEGLIGENCE, WILLFUL MISCONDUCT, OR FRAUD OF ACCUSHIELD.
- 2.6 *Contracting with Agencies.*
- a) Given the significant risk to both the Facility and the applicable Agency if any Casual Staff provide Services without a valid agreement in place between the Facility and the applicable Agency, the Facility shall not engage any Casual Staff of any Agency to fulfill any Shift Request through the Platform unless and until the Facility has entered into an agreement for staffing services (each, a “**Staffing Services Agreement**”) with the applicable Agency. The Facility acknowledges and agrees that the negotiation, execution, and delivery of a Staffing Services Agreement is the sole responsibility of the Facility and the applicable Agency. Neither Accushield nor the Platform verifies whether a Staffing Services Agreement is in place between the Facility and the applicable Agency when displaying Shift Requests or Staff Profiles on the Platform, and Accushield shall have no responsibility to ensure that a Staffing Services Agreement is in place when the Facility engages any Casual Staff of an Agency to fulfill a Shift Request. ACCUSHIELD SHALL HAVE NO LIABILITY WHATSOEVER TO THE FACILITY FOR ANY LOSSES, DAMAGES, LIABILITIES, OR CLAIMS OF ANY KIND ARISING OUT OF THE

## FACILITY'S RECEIPT OF OR REQUEST TO RECEIVE SERVICES WITHOUT A VALID STAFFING SERVICES AGREEMENT IN PLACE.

b) Each Staffing Services Agreement forms a separate agreement from these Terms and will govern all aspects of the Services provided to the Facility by the applicable Agency's Casual Staff. The Facility shall comply with each Staffing Services Agreement. Accushield assumes no responsibility hereunder for the obligations of the Facility or any Agency in connection with any Staffing Services Agreement, and Accushield hereby disclaims all such responsibility. All Staffing Services Agreements (and all engagements thereunder) will survive any termination of the Facility's use of the Platform. Each time the Facility engages Casual Staff through the Platform to fulfill a Shift Request, such engagement will be governed by the applicable Staffing Services Agreement, and the Facility shall comply with the terms thereof.

2.7 *Form Staffing Services Agreement.* Upon the Facility's written request, Accushield will provide the Facility with a form staffing services agreement that, in Accushield's experience, includes terms and conditions generally acceptable to Agencies and healthcare facilities. Accushield does not represent or warrant that any Agency will be willing to accept the form staffing services agreement in whole or in part. The Facility acknowledges and agrees that: (a) Accushield is not engaged in the practice of law or in providing legal services to the Facility or any third party with respect to the use of any form staffing services agreement, (b) no attorney-client relationship exists, by virtue of these Terms, between Accushield and the Facility or Accushield and any third party with respect to any form staffing services agreement, and (c) if the Facility desires to use any form staffing services agreement provided by Accushield, the Facility must make an independent legal analysis of such form staffing services agreement and adopt it as the Facility's own.

2.8 *Communication Channels.* The Platform may include communication channels such as forums, communities or chat areas ("**Communication Channels**") designed to enable the Facility to communicate with Agencies, Casual Staff, and/or Accushield. All submissions to Communication Channels by any User (other than Accushield) will be deemed to be User Content under these Terms. THE FACILITY WILL BE SOLELY RESPONSIBLE FOR ITS AND ITS USERS' ACTIVITIES WITHIN THE COMMUNICATION CHANNELS AND UNDER NO CIRCUMSTANCES WILL ACCUSHIELD BE LIABLE FOR ANY ACTIVITY WITHIN THE COMMUNICATION CHANNELS. The Facility agrees that all of its communications within the Communication Channels are public, and the Facility should have no expectation of privacy regarding its use of the Communication Channels.

### 3. **USER ACCOUNTS AND REGISTRATION**

3.1 *Registration Data.* In order to establish a Login, each User will be required to provide certain personal and/or business information. Upon registering for a Login, each User (a) must provide accurate, current and complete information as may be prompted through any registration forms on the Platform ("**Registration Data**"); (b) must maintain the security of their Login; and (c) must maintain and promptly update the Registration Data, and any other information provided to the Platform, and keep it accurate, current and complete; and (d) accepts all risk of unauthorized access to the Registration Data and any other information provided to the Platform that is caused by the negligence, willful misconduct or omission of the Facility. If Accushield believes that any Registration Information provided by a User is untrue, inaccurate, not current or incomplete, Accushield may suspend or terminate the User's Login and refuse any and all current or future use of the Platform (or any portion thereof) by such User.

3.2 *Verifying Information.* In order to apply for and register for an Account and a Login, the Administrator will be required to submit additional information regarding the Facility as prompted by the Platform ("**Verifying Information**"). The Facility hereby consents and permits Accushield to send, give and/or present such Verifying Information to Casual Staff and the other Users of the Platform, including Agencies. The Facility also consents to posting or having such information posted on the applicable Agency's profile that Accushield, Casual Staff and other Users (including Agencies) will have access to and be able to view. If Accushield believes that any Verifying Information provided by the Facility is untrue, inaccurate, not current or

incomplete, Accushield may suspend or terminate the Facility's entire Account (including the Logins of all of its Users) and refuse any and all current or future use of the Platform (or any portion thereof) by the Facility.

3.3 *Account Security.* No User may allow other persons or entities to use such User's Login, and no Facility may allow other persons or entities to use such Facility's Account. The Facility agrees that it is responsible for any activity under any Logins granted under its Account(s), whether or not the Facility authorized that activity, except to the extent caused by Accushield's breach of any of its obligations set out in these Terms, or the gross negligence, willful misconduct, or fraud of Accushield. The Facility will immediately notify Accushield of any unauthorized use of any Account or Login.

3.4 *Consent to Communications.* By creating an Account and/or Login, the Facility, on behalf of itself and its Users, agrees and consents to receive certain communications from Accushield or Agencies, including notifications, Accushield's newsletter and/or other promotional emails or advertisements. Specifically, you agree that we may send you and your Users text messages (including SMS and MMS) or emails to any mobile phone number or email address provided when creating an Account or Login. Carriers are not liable for delivered or undelivered messages. Texts may be sent through an automatic telephone dialing system. The Facility and each User can opt-out of non-essential communications.

#### 4. **CASUAL STAFF CREDENTIALS AND TIMEKEEPING**

4.1 *Casual Staff Credentials.* The Agency, and not Accushield, is solely responsible for ensuring that all information, including all licenses, credentials, approvals, and authorizations, reflected in its Staff Profiles will be, at all times when such information is reflected on the Platform, legal, accurate, complete, and correct. Without limiting the generality of the foregoing, the Agency, and not Accushield, is solely responsible for ensuring that its Casual Staff have all the qualifications, licenses, credentials, approvals, immunizations, and authorizations required by the Facility for the position type designated in each Shift Request accepted by such Casual Staff, and that such Casual Staff meet all other personnel requirements of the applicable Staffing Services Agreement. The Agency, and not Accushield, is solely responsible for ensuring that no Casual Staff accepts any Shift Request or work from any other business organizations or entities which would create an actual or potential conflict of interest.

4.2 The Facility shall direct all Casual Staff clock in and clock out for Scheduled Shifts using the Accushield kiosk, if such is located at the Facility.

#### 5. **FEES AND EXPENSES.**

5.1 *Fees and Expenses under Staffing Services Agreement.* As between Accushield and the Facility, the Facility is solely responsible for all fees, charges, and expenses payable to the Agency in connection with each Staffing Services Agreement. Accushield will not be responsible for any amounts payable by or to the Facility or any Casual Staff in connection with any Staffing Services Agreement, Shift Request, or Services, including staffing fees, charges, travel expenses, assessments, taxes, penalties, or other liabilities.

5.2 *Cancellation of Scheduled Shifts.* Any cancellation of a Scheduled Shift by the Facility, an Agency, or any Casual Staff, or any failure of a Casual Staff to arrive for a Scheduled Shift will be governed entirely by the terms and conditions of the Staffing Services Agreement. Accushield makes no representations, warranties, or guarantees that the Casual Staff of any Agency will arrive on time for any Scheduled Shift or that any Casual Staff will agree to fulfill any Shift Request.

5.3 This Section 5 will survive any termination of the Facility's use of the Platform.

#### 6. **NON-CIRCUMVENTION.**

The Facility shall not, directly or indirectly, contact an Agency outside of the Platform to fulfill any Shift Request available to the Agency or any of its Casual Staff on the Platform, which obligation will survive any termination of the Facility's use of the Platform. In addition, the

Facility shall not, directly or indirectly, cause, induce or encourage any Agency who has filled Shift Requests or any of its Casual Staff on the Platform to terminate or materially reduce its use of the Platform to fulfill Shift Requests, which obligation will survive for twelve (12) months following any termination of the Agency's use of the Platform. Repeated attempts to do either of the foregoing may result in termination of the Agency's access to the Platform.

## 7. OWNERSHIP, COPYRIGHT AND TRADEMARKS

- 7.1 *User Content.* Content provided by any Users (including the Facility, Casual Staff, and Agencies) is called "**User Content**". User Content is the property of its respective owners (e.g. the User that inputted it). For clarity, User Content includes reviews, communication between Users, Verifying Information, Agency Business Information, Shift Requests, Staff Profiles and other data uploaded by a User to the Platform. Accushield's only rights to use the Facility's User Content are reflected in the limited licenses granted to it in these Terms. Although Accushield has no obligation to do so, Accushield has the absolute discretion to pre-screen, monitor, review, cut, crop, edit, refuse to publish, remove, block, "ghost," disallow, or delete, without notice, any User Content posted or stored on the Platform, and Accushield may do this at any time and for any reason, provided that it is acting in good faith. Accushield accepts no liability in respect of any User Content published by Users or by third parties. The Facility's User Content is the Facility's responsibility. Accushield has no responsibility or liability for it, or for any loss or damage User Content may cause to the Facility or other people, except where attributable to the gross negligence, willful misconduct, or fraud of Accushield. Accushield does not endorse any of the views reflected in any User Content posted on the Platform. User Content submitted to any public area of the Platform will be considered non-confidential. ACCUSHIELD DOES NOT GUARANTEE THE ACCURACY, INTEGRITY, APPROPRIATENESS OR QUALITY OF ANY USER CONTENT OR BIOGRAPHICAL INFORMATION OR OTHER USER INFORMATION ACCOMPANYING SUCH USER CONTENT, AND UNDER NO CIRCUMSTANCES WILL ACCUSHIELD BE LIABLE IN ANY WAY FOR THE SAME.
- 7.2 *Copyright, Trademarks, and Other Materials.* Other than User Content, the Platform, any other Content, and any other software or other technologies used to create and operate the Platform, or made available in connection therewith, is the property of Accushield or its direct and indirect licensors, and is protected by US, Canadian and international copyright laws, and all rights to the Platform, such Content and such software are expressly reserved. All Trademarks displayed in the Platform are the property of their respective owners. Except as explicitly provided in these Terms, you may not distribute, transmit, display, reproduce, modify, create derivative works from, or otherwise exploit any of the Content on the Platform. You may display and occasionally print a single copy of any page on the Platform for your own use, but you may not otherwise reproduce any Content appearing on the Platform without the prior written consent of the owner. You may not store any significant portion of, or distribute copies of, Content found on the Platform, in any form (including electronic means), without prior written permission from the owner. The foregoing restrictions will survive any termination of the Facility's use of the Platform.
- 7.3 *Marketing Using the Accushield Trademarks and Name.* The Facility is not authorized to use any of the Trademarks of Accushield or any of its licensors. Accushield may grant a limited license or use to the Facility to use specified Trademarks of Accushield or certain of its licensors for marketing purposes. Such license or use shall be requested and granted in writing only. Such use shall be limited to and not exceed the authority granted by Accushield in the written authorization and shall not extend to other Intellectual Property Rights. The Facility shall cease all use of any Trademarks of Accushield or its licensors upon any termination of the Facility's use of the Platform.
- 7.4 *Anonymous Statistical Data.* Notwithstanding anything else in this Agreement or otherwise, Accushield may monitor use of the Platform and use data and information related to such use in an aggregate manner, including to compile statistical and performance information related to the provision and operation of the Platform, but in each case in a manner that is anonymized and

does not identify the Facility or its users (“**Aggregated Statistics**”). Accushield may use or distribute Aggregated Statistics for any purpose, provided that such data and information is anonymized and does not identify the Facility or its users.

## 8. LICENSE TO USE THE SERVICE; USAGE RESTRICTIONS

8.1 *Right to Access.* Subject to the terms and conditions of these Terms, Accushield hereby grants to the Facility a revocable, non-exclusive, non-transferable, non-sublicensable right to use and access the Platform, solely through its authorized Users, to submit Shift Requests, and to conduct other activities related thereto that are made available via the Platform for such purposes, in each case, in accordance with the terms and conditions of these Terms. Unless explicitly stated herein, nothing in these Terms may be construed as conferring any license to Intellectual Property Rights, whether by estoppel, implication or otherwise.

8.2 *Usage Restrictions.* Other than as expressly permitted under these Terms, the Facility shall not, and the Facility shall ensure that its Users do not:

- (a) resell, lease or provide access to the Platform or any Staff Profiles in any other way to anyone else, except as permitted through the Platform;
- (b) make or distribute copies of the Platform or any Content on the Platform, including the User Content of other Users;
- (c) alter, merge or translate the Platform or any Content on the Platform, or decompile, reverse engineer, disassemble, or otherwise reduce the Platform to a human-perceivable form (except as otherwise required by Applicable Laws);
- (d) modify, reproduce or create derivative works based on the Platform or any Content on the Platform;
- (e) use the Platform or any Content on the Platform to develop or deploy any application, offering or service having the same or similar primary function as the Platform;
- (f) remove or modify any copyright, trademark or other proprietary notices that have been placed in the Platform or any Content on the Platform;
- (g) otherwise use the Platform or any other materials made available through the Platform other than for its or their intended purposes;
- (h) impersonate any person or entity;
- (i) stalk, threaten, or otherwise harass any person or entity;
- (j) use any portion of any User Content without the prior written permission of its owner;
- (k) act, or provide, in any manner and/or post, upload to, transmit, distribute, store, create or otherwise publish through the Platform any message, data, information, text, music, sound, photos, graphics, code or other material, that (i) is unlawful, libelous, defamatory, obscene, harassing, racist, prejudiced, threatening, invasive of privacy or publicity rights, abusive, inflammatory, fraudulent or otherwise objectionable in the sole opinion of Accushield; (ii) would constitute, encourage or provide instructions for a criminal offense, violate the rights of any party or that would otherwise create liability or violate any Applicable Law; (iii) is intended to advertise the services of another person or entity; (iv) includes private information of any third-party, unless that third-party has expressly consented to such use; or (v) contains viruses, corrupted data or other harmful, disruptive or destructive files;
- (l) index, scrape “data mine”, survey or in any way reproduce or circumvent the navigational structure or presentation of the Platform;
- (m) link directly or indirectly to any other websites, applications or services from any User Content uploaded by the Facility or any of its Users; or
- (n) transfer or sell any Account, Login, password and/or identification to any other party.

8.3 Any unauthorized use of the Platform or any materials provided through the Platform may also violate Applicable Laws, including without limitation copyright and trademark laws. ACCUSHIELD RESERVES THE RIGHT TO SUSPEND AND/OR TERMINATE FACILITY'S USE OF THE PLATFORM (IN WHOLE OR IN PART) AT ANY TIME WITHOUT PRIOR NOTICE, WITH OR WITHOUT CAUSE, AND WITHOUT ANY RIGHT OF REFUND, SET-OFF, OR HEARING. Accushield further reserve the right, at any time and without prior notice, with or without cause, to remove or disable access to content at our discretion for any reason or no reason. Any termination of the Facility's use of the Platform terminates all rights and licenses granted to the Facility and its Users hereunder. The usage restrictions above will survive any termination of the Facility's use of the Platform.

## 9. LIMITED LICENSES TO ACCUSHIELD

9.1 By posting or distributing any User Content to or through the Platform, the Facility, on behalf of itself and its Users, (a) hereby irrevocably grants Accushield and its affiliates and subsidiaries, and its and their respective personnel, contractors, licensors, and representatives, a non-exclusive, royalty-free, transferable, sub-licensable, worldwide right to use, display, perform, reproduce, distribute, publish, modify, adapt, translate and create derivative works from such User Content, and otherwise use any and all of such User Content in the manner and for the purposes which the Platform from time to time uses such User Content; and (b) represents and warrants that the Facility owns and control all of the rights in and to such User Content, or otherwise has the lawful right, to post and distribute such User Content to or through the Platform and to grant the rights and licenses granted herein.

9.2 Subject to the Privacy Policy, the Facility, on behalf of itself and its Users, hereby grants Accushield and its affiliates and subsidiaries, and its and their respective personnel, contractors, licensors, and representatives, a non-exclusive, royalty-free, transferable, sub-licensable, worldwide right to use, reproduce, modify, disclose, transmit or post any communications (other than User Content), whether verbal or in writing, including data, information, ideas, inventions, concepts, techniques, know-how evaluations, questions, comments, suggestions, or similar, transmitted by the Facility or its Users to Accushield or its affiliates or its or their personnel ("**User Submissions**"), for any purpose whatsoever, including developing, manufacturing and marketing products using such information, without acknowledgement or compensation to the Facility or any User.

## 10. SECURITY OF THE SERVICE

Despite Accushield's reasonable efforts to support security and availability, the internet is an inherently insecure medium, and the reliability of hosting services, internet intermediaries, internet service providers, and other service providers cannot be assured. Therefore, when the Facility uses the Platform, it accepts these risks and the responsibility for choosing to use a technology that cannot guarantee complete security and reliability.

## 11. THIRD-PARTY MATERIALS AND SERVICE PROVIDERS; LINKED SITES

11.1 *Third-Party Software and/or Open Source Software.* The Platform may contain and/or may connect to third-party software and/or open source software, which may be subject to third-party licenses and require notices and/or additional terms and conditions ("**Third-Party Licenses**"). These Third-Party Licenses are made a part of and incorporated into these Terms. By accepting these Terms, the Facility is also accepting the Third-Party Licenses, if any. The Facility and Accushield hereby agree that nothing in the Third-Party Licenses shall, in any way, alter these Terms or the Facility's or Accushield's obligations hereunder. ACCUSHIELD IS NOT RESPONSIBLE OR LIABLE TO THE FACILITY OR ANY OTHER PARTY FOR ANY THIRD PARTY SOFTWARE OR ANY USE THEREOF BY THE FACILITY OR ANY USER.

11.2 *Third-Party Service Providers.* In the course of using an Account or the Platform, the Facility may be required or, by the Facility's actions, may be deemed, to consent to the terms of agreements provided by certain third-party service providers, including but not limited to, payment processors, credit card companies and banks. The Facility agrees that nothing in those agreements shall, in any way, alter the terms and conditions of these Terms or the Facility

obligations hereunder. ACCUSHIELD IS NOT RESPONSIBLE OR LIABLE TO THE FACILITY OR ANY OTHER PARTY FOR ANY ACTS OR OMISSIONS OF ANY THIRD PARTY SERVICE PROVIDER OR ANY USE BY THE FACILITY OR ANY USER OF SERVICES PROVIDED BY ANY THIRD PARTY SERVICE PROVIDER.

- 11.3 *Linked Sites.* Accushield or other Users may, within the Platform or otherwise, make available a variety of links to other websites or applications where the Facility may, among other things, obtain related products and services (the “**Linked Sites**”). Whether or not Accushield is affiliated with a Linked Site, Accushield is not responsible for its content. The Linked Sites are for the Facility’s convenience only and the Facility may access them at its own risk. Linked Sites are not an endorsement and Accushield does not represent or warrant the accuracy or truth of the contents or information found on said Linked Sites.

## 12. **INDEMNIFICATION.**

- 12.1 The Facility shall defend, indemnify, protect and hold harmless Accushield, its affiliates, and each of their respective directors, officers, employees, licensors, agents, successors and assigns from and against any and all losses, damages, liabilities, judgments, costs, and expenses (including reasonable attorneys’ fees) incurred by any of them in connection with any demands, causes of action, claims or suits of any kind asserted or brought by a third party, in each case, to the extent arising out of or resulting from (a) use of or access to the Platform by the Facility or any of its Users, including any Shift Request or other User Content of the Facility or its Users; (b) any Staffing Services Agreement, including as a result of any breach thereof by the Facility or any failure by the Facility to pay all fees, charges, and expenses due thereunder; (c) any other misrepresentation, negligent act or omission, willful misconduct, or violation of Applicable Law of or by the Facility, its Users, or other personnel or agents, (d) the breach of any warranty, covenant, or obligation contained in these Terms by the Facility or its personnel or any agents of the Facility, (f) any claim that any User Content, User Submissions, or other materials provided by or through the Facility or its Users to the Platform or to Accushield infringes, misappropriates, or otherwise violates any third party right, including any Intellectual Property Right or other proprietary rights, or any privacy right, or (g) any and all claims with respect to the Facility’s consent to receive advertising offers and other communications from Accushield, in each case, except to the extent that such demand, cause of action, claim or suit gives rise to an obligation for Accushield to indemnify the Facility under Section 12.2 below.
- 12.2 Accushield shall defend, indemnify, protect and hold harmless the Facility, its affiliates, and each of their respective directors, officers, employees, licensors, agents, successors and assigns from and against any and all losses, damages, liabilities, judgments, costs, and expenses (including reasonable attorneys’ fees) incurred by any of the in connection with any demands, causes of action, claims or suits of any kind asserted or brought by a third party, in each case, to the extent arising out of or resulting from (a) an allegation that Facility’s use of the Platform in accordance with these Terms infringes or misappropriates such third party’s United States patent, copyright, or trademark rights; or (b) the breach of any warranty, covenant, or obligation contained in these Terms by Accushield or its personnel or any approved subcontractors of Accushield. Notwithstanding the foregoing, Accushield shall have no obligation under these Terms for any claim arising from any infringement or misappropriation (or alleged infringement or misappropriation) resulting from or caused by (i) access to or use of the Platform or any Content in combination with any products, service, hardware, system, software, network, business process(es), or other materials or service not provided by Accushield or specified for the Facility’s use in any documentation or these Terms, (b) third party software, third party providers, or Linked Sites, (c) User Content, User Submissions, or other materials provided by or through the Facility or its Users to the Platform or to Accushield, (d) any modification of the Platform or Content made without Accushield’s specific written approval, (e)



failure to timely implement any modifications to the Platform made available to the Facility by or on behalf of Accushield, or (f) any misuse of the Platform or Content.

12.3 The obligations contained in this Section 12 will survive any termination of the Facility's use of the Platform.

13. **DISCLAIMER OF WARRANTIES; LIMITATION OF LIABILITY**

13.1 IF YOU RELY ON THE PLATFORM OR ANY CONTENT AVAILABLE THROUGH THE PLATFORM, INCLUDING WITHOUT LIMITATION, ANY USER CONTENT OR STAFF PROFILE, YOU DO SO AT YOUR OWN RISK. YOU UNDERSTAND THAT THERE MAY BE DELAYS, OMISSIONS, INTERRUPTIONS, INACCURACIES, AND/OR OTHER PROBLEMS WITH THE CONTENT PUBLISHED OVER THE PLATFORM. YOU ALSO UNDERSTAND THAT YOU ARE SOLELY RESPONSIBLE FOR ANY DAMAGE OR LOSS YOU MAY INCUR THAT RESULTS FROM YOUR USE OF ANY SERVICE OR ANY CONTENT DOWNLOADED FROM OR OTHERWISE PROVIDED THROUGH THE PLATFORM.

13.2 THE PLATFORM IS PROVIDED TO YOU "AS IS." ACCUSHIELD AND ITS AFFILIATES, AGENTS AND LICENSORS CANNOT AND DO NOT WARRANT THE ACCURACY, COMPLETENESS, CURRENTNESS, NONINFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PLATFORM OR THE CONTENT AVAILABLE THROUGH THE PLATFORM (OR ANY INFORMATION, GOODS OR SERVICES THAT ARE REFERRED TO, ADVERTISED OR PROMOTED ON, OR SOLD THROUGH THE PLATFORM). NOR DO WE OR THEY GUARANTEE THAT THE PLATFORM WILL BE ERROR FREE, OR CONTINUOUSLY AVAILABLE, OR THAT THE PLATFORM WILL BE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. BECAUSE SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, SOME OF THESE LIMITATIONS MAY NOT APPLY TO THE FACILITY.

13.3 UNDER NO CIRCUMSTANCES WILL ACCUSHIELD OR ITS AFFILIATES, AGENTS OR LICENSORS BE LIABLE TO THE FACILITY OR ANYONE ELSE FOR ANY DAMAGES OTHER THAN DIRECT DAMAGES ARISING OUT OF THE FACILITY'S USE OF THE PLATFORM OR ANY PRODUCT OR SERVICE PROMOTED OR ADVERTISED OR ACCESSIBLE THROUGH LINKED SITES ON THE PLATFORM, INCLUDING CONSEQUENTIAL, SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, EXEMPLARY, OR OTHER DAMAGES OF ANY KIND (INCLUDING LOST REVENUES OR PROFITS, LOSS OF BUSINESS OR LOSS OF DATA OR DIMINUTION IN VALUE), EVEN IF ACCUSHIELD OR ITS AFFILIATES, AGENTS OR LICENSORS ARE ADVISED BEFOREHAND OF THE POSSIBILITY OF SUCH DAMAGES. THE FACILITY AGREES THAT THE LIABILITY OF ACCUSHIELD AND ITS AFFILIATES, AGENTS AND LICENSORS, IF ANY, ARISING OUT OF ANY KIND OF LEGAL CLAIM ARISING OUT OF OR OTHERWISE RELATED TO THE PLATFORM WILL NOT EXCEED THE GREATER OF (i) THE AMOUNT THE FACILITY PAID, IF ANY, FOR THE USE OF THE PLATFORM OUT OF WHICH SUCH LIABILITY ALLEGEDLY ARISES IN THE THREE (3) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM AND (ii) \$100.

13.4 **In no event may you bring any claim or cause of action under these Terms more than one (1) year after such claim or cause of action arises.**

13.5 The limitations contained in this Section 13 will survive any termination of the Facility's use of the Platform.

14. **CONFIDENTIALITY.**

14.1 During the course of the Facility's use of the Platform, the Facility and Accushield, and their respective employees, consultants, and representatives ("**Representatives**"), may be exposed to, receive, or otherwise learn information of the other party which is known to be confidential or, through reasonable care, should have been known to be confidential ("**Confidential**

**Information**”). For clarity, the terms of these Terms are the Confidential Information of Accushield.

- 14.2 The Facility and Accushield shall each, and shall cause its respective Representatives to, hold all Confidential Information in trust and confidence; shall safeguard the Confidential Information with security measures reasonable under the circumstances, given the nature of the Confidential Information; shall use such Confidential Information only for performance of its obligations or exercise of its rights under these Terms; and shall disclose the Confidential Information only to those of its affiliates, Representatives and attorneys, accountants, and financial advisors who have a need to know in order to perform its obligations or exercise its rights under these Terms. Further, Accushield shall be entitled to disclose these Terms to third parties who have been informed of the confidentiality obligations of these Terms and agree to be bound by the terms of a confidentiality agreement entered into with Accushield.
- 14.3 Nevertheless, the restrictions of Section 14.2 shall not apply to information that: is or becomes public through no wrongful act or omission of the receiving party, was known to receiving party prior to disclosure or discovery hereunder; is independently developed by receiving party without reference to the Confidential Information; is rightfully obtained from a third party lawfully in possession of the Confidential Information and not under a confidentiality obligation; or is required to be disclosed by a court or other governmental order or decree, provided that receiving party furnishes prompt notice of the matter involving such order or decree (to the extent permitted by law) and cooperates with disclosing party in opposing or limiting such compelled disclosure. Notwithstanding the foregoing, this Section 14.3 does not apply to any Registration Data and Verifying Information, which shall at all times be Confidential Information of the Facility.
- 14.4 Accushield agrees to use appropriate security measures to protect the Facility’s User personal information from unauthorized access, destruction, use, modifications or disclosure in accordance with all applicable federal and state privacy laws.
- 14.5 The rights and obligations of the parties under this Section 14 will survive any termination of the Facility’s use of the Platform.

15. **GENERAL.**

- 15.1 *Non-Exclusivity.* Nothing in these Terms is intended or shall be construed as creating any exclusive arrangement between Accushield and the Facility. These Terms shall not restrict Accushield from providing the Platform or any similar, equal or like services to other entities or persons.
- 15.2 *Governing Law.* These Terms shall be governed by and construed in accordance with the laws of the State of Georgia in the United States.
- 15.3 *Survival.* When any Account is terminated, any User Content uploaded to the Platform may remain on the Platform or in related backup systems. The license and rights the Facility has granted to Accushield in Section 9 therefore survive such termination. Any terms and conditions of these Terms which by their nature extend beyond termination of an Account shall survive such termination, including those expressly designated herein as surviving such termination.
- 15.4 *Dispute Resolution.*
- (a) The parties hereby irrevocably and unconditionally agree that any controversy or claim between the parties arising out of or relating to the Platform, to these Terms, to the Privacy Policy, to our advertising or solicitation practices or to Shift Requests you submit through the Platform that is not resolved through good faith negotiation will be settled solely by final and binding arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Claims shall be heard by a single arbitrator and the place of arbitration shall be Cobb County, Georgia. This arbitration agreement is made pursuant to a transaction involving interstate commerce, and will be governed and enforced under the Federal Arbitration Act, 9 U.S.C. § 1-16 (“**FAA**”). Each party will bear its own

expenses in the arbitration and will share equally the costs of the arbitration; provided, however, the prevailing party shall be entitled to an award of reasonable attorney fees. To the greatest extent permissible under Applicable Law, the arbitrator will be bound by and will strictly enforce these Terms, including any limitations of liability contained herein, and may not limit, expand or otherwise modify any of the provisions of the foregoing.

(b) **CLASS ACTION WAIVER. ANY ARBITRATION PROCEEDING UNDER THIS SECTION WILL TAKE PLACE ON AN INDIVIDUAL BASIS. CLASS ARBITRATIONS AND CLASS OR REPRESENTATIVE PROCEEDINGS OF ANY KIND ARE NOT PERMITTED AND YOU EXPRESSLY WAIVE YOUR ABILITY TO PARTICIPATE IN A CLASS OR REPRESENTATIVE PROCEEDING AGAINST ACCUSHIELD OR ITS AFFILIATES. IF THIS ARBITRATION AGREEMENT IS FOUND INAPPLICABLE TO YOUR DISPUTE WITH ACCUSHIELD, THIS CLASS ACTION WAIVER WILL CONTINUE TO APPLY IN LITIGATION. YOU AGREE THAT THIS CLASS ACTION WAIVER IS AN ESSENTIAL ELEMENT OF THIS AGREEMENT TO ARBITRATE AND THAT IT MAY NOT BE SEVERED. IN THE EVENT THAT THIS CLASS ACTION WAIVER IS DEEMED INVALID OR UNENFORCEABLE, THEN THE ENTIRE AGREEMENT TO ARBITRATE IN THIS SECTION WILL BE NULL AND VOID.**

(c) Notwithstanding anything contained in these Terms to the contrary, either party shall be entitled to seek injunctive or other equitable relief from a court of competent jurisdiction whenever the facts or circumstances would permit a party to seek such relief.

15.5 *Force Majeure.* Accushield shall not be liable for its failure, delay, or hindrance in performing any of its obligations hereunder to the extent such failure, delay, or hindrance is attributable to a Force Majeure Event. Accushield will promptly notify the Facility of such failure, delay, or hindrance and shall use commercially reasonable efforts to limit the effect of such event or circumstance on the performance of its obligations. **“Force Majeure Event”** means any circumstance or cause beyond a party’s reasonable control and not caused by such party, its agents or employees, including, without limitation, (a) acts of God, (b) flood, fire, earthquake, severe weather event, explosion, accident, epidemic, quarantine or other natural or man-made disaster, (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, sabotage, riot, national or regional emergencies or other civil disturbances, (d) acts or failures to act of any governmental or regulatory body (whether civil or military, domestic or foreign), embargoes or blockades, (e) strikes, lockouts, labor stoppages or slowdowns or other industrial disturbances, and (f) outage or shortage of adequate power, telecommunications, internet, supplies, raw materials, fuel, infrastructure or transportation..

15.6 *Independent Contractor.* Nothing contained in these Terms shall create an employer and employee relationship, a master and servant relationship, or a principal and agent relationship between the Facility or any Facility employee(s), on the one hand, and Accushield or its affiliates or licensors, on the other hand. Accushield and the Facility agree that the Facility and Accushield are and shall remain independent contractors.

15.7 *Notices.*

(a) Except as otherwise required by these Terms, Accushield may give any notice required by these Terms by means of a general notice on the Platform or via email to the Facility’s email address on record in Accushield’s account information. Notices provided via email will be deemed given and received on the transmission date of the email. It is the Facility’s responsibility to periodically review the Platform for notices. Notwithstanding the foregoing, Accushield shall provide the Facility with notice in writing, by certified mail or overnight courier, return receipt requested, at the address on record in Accushield’s account information, with respect to any request for indemnification, notice of dispute, or notice of breach.

(b) The Facility may give any notice required by these Terms by any of the following means, and, in each case, such notice shall be deemed given when received by Accushield: (a) email with receipt notification to [lever.stewart@accushield.com](mailto:lever.stewart@accushield.com) (for other communication that does not involve notices required by these Terms, the Facility may use [info@accushield.com](mailto:info@accushield.com) or such

other email specified by Accushield), or (b) notice in writing, by certified mail or overnight courier, return receipt requested, to Accushield at the following address:

Accushield, LLC.  
2030 Powers Ferry Rd  
Suite 360  
Atlanta, GA 30339 USA  
Attention: Lever Stewart, COO  
[lever.stewart@accushield.com](mailto:lever.stewart@accushield.com)

- (c) Each party may change its particulars respecting notice by issuing notice to the other party in the manner described in these Terms.
- 15.8 *Amendment.* Accushield reserves the right, at any time and from time to time, to update, revise, supplement, and otherwise modify these Terms or its Privacy Policy and to impose new or additional rules, policies, terms, or conditions on the Facility's use of the Platform. Accushield will communicate changes to these Terms by posting the new version on the Platform or its website here, or as otherwise determined by Accushield in its sole discretion, at which time such updated Terms will be immediately effective. The Facility is responsible for regularly reviewing these Terms and the Privacy Policy. The Facility's continued use of the Platform after such notification of changes to these Terms will constitute the Facility's acceptance of any and all such changes. Notwithstanding the foregoing, Accushield will notify the Facility of any material changes to these Terms no less than fifteen (15) days prior to such changes taking effect.
- 15.9 *Assignment and Subcontracting.* These Terms shall inure to the benefit of, and be binding on, the parties and their respective successors and permitted assigns. The Facility may not assign its rights or delegate its obligations under these Terms, in whole or in part, without the prior written consent of Accushield, which consent shall not be unreasonably delayed or withheld. Accushield may assign any of its rights or delegate its obligations under these Terms, in whole or in part, to any affiliate or to any person acquiring all or substantially all of Accushield's assets without the Facility's consent. Accushield may hire or engage one or more subcontractors or other independent contractors, in locations both inside and outside of the United States, to perform any or all of its obligations under these Terms, including operation of the Platform. Such persons may have access to the Facility's User Content in providing services to Facilities, and/or providing the Facility with access to the Platform. Any such access from outside the United States may make the Facility personal and/or business information the subject of foreign laws and foreign legal proceedings; provided, that no such information will be disclosed in connection with foreign legal proceedings or otherwise unless required by law, and prior to any required disclosure, Accushield will provide notice to the Facility unless it is prohibited by law from doing so. Accushield shall remain responsible for the acts and omissions of its subcontractors, independent contractors and other third party providers to the same extent that Accushield is liable for its own acts or omissions hereunder.
- 15.10 *Third Party Beneficiaries.* Except as specified in these Terms, these Terms do not create any obligations of, or any rights, causes of action, or benefits, in favor of any person or entity other than the Facility and its applicable affiliates (and their respective successors and permitted assigns) and Accushield and its applicable affiliates (and their respective successors and permitted assigns).
- 15.11 *Severability.* Any provision of these Terms which is prohibited or unenforceable in any jurisdiction will, as to that jurisdiction, be ineffective to the extent of such prohibition or unenforceability and will be severed from the balance of these Terms, all without affecting the remaining provisions of these Terms or affecting the validity or enforceability of such provision in any other jurisdiction. Such provision(s) shall be construed, as nearly as possible, to reflect the intentions of the invalid or unenforceable provision(s).
- 15.12 *Entire Agreement.* These Terms and any documents incorporated herein constitute the entire agreement between the parties with respect to the subject matter hereof and supersedes all

previous negotiations, proposals, commitments, writings and understandings of any nature whatsoever.

- 15.13 *Waiver.* No term or provision of these Terms is deemed waived and no breach excused, unless the waiver or consent is in writing and signed by the party claiming to have waived or consented. Any consent by any party to, or waiver of, a breach by the other, whether expressed or implied, does not constitute a consent to, waiver of, or excuse for, any other different or subsequent breach.
- 15.14 *Interpretation.* The headings used in these Terms are used for convenience only and are not to be considered in construing or interpreting these Terms. The parties agree that the terms and conditions of these Terms are the result of negotiations between the parties and that these Terms will not be construed in favor of or against any party by reason of the extent to which any party or its professional advisors participated in the preparation of these Terms. For purposes of these Terms, unless the context requires otherwise: (a) the words “include,” “includes,” and “including” are deemed to be followed by the words “without limitation”, and (b) the words “herein,” “hereof,” “hereby,” “hereto,” and “hereunder” refer to these Terms as a whole.

## 16. **DEFINITIONS**

The following capitalized terms will have the following definitions under these Terms:

- 16.1 “**Administrator**” means a primary User of an Account with authority to designate additional Administrators and/or Users to access such Account and use the Platform.
- 16.2 “**Aggregated Statistics**” means anonymized Platform performance and usage data that does not identify the Facility or its users.
- 16.3 “**Application**” means Accushield’s iOS and Android applications that allow Users to access and use the Platform.
- 16.4 “**Applicable Law**” means all applicable requirements, laws, statutes, codes, acts, ordinances, orders, decrees, injunctions, by-laws, rules, regulations of all applicable government authorities, agencies, bodies or departments, having jurisdiction over the Facility’s use of the Platform.
- 16.5 “**Services**” means nursing, personal support, and other health-care or non-healthcare related services that are provided by Casual Staff.
- 16.6 “**Casual Staff**” means active employees or contractors of an Agency that are in good standing and have been assigned by the Agency and for whom Staff Profiles are maintained on the Platform.
- 16.7 “**Content**” means the content available on, processed by, or generated by the use of the Platform, whether or not made available to the Facility or provided by the Facility, including all User Content, information, data, usage and performance data, logos, marks, designs, graphics, pictures, sound files, other files, and their selection and arrangement.
- 16.8 “**Intellectual Property Rights**” means worldwide, common law and statutory rights, laws of equity or any other governing form of law associated with (a) patentable inventions, patents and patent applications, divisions, continuations, renewals, reissuance and extensions, thereof, (b) copyrights, copyright applications and copyright registrations, “moral” rights and mask work rights, (c) the protection of trade and industrial secrets and confidential information, and (d) trademarks, trade names, service marks, and logos (collectively “**Trademarks**”).
- 16.9 “**Login**” means a unique login established by each (a) Administrator upon the approval and authorization of Accushield; and (b) User upon the approval and authorization of an Administrator, for a specific Account, so that the User can access such Account and use the Platform.
- 16.10 “**Scheduled Shift**” means a Shift Request from the Facility that has been accepted by or on behalf of Casual Staff through the Platform.

- 16.11 “**Shift Request**” means a request by the Facility for Services that has been submitted through the Platform and is made available for Casual Staff to accept under these Terms.
- 16.12 “**User**” means an Administrator(s) and other individual(s), approved and authorized by each Administrator to apply for, access and use an Account, through a Login, and use the Platform on the Facility’s behalf.

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